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ABLE DANGER AND INTELLIGENCE INFORMATION SHARING

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

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ABLE DANGER AND INTELLIGENCE INFORMATION SHARING

WEDNESDAY, SEPTEMBER 21, 2005

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 9:31 a.m., in Room 226, Dirksen Senate Office Building, Hon. Arlen Specter (chairman of the committee) presiding.

Present: Senators Specter, Grassley, Kyl, Sessions, and Biden.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Chairman SPECTER. The Judiciary Committee will now proceed to a hearing on a project known as Able Danger.

There has been extensive publicity in the media about this program known as Able Danger, with representations made that the Department of Defense had information about an Al Qaeda cell, including the identification of Mohammed Atta, substantially prior to 9/11, and that arrangements which had been made preliminarily to turn over the information to the FBI were not carried out because of concern by the Department of Defense that there might be a violation of the Posse Comitatus Act. That is a statute which was enacted shortly after the Civil War which prevents the United States military from being engaged in law enforcement activities.

If the Posse Comitatus Act precluded this information from being turned over by the Department of Defense to the FBI, then that is a matter which may require amendments to the Act, and that is a matter for the Judiciary Committee. It is squarely within our jurisdiction. The oversight of the FBI also is a matter squarely within the jurisdiction of the Judiciary Committee, so that the Committee is concerned about what happened here.

There have been some allegations of destruction of records. There has been a question raised as to whether the name Mohammed Atta is the Mohammed Atta, some saying that it is a common name. The circumstances relating to the identification of the Al Qaeda cell, if, in fact, that happened, and alleged charts with the name of Mohammed Atta and a picture, all are questions to be resolved.

For the record, I will now introduce, without objection, a letter which I wrote to Secretary of Defense Rumsfeld dated September 8, 2005. There have been extensive discussions between my staff and staff from the Department of Defense. I was surprised to find that the Department of Defense has ordered five key witnesses not

to testify, some of them military, some civilian, all working for the Department of Defense. That looks to me as if it may be obstruction of the Committee's activities, which is something we will have to determine.

There have been repeated requests for documents. They were delivered, I am advised, last night at five o'clock. They were in a secure room, Senate-407, some 500 pages, so there has not been any opportunity to review those documents for whatever light they may bear upon this hearing.

There has been a contention raised by the Department of Defense that the Department is concerned about classified information. This Committee is zealous in its protection of classified information, something that I have had personally extensive experience with in my capacity as Chairman of the Senate Intelligence Committee in the 104th Congress. I conferred with Senator Pat Roberts, Chairman of the Intelligence Committee, and our staffs have coordinated so that we will be advised of whatever the Senate Intelligence Committee knows so that we have the benefit of the work of both staffs.

As a precautionary matter, the Committee has conferred with the Office of Legal Counsel on the issue of classified information and I would, without objection, put into the record the advice from the Office of Legal Counsel, which takes the form of a memorandum from my General Counsel, Carolyn Short, to me, specifying the advice which she had received orally from the Office of Legal Counsel. It was put in writing under their procedure on a request by Senator Leahy and myself in writing. I will put in a copy of the letter from Senator Leahy and me to the Office of Legal Counsel and put into the record this memorandum from the Office of Legal Counsel.

The essence of the situation on classified information is that the Office of Legal Counsel advised that I should state, and I do, at the opening of this hearing that we are not seeking the disclosure of classified information and that I am instructing the witnesses not to disclose any classified information. The Legal Counsel further advised that I should instruct the witnesses that if there is classified information that they wish to present to the Committee, if they so inform the Committee, at the conclusion of the public hearing the Committee can make the decision about whether to go into closed session.

We have a representative from the Department of Defense here today, Mr. William Dugan, who is Acting Assistant to the Secretary of Defense for Intelligence Oversight, Department of Defense. Legal Counsel has made the suggestion that the DOD representative in the audience at the hearing should feel free to raise objections to staff, when appropriate. Well, I would go beyond that and say that if someone from the Department of Defense who is here has an objection, they can state it publicly prior to the time any risk arises of the disclosure of classified information and the Committee will take into account what is raised, make a determination, and we will err on the side of caution to be sure that there is no classified information.

Our lead witness is Congressman Curt Weldon, who has key positions on the House of Representatives Armed Services Committee and on Subcommittees dealing with intelligence. Congressman

Weldon has made a very expansive study of this matter. I have known him personally for 25 years or more, since the days when he was mayor of Marcus Hook and in the House of Representatives, having been elected there in 1986. My knowledge of Congressman Weldon give me the utmost confidence in his thoroughness and his integrity and his objectivity.

On the issue of the classified information, in discussing this matter with Congressman Weldon, he assured me and the Committee that classified information was not involved here. May the record show he is nodding. In a few minutes, he will be testifying about his knowledge of Able Danger and the reasons why he said, as reported to me in our discussions in advance of this hearing, that if it had been classified, there would have had to have been a formal order of destruction. Again, let the record show he is nodding, but he will testify.

That is a very, very brief statement of overview. Terrorism remains the No. 1 problem in the United States today. Notwithstanding all the other problems we have, it is the No. 1 problem. This country is still recoiling from the events of 9/11/2001, more than 4 years ago. This country will be recoiling from those events for a very, very long time, indefinitely and perhaps permanently.

If there is some change legislatively which needs to be undertaken in the Posse Comitatus Act, it is the duty of this Committee to move ahead and to find out what went wrong here, if something did, in fact, go wrong. And it is my hope that we will have cooperation yet from the Department of Defense on these important matters. It is not a matter of attaching blame, it is a matter of correcting any errors so that we don't have a repetition of 9/11. And if there is intelligence information available, it ought to be shared and made known to the authorities who can act on it, like the FBI and the CIA and the other intelligence agencies.

This is practically a Delaware Valley affair at this moment. We have been joined by Senator Biden, whom I yield to now for any opening statement he may care to make.

STATEMENT OF HON. JOSEPH R. BIDEN, JR., A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator BIDEN. Thank you, Mr. Chairman. I apologize for being a few minutes late. I am here for two reasons. One, my high regard for the Congressman. He has, over the years and the last 9 months, shared information with me. Some of it seemed prescient and it turns out that a number of the things he said have been—I was unaware of, have turned out to be the case.

I thought this morning we were going to be able to get to the bottom of some of this. I know, as you know better than I do, that the Congressman is a loyal American first, but a very staunch Republican and has no political agenda here other than trying to figure out what we knew and didn't know and why we didn't know it.

My staff indicates to me that representatives from the Department of Defense have confirmed that an internal investigation identified five Able Danger team members who claim they had either seen a picture of Atta or had seen his name in a chart prepared in 1999 by the Able Danger team, and the Defense investigation found these sources to be credible but didn't uncover the chart

itself. Defense officials have said that documents associated with the project have been destroyed in accordance with regulations regarding collection, dissemination, and destruction procedures for intelligence gathering on people inside the United States.

So I thought we were going to get a chance to clear some of that up this morning. For the life of me, I don't understand why—as I understand it, I stand corrected if I am wrong, but I understand the witnesses we assumed we were going to get to hear from the Defense Department have been pulled. They may be or may not be in the room, but have been instructed that they cannot testify. I think that is a big mistake and I am sorry that is the case, but I know the Chairman over these many years we have been friends and worked together seldom takes no for an answer when we have a right to hear some things, and so I hope we will pursue that.

But in the meantime, I am anxious to hear—to be very blunt about it, I have heard, I have had the opportunity to travel with the Congressman. He and I went to Iraq Memorial Day with a number of his bipartisan group he led in the House. We had a chance to talk about a lot of this.

So I am going to stop—I have a few minutes left, but stop now because I am supposed to co-host the King of Jordan with my colleague, Senator Lugar and the Foreign Relations Committee, and he is going to be talking to us about Iraq and a few other things. I am going to stay as long as I can, but hope we can get to the bottom of this and hope we can prevail upon the Defense Department to change its mind. I have heard no good reason for the change.

I thank you and I welcome the Congressman.

Chairman SPECTER. Thank you very much, Senator Biden.

Senator Leahy, the Ranking Member, is scheduled to speak shortly on the floor on the nomination of Judge Roberts for Chief Justice or he would be here, as he attends very faithfully.

We have been joined by Senator Kyl, who chairs the Subcommittee on Terrorism. Senator Kyl, would you care to make any opening remarks?

STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator KYL. Mr. Chairman, first of all, welcome to my colleague, Curt Weldon. We came into the House of Representatives together, oh, a few years ago. I have appreciated the effort that he has put into trying to get to the bottom of this matter and the fact that he has had a lot to do with bringing it to our attention.

I commend you for the effort here to also get to the bottom of it and hold these hearings. I know that we are going to have a lot of work to do in the future to bring all of the folks here, and in the meantime, subscribe to your notion that we need to do a little bit more work on the whole issue of Posse Comitatus so that we can address that, as well.

Thank you, Mr. Chairman.

Chairman SPECTER. Thank you very much, Senator Kyl.

For the record, as to Congressman Weldon's background and work in this matter, it ought to be noted that he is Vice Chairman of the House Armed Services Committee and chairs the Tactical

Air and Land Forces Subcommittee. He served for 6 years as Chairman of the Military Research and Development Subcommittee and he is also Vice Chairman of the Homeland Security Committee. So he has been very deeply involved in these issues.

Our practice, Congressman Weldon, is to set the time at 5 minutes, even for members of the House or for Senators, but knowing what you have to say, we are going to set the clock at 15 minutes. To the extent you can testify about this very complex situation within that time would be fine, and if it takes a little longer, we want you to have an opportunity to develop the factual issues as fully as you can.

Thank you for coming, and we look forward to your testimony.

STATEMENT OF HON. CURT WELDON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Representative WELDON. Thank you, Mr. Chairman, and let me thank my friends, Joe Biden and Jon Kyl, for also showing up for this hearing. I want to thank you for your willingness to listen to the facts of this story and attempt to get to the bottom of it. I will be brief. I wrote my statement down, which I don't usually do, to stay in compliance with your time limitation, Mr. Chairman.

I have a number of documents that I will make available to the Committee and will enter into the record. If the Chairman would like, I have a full written statement and a time line, but I have some prepared comments I would like to make today.

I would like to thank you and Ranking Member Leahy and the other members for scheduling this hearing today. Mr. Chairman, I am dismayed and frustrated, however, with the response of our government to information about the program Able Danger.

The Defense Department has acknowledged that a program, Able Danger, existed and operated during the 1999–2000 time period, authorized by the Chairman of the Joint Chiefs of Staff and carried out by SOCOM with the help of the Army. DOD has stated publicly that five individuals, including an Army lieutenant colonel, recipient of the Bronze Star, who is in the room today, and a Navy Annapolis graduate, ship commander, have emphatically claimed that they worked on or ran Able Danger and identified Mohammed Atta and three other 9/11 terrorists over 1 year prior to the Trade Center attack. These five individuals have told me, your staff, and others that Able Danger amassed significant amounts of data, primarily from open sources, about Al Qaeda operations worldwide and that this data continued to be used through 2001 in briefings prepared for the Chairman of the Joint Chiefs of Staff and others.

These two brave military officers have risked their careers to come forward to simply tell the truth and to help America fully understand all that happened prior to 9/11 that had or might have had an impact on the most significant attack ever against our country and our citizens. These individuals have openly expressed their willingness to testify here today without subpoenas, but have been silenced by the Pentagon. They have been prevented from testifying, according to the Pentagon, due to concerns regarding classified information, in spite, Mr. Chairman, of the Pentagon's claims to members of the House Armed Services Committee 2 weeks ago that the bulk of the data used by Able Danger was open source,

which was why DOD lawyers claim that no certificates were needed to certify the destruction of massive amounts of data that had been collected.

Mr. Chairman, you can't have it both ways. It is either classified or it is not. But what the Pentagon has done in the last 2 weeks is they have contradicted themselves.

Another former DOD official told me and your staff and was prepared to testify today—and he is in the room—that he worked on the data collection and analysis used to support Able Danger. He was prepared to state, as he told us, that he had an Able Danger chart with Mohammed Atta identified on his office wall at Andrews Air Force Base until DOD Investigative Services removed it. At risk to his current employment, he has told us and was prepared to testify under oath in direct rebuttal to the claims of the 9/11 Commissioners that he was aware of the purchase of Mohammed Atta's photograph from a California contractor, not from U.S. legal identity documents. He was prepared to discuss the extensive amount of data collected and analyzed about Al Qaeda—

Chairman SPECTER. Whom are you referring to now, Congressman Weldon?

Representative WELDON. I am talking about J.D., right here, J.D. Smith, in the room. He was prepared to discuss the extensive amount of data collected and analyzed about Al Qaeda, underscoring the fact that Able Danger was never about one chart or one photograph, but rather was and is about massive data collected and assembled against what Madeleine Albright declared to be in 1999 an international terrorist organization. He, too, has been silenced.

Another former DOD official will testify today that he was ordered to destroy up to 2.5 terabytes of data. Now, I don't know what a terabyte of data is, so we contacted the Library of Congress. It is equal to one-fourth of all the entire written collection that the Library of Congress maintains. This information was amassed through Able Danger that could still be useful today. He will name the individual who ordered him to destroy that data and will state for the record that the customer for that data, General Lambert of SOCOM, was never consulted about that destruction and expressed his outrage upon learning that the destruction had taken place.

An FBI employee that I identified and has met with your Committee staff and was prepared to testify today that she arranged three meetings with the FBI Washington Field Office in September of 2000 for the specific purpose of transferring Al Qaeda Brooklyn cell Able Danger information to the FBI for their use. In each instance, she has stated that meetings were canceled at the last minute by DOD officials. She has not been allowed to testify publicly today.

The 9/11 Commission was created by Congress with my full support. I have publicly championed many of their recommendations. On four separate occasions, I attempted to brief the Commission on specifics related to intelligence problems, lack of intelligence collaboration, the NOAH concept, the National Operations Analysis Hub that I had pursued in 1999 and 2000, and the work of the LIWA and Able Danger. Except for one 5-minute telephone call with Tom Kean, I was unable to meet with 9/11 Commissioners

and/or staff. In fact, I had my Chief of Staff hand-deliver questions to be asked of George Tenet and others to the Commission on March 24 of 2004, which I will enter into the record. They were never used and the questions were never asked.

It was, in fact, a member of the 9/11 Commission who encouraged me to pursue the Able Danger story after I briefed him on June 29 of 2005. He informed me that the 9/11 Commission staff had never briefed Commission members on Able Danger. He said that the facts had to be brought out.

When the 9/11 Commission first responded to questions about Able Danger, they changed their story and spin three times in 3 days. This is not what Congress intended. All the people involved with Able Danger should have been interviewed by the 9/11 Commission.

Because Able Danger ceased to formally exist before the administration came into office, I understand why there might have been a lack of knowledge about the program and its operations. In fact, when I first met with Steve Cambone, and I am the one that introduced him to Tony Shaffer, who is here today, he told me that he was at a significant disadvantage, that I knew more about Able Danger than he did, but that is not an excuse to not pursue the complete story of Able Danger.

In fact, Mr. Chairman, DOD never conducted an actual investigation, and this came up in our Armed Services meeting 2 weeks ago. No oaths were given. No subpoenas were issued. Rather, an informal inquiry was initiated. A thorough review of Able Danger, its operations, and data collected and analyzed, and recommendations for data transfer to other agencies could have and should have been completed by more than one Member of Congress using one staffer.

Instead, over the past 3 months, I have witnessed denial, deception, threats to DOD employees, character assassination, and now silence. This is not what our constituents want. It is unacceptable to the families and friends of the victims of 9/11 and flies in the face of every ideal upon which this country was founded.

Over the past 6 weeks, some have used the Able Danger story to make unfair public allegations, to question the intentions or character of 9/11 Commissioners, or to advance conspiracy theories. I have done none of this. When I learned details of Able Danger in June, I talked to 9/11 Commissioners personally and staff. I delivered a comprehensive floor speech on June 27 of 2005 and methodically briefed the House Chairs of Armed Services, Intelligence, Homeland Security, and Justice Appropriations.

This story only became public, even though significant portions were first reported in a Heritage Foundation speech that I gave, still available online, on May 23, 2002, and a Computer World magazine story that ran on January 28, 2003, when Security News ran a story on August 1 of 2005, followed by a front-page story in the New York Times on August 2 of 2005.

My goal now, Mr. Chairman, is the same as it was then, the full and complete truth for the American people about the run-up to 9/11. Many Americans lost family and friends on 9/11. Michael Horacks was a neighbor of mine in Pennsylvania, a former Navy pilot, graduate of Westchester, like myself. He was at the controls

of one of the planes on 9/11. He left behind a wife and two kids. We built a playground in his honor at his kids' school.

Ray Downey was a personal friend. As a New York Deputy Fire Officer, he took me through the garage of the Trade Center Towers in 1993, the first time Bin Laden hit us. We worked together. In fact, he gave me the idea for the creation of the Gilmore Commission, which I authored and added to the Defense authorization bill in 1997. On September 11, 2001, he was the New York City Fire Department Chief of All Rescue. The 343 fire fighters, including Ray, who were all killed were under Ray's command as he led the largest and most successful rescue effort in the history of mankind.

I promised Michael's wife and kids and Ray's wife and kids and grandkids that we would not stop until the day that we learned all the facts about 9/11. Unfortunately, Mr. Chairman, that day has not yet arrived. We must do better.

Chairman SPECTER. Thank you very much.

Representative WELDON. Mr. Chairman, I have significant material that I would put into the record, the data that I provided to the 9/11 Commission, the questions I gave them. I have packets that I gave them. I have material on the NOAH process. I can enter it all into the record at your—it is basically your call.

Chairman SPECTER. Without objection, all of those documents will be made a part of the record.

[The prepared statement of Representative Weldon appears as a submission for the record.]

Chairman SPECTER. Senator Biden, you said you have other commitments. Can you wait for 5 minutes for the first round, or I would be glad to yield to you if—

Senator BIDEN. Would you mind, Mr. Chairman?

Chairman SPECTER. No, I would be glad to.

Senator BIDEN. What I would like to suggest, with the Chairman's permission, is since the questions I had prepared, my staff and I had prepared, quite frankly, weren't directed to Congressman Weldon but to others who we thought were going to be testifying, I would like to submit for the record, just so it is in the record, what I want to know from these other witnesses, if that is—

Chairman SPECTER. Without objection, you may do so.

Senator BIDEN. There are a number of theories that are bouncing around, Curt, about why would—first of all, time line here. Able Danger was established in September 1999, correct?

Representative WELDON. It was the 1998–99 time frame, but officially 1999.

Senator BIDEN. When did it go out of business?

Representative WELDON. As best we can tell, it ended in 2000, yet there was a briefing given to the Chairman of the Joint Chiefs of Staff, a 3-hour briefing, in January of 2001 using material. Now even though they have claimed they destroyed all the material, there obviously had to be material for the Chairman of the Joint Chiefs to be briefed, and I just learned that Steve Cambone also was involved in a briefing with the head of the DIA in March of 2001. I was not aware of that information until last week. One of your witnesses would have explained that here today.

Senator BIDEN. Well, that is what I was hoping we would be able to establish, is that Lieutenant Colonel Shaffer, who I understand

is in the audience today, who is under Rumsfeld's gag order, attempted to give this information, as well, to the FBI in 2001?

Representative WELDON. Two-thousand—

Senator BIDEN. Two-thousand.

Representative WELDON. September of 2000, he arranged three meetings, and the FBI person who was going to testify but was silenced was going to state that she knew the purpose of the meetings.

Senator BIDEN. And was anyone prepared to testify to the fact that there was a 3-hour briefing for General Shelton?

Representative WELDON. Yes. Tony Shaffer would have done that.

Senator BIDEN. And for the record, obviously, he was the Chairman of the Joint Chiefs at the time, right?

Representative WELDON. Yes.

Senator BIDEN. And then the March 2001 meeting, that briefing for Under Secretary of Defense for Intelligence Steve Cambone, there was someone prepared to confirm that today, as well?

Representative WELDON. My understanding is Mr. Cambone was not in his current position at that time. He was a Special Assistant to Secretary Rumsfeld. And the purpose of the brief, my understanding, it was not specifically for Able Danger. It was a briefing on another classified program, but Able Danger came up, it was discussed, and it was discussed by a lawyer who you had wanted to testify named Richard Schiefren by the head of Naval Intelligence, Admiral Wilson, and I believe there was a third person in the room—just the two, Admiral Wilson, Richard Schiefren, Steve Cambone, and Able Danger was discussed in March of 2001 at that meeting.

Senator BIDEN. My next question, why was Able Danger shut down?

Representative WELDON. There were a combination of reasons. They had done a profile of Chinese proliferation in 1999 that John Hamre had asked for. I was aware of that presentation, and because it was massive data mined that had not yet been vetted, a couple of very sensitive names surfaced because they had been affiliated with Stanford University, where many of the students that were doing this very, very specific research, very sensitive to our country's security, were located, and I think partly because of that, there was a wave of controversy.

In fact, in the House, the son of Congressman Sam Johnson was working for the Raytheon Corporation. He went to his father and said, "Dad, they are destroying data." Sam went to Dan Burton, who was Chairman of the Government Operations Committee, and Dan Burton subpoenaed documents that had been used in compiling the Chinese proliferation information. As a result of that, tremendous pressure was placed on the Army, because this was a prototype operation, and they shut down the Able Danger operation.

General Schoomaker was so enamored with this capability that he stood up a separate operation in Garland, Texas, at a Raytheon facility, to try to duplicate what had been done in the Army, and that lasted for about a year, maybe slightly longer than a year.

So the Special Forces Command understood the significance of this data, and as a result of the Chinese proliferation situation, I am convinced Able Danger was shut down.

Senator BIDEN. Is there anything to the sort of, when you get into this, the sort of buzz that it was shut down because Able Danger exceeded its authority and was dealing with targeting Americans that the Defense Department and others were concerned would cause a real brouhaha? There were even some press accounts that the now-Secretary of State came up on a list as being a suspect somehow, or something ridiculous. What part did that play in it?

Representative WELDON. It was a significant part. In fact—

Chairman SPECTER. Senator Biden, if you need a little more time, take it. He won't be here for a second round, so if you need a little more time, proceed.

Representative WELDON. In fact, that was a significant part. The Secretary of State's name did come up, along with a former Secretary of Defense because they were both affiliated with Stanford where this research work was being done by Chinese students that were here basically acquiring technology that was very sensitive to our security.

But for them to say that somehow this information should have all been destroyed, to me is unacceptable because the military itself has said it was open source information. It is the same information the Republican and Democrat Party used to target voters. It is massive data you can buy in open sources. It is information you can get. It is magazine subscriptions that you order. It is everything that is available in the public domain. Now if there, in fact, is some classified information blended in with that, then that needs to be dealt with and there are processes to do that.

The Able Danger folks knew that there was the possibility of information coming out about American nationals and they knew how to deal with it. I don't understand for the life of me how that would justify destroying 2.5 terabytes of data, and especially not in telling the customer before you are going to do that, "I am going to destroy all your data," if Madeleine Albright has declared Al Qaeda the top international terrorist organization in the world, which she did, and furthermore, for them to brief General Sheldon in January of 2001 meant they didn't destroy all the information.

So who decided to keep information and what led to the fact that some of that information was kept for later briefings? So I don't accept the position, and furthermore, what I would say is let them come and explain that publicly. I am not making any accusations.

Senator BIDEN. Well, that is the only point I am trying to get at here. This is a bit—your assertions are not confusing. I am inclined to accept what the witnesses would have said based upon staff and based upon assertions that have been made by you. You wouldn't be saying this with them sitting behind you if these guys weren't ready to say what you said they were going to say. One of them would, at this point, gagged or not, would say, "Hey, I wasn't going to say that." So it is pretty compelling.

The part that, quite frankly, confuses the devil out of me as I try to figure this out, Mr. Chairman, this started in the Clinton administration and it morphed into or it leached into the beginning of the

Bush administration. It is not like there is an attempt to nail politically anybody here. I don't understand why—it is not self-evident to me why the Defense Department would be so focused on this not coming forward. I don't understand, quite frankly, why the Commission and Slade Gorton, if he was—if, in fact, folks were briefed, why they would say, "No, it is absolutely"—I forget, but he has a very, very strong statement saying—

Representative WELDON. They were never briefed.

Senator BIDEN. [continuing]. That they were never briefed and no one knew anything about this.

And I don't get why the coverup. I mean, I don't get the purpose of the coverup. Is it to protect the Clinton administration? The Bush administration? Is it to protect something that was going on that was illegal under the law? I mean, I don't get it. I don't understand why people aren't just coming forward and saying, "Here is the deal. This is what happened."

I hope we can get to the bottom of this, Mr. Chairman. I would like to be able to submit some questions in writing. When I say submit the questions, I was going to ask the witnesses so they are on the record as to where I am confused and what I want spoken to, anyway.

I thank you, Mr. Chairman, for your courtesy in allowing me, A, to go first and to go over by almost 4 minutes the time allotted, and I thank the Chairman of the House for being here.

Representative WELDON. Thank you.

Chairman SPECTER. Senator Biden, your questions will be made a part of the record and directed to the witnesses to give you responses.

Congressman Weldon, you commented about threats and character assassination. What did you mean as to the threats?

Representative WELDON. Well, Mr. Chairman, at least two of the five people that were going to appear today were threatened with removal of their security clearances if they continue to talk about this. This is—

Chairman SPECTER. Are you at liberty to identify who those people are?

Representative WELDON. I will to you. I would rather do it privately, since the Defense Department has chosen not to allow anyone to testify, but I will provide that information to the Committee, at least on two of them.

And one of them, and I will state this publicly because it happened just on the eve of this hearing, Lieutenant Colonel Tony Shaffer had his security clearance officially removed the day before this hearing was scheduled to be held, not yesterday, but actually it would have been Monday night. He was notified. His lawyer will come next and will tell you that his security clearance was officially removed. There is no doubt in my mind that that was caused by his cooperation in—

Chairman SPECTER. How about the character assassination?

Representative WELDON. Oh, there has been character assassination left and right. We had Larry DeRita, the spokesman for the Pentagon, question the memories of these military people when they came out, and I called Larry DeRita on the phone. I said, how can you question an Annapolis graduate who was the commander

of one of our Naval destroyers who risked his entire career after 23 years—

Chairman SPECTER. You are talking about Captain Philpott?

Representative WELDON. I am talking about Captain Philpott—to tell this story because the 9/11 Commission characterized his work as historically insignificant. How can you challenge his memory? Why don't you challenge the memories of the other people who said this didn't occur? I mean, that, to me, was outrageous.

There are a number of other examples. I can provide a whole list of those, a litany of those character assassinations and attempts to intimidate for the Committee.

Chairman SPECTER. Would you specify again why you concluded that the information was not classified, based upon what DOD told you?

Representative WELDON. At a private briefing that we had for members of the Armed Services Committee 2 weeks ago, there were probably six members in the room, three Republican, three Democrats, and all of our staff, the Legal Counsel for the Pentagon, when asked, what about the certification for the destruction of this data—

Chairman SPECTER. Mr. Haynes?

Representative WELDON. I don't know the name. I will get it for you. I don't recall the name right now, but he was Legal Counsel. He said, "Well, there is no certificate needed if the information is not classified or not used in compartmentalized work." Well, you can't claim that the information is not classified on one hand and then come in today when all they are going to talk about is open source information—

Chairman SPECTER. The representation was made to you that this did not involved classified information?

Representative WELDON. Yes. It was made to the Armed Services Committee members.

Chairman SPECTER. And is there a transcript of that record?

Representative WELDON. No, there is not. It was an informal briefing. Most of what the Pentagon did was informal. There were no minutes kept. There were no witnesses put under oath. There were no subpoenas issued. It was not an investigation, and that point was raised by members of the Armed Services Committee. It was not an investigation.

Chairman SPECTER. Since Captain Philpott has been precluded from testifying—ordered not to testify. I would have prefered to hear him, but in his absence, did you discuss this matter with him—

Representative WELDON. Yes.

Chairman SPECTER. [continuing]. Or question him in detail?

Representative WELDON. I questioned Captain Philpott. He was the one who felt—was so incensed about what happened that he risked his entire Naval career and came out with a New York Times interview that I arranged and he said to the reporter with me there listening and witnessing that he would risk his entire career and life on the fact that in January and February of 2000, he identified absolutely Mohammed Atta as a part of the Brooklyn cell.

Chairman SPECTER. And with respect to Dr. Eileen Preisser, she, too, has been ordered not to testify. Have you discussed this matter in detail with her?

Representative WELDON. I have discussed it with all the individuals. She, too, said there were materials that were produced that identified Mohammed Atta by name and with a facial recognition that the 9/11 Commission said couldn't have happened because there were no government I.D. documents, but as you will hear—or you won't hear, because J.D. won't be allowed to testify—but what he would have said is they purchased the photograph of Mohammed Atta from a contractor in California. Now, we came very close to identifying that contractor and we are still working on it. We know people who knew the woman—

Chairman SPECTER. And who said that?

Representative WELDON. One of the 9/11 Commissioners, I think it was Tim Roemer, said publicly that there is no way they could have had a photograph of Mohammed Atta because there were no government records at the time that the Able Danger reported, but they didn't get it from government records. They got the photograph of Mohammed Atta by purchasing it from a source in California, and the witness that was not allowed to testify today who is sitting behind me would have stated that he was aware of that effort and how they got that photograph.

Chairman SPECTER. What information do you have as to the allegation on the destruction of records?

Representative WELDON. You are going to hear testimony today from another former Federal employee who again is risking his career. He is a private contractor today. But he was ordered to destroy—

Chairman SPECTER. And his name is?

Representative WELDON. His name is Kleinsmith, Erik Kleinsmith. He is on your witness list. And he will testify that he was ordered to destroy all Able Danger material, 2.5 terabytes, and he will name the person who ordered him to destroy that data. And he was further told that if he didn't do it, he would lose his job and quite possibly might go to jail.

He will also testify, and you can ask him this question, but it is my understanding he will testify that when he met with General Lambert, who was the SOCOM official who was the customer for this data, he had never been consulted prior to the destruction of this data and when he found out, he was livid. For the life of me, I don't understand how someone extraneous from that chain of command could order destruction of data and not even inform the customer of that data, the general at SOCOM, General Lambert.

Chairman SPECTER. Thank you, Congressman Weldon. My red light went on during the middle of your last answer, so I will desist now and turn to Senator Kyl.

Senator KYL. Thank you, Mr. Chairman. I think that most of the questions I have are actually for the lawyers who are going to testify, but I am not sure what they can testify to, so let me ask you a couple of questions.

Representative WELDON. I don't think Mark Zaid will be limited, Jon.

Senator KYL. OK, great.

Representative WELDON. I think you can do whatever you want.

Senator KYL. I am trying to now, having served on the Intelligence Committee for 8 years, I can understand why there might be some nervousness about this, so I am going to try to put on a hat and be the most restrictive devil's advocate here and try to figure out why they might want to restrict this information.

For example, data mining is known to be a method for intelligence collection and it is just now beginning to be something that is utilized, and this was one of the first significant uses of it, as I understand it. That is a method of intelligence gathering. What do you know about the point that perhaps one of the reasons why they don't want a lot of public testimony about this is that it might reveal capabilities, methodology that might be relevant to, A, future intelligence gathering, and B, might conceivably tip somebody off that they may or may not have been a part of an investigation related to data mining? From all of your discussions of this, could that be part of the reason? And if it is, why would that necessarily limit most of the things that you have talked about here?

Representative WELDON. Well, it wouldn't. It has been a reason given, and I share the gentleman's concern for security. We served together on the Armed Services Committee for a number of years, and as the Vice Chairman of the Armed Services Committee, I would never do anything to reveal classified data. So that would never be an intent of mine.

This information was largely open source. From 1999, I started pursuing the prototype that the Army had developed at our legal facility at Fort Belvoir. I was the oversight Chairman of the Committee that funded it. I was enamored with their capability and I saw tremendous potential. In fact, I had experience in 1999 that I will go into, but it would take some time, if you want as to how I saw the CIA and the FBI did not have the capability.

I took a delegation of ten members to Vienna to meet with five Russians to find a common foundation in the Kosovo War. Before I left, the Russians told me they were bringing a Serb. I called George Tenet at the CIA and said, can you run me a profile of this Serb. He gave me two sentences. I called the Army's Information Dominance Center, which I had a good relationship with. I said to the folks down there, Dr. Heath and Dr. Preisser, can you run me a profile? They unofficially gave me, like, eight or ten pages of information.

When I came back from that trip, I got a call from the FBI and the CIA to debrief them on what I knew about the Serb, and the CIA said, Congressman, when I said, why is this so urgent, they said, "We have been tasked by the State Department to brief our Ambassador negotiating the end of the war and you met with this person, so we want you to debrief our people." So I had four agents in my office for 2 hours and I gave them all that I knew, and when I ended, I said, now, do you know where I got my data from? They said, "Well, you got it from the Russians." I said, no. "Well, you got it from the Serb." I said, no. I said, before I left America, I called the Army's Information Dominance Center. They ran me a profile and gave me eight to ten pages of open source information. The FBI and the CIA said, "What is the Army's Information Dominance Center?"

It was then that I developed a nine-page briefing called the NOAH, a National Operations and Analysis Hub. John Hamre agreed with my assessment that this was critically important, and it was developed by intelligence people, not by me. On November 4 of 1999, 2 years before 9/11, I had the CIA, the FBI, and DOD in my office at John Hamre's suggestion to brief them on creating what today exists, the TTIC and now the NCTC. And the CIA at the end of the briefing said, "We don't need that. It is not necessary."

And so as a result, before 9/11, I felt I did not push hard enough against the system to put into place a mechanism that today is in place that might have helped us understand what was about to happen.

Senator KYL. But there is nothing from your knowledge here that would prevent testimony in general about what was done here?

Representative WELDON. No. We would never get into specifics.

Senator KYL. Sure.

Representative WELDON. Nothing in general.

Senator KYL. And then, just a second, a little bit of time. The matter of Posse Comitatus, is it your belief that it was a significant factor in the decision both to destroy the information and not to provide testimony here that there might have been—that there was a concern that perhaps they had gone too far in gathering information about people who were legally in the United States and that they might not have been authorized to do that and that might be one of the reasons for the reluctance to testify, as well as the destruction of the—

Representative WELDON. That might be a reason, but to me, that is absolutely unacceptable. I mean, these are terrorists. If they are terrorists in the United States and we were monitoring them or had information from open sources, then I think our law enforcement community had a right to know that. We are not—I mean, our Republican and Democrat Parties transfer this information to ID voters. It is called Vote Smart. I mean, we can use it for voter ID, but we can't use it to identify people in this country that are involved in terrorism? I mean, cut me a break.

There is something wrong with this system, and at a minimum, we should have been able to discuss that. That is what we are all about as policy makers. But to clamp down on this and to do it with such venom, to me, it is mysterious. I don't understand it.

Senator KYL. We will get more into that with the next panel. Thank you very much, Representative Weldon.

Representative WELDON. Thank you.

Chairman SPECTER. Thank you, Senator Kyl.

Senator Grassley?

STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Mr. Chairman, because of my work with Katrina, I am not going to be able to stay here, so I have got a statement I want to put in the record—

Chairman SPECTER. Without objection, so ordered.

Senator GRASSLEY. [continuing]. And I have got questions in writing for two witnesses, and I do have something that I want to

say at this point beyond that statement and that is to compliment the Congressman for your work.

It is just so reminiscent of everything I have run into, not just with the Defense Department, but bureaucracy generally and maybe the Defense Department to some extent, just a little bit worse than others. But what you say you don't understand is an institutional disease that we have that if the information that you want out got out, people would have egg on their face. They are just going to try to wait you out.

I hope that, Senator Specter, you won't let that happen. Whatever it takes to get this information out needs to be gotten out, not just to back up Congressman Weldon's work, but more importantly, just the fact that Congress has to fulfill its constitutional responsibility of oversight. We all want to brag about the legislating we are doing, but quite frankly, in this day and age, I think we do a more responsible job for our constituents, what we do through Congressional oversight to make sure that these laws are faithfully executed and that money spent according to Congressional intent, and in particular now when we are in this war on terrorism, we have got to get all the information out we can.

You can't have somebody hiding information from Congress under the ridiculous idea that we might be compromising national security when you and I can buy that very same information. And more importantly, what can be done in a closed session of the Congress if it can't be done in open session.

Really, what is at stake here is not, again, Congressman Weldon. What is at stake here is whether or not Congress is going to fulfill its constitutional responsibility and whether or not we are going to let people that come up here with a lot of ribbons and a lot of stars on their shoulders or political appointees of the same Department just embarrass us and get away with it.

I know that you are not a Senator that is going to be embarrassed, and whatever I can do to help you, count on me helping you, because we must get to the bottom of this.

Thank you for being a great American.

Representative WELDON. Thank you, Senator.

Chairman SPECTER. Thank you, Senator Grassley.

[The prepared statement of Senator Grassley appears as a submission for the record.]

Chairman SPECTER. I don't often do this, but I associate myself with your remarks.

[Laughter.]

Chairman SPECTER. It is not that I don't often associate myself with your remarks; it is that I don't often associate myself with any remarks.

[Laughter.]

Chairman SPECTER. You and I came here in the same time, in the 1980 election, and you have been fierce in oversight and whistleblowers and determination and I have joined you all the way. You expressed it very well. I don't have to repeat it. Thank you. And the questions that you have propounded for other witnesses will be made a part of the record and they will be submitted to witnesses and we will get answers for you.

Congressman Weldon, you had testified that at one juncture, there was an effort made to turn over this information to the FBI. Could you amplify that, please?

Representative WELDON. Yes. Lieutenant Colonel Shaffer was prepared to testify—his lawyer will testify today—that he on three occasions set up meetings with the FBI Washington Field Office. The woman who set those meetings up is prepared to testify. Your staff has met with her and they have interviewed with her and she also was prohibited from testifying. But she knew the purpose of the meetings. The meetings were designed to allow the Special Forces Unit of Able Danger to transfer relevant information that they thought important to the FBI about the Brooklyn cell, which included Mohammed Atta and three of the terrorists. This information was largely gathered from open sources. On three separate occasions in September of 2000, at the last minute, lawyers, I assume from within DOD, and we still haven't determined who made the ultimate decision, but lawyers determined that those meetings could not take place and they were shut down.

Chairman SPECTER. Congressman Weldon, had this information been called to the attention of the National Security Advisor?

Representative WELDON. Mr. Chairman, 2 weeks after 9/11, some of the folks at the Army's LIWA and involved in Able Danger came into my office and brought me a chart, a chart that had Al Qaeda linkages and pan-Islamic terrorist threats, I think was the way the chart was categorized. I took that chart immediately down to the White House and provided it to Steven Hadley and I took with me Dan Burton, Chairman of the Government Operations Oversight Committee.

Chairman SPECTER. And when was that?

Representative WELDON. That was 2 weeks after 9/11, so it would have been September 25. And I took it down immediately. As soon as I got it, I said, I have got to get this down to the White House. Steven Hadley's response to me was, "Where did you get this from, Congressman?" I said, I got it from the Army's Information Dominance Center. I said, this is the process that has been used, and I have been trying to convince the government for 3 years to put into place that the CIA has refused to accept, because up until the establishment of the TTIC, the Terrorism Threat Integration Center, the CIA was not using open source information, which to me was a disaster in itself for our National intelligence estimates.

And so I said to Mr. Hadley, I said, this is a process they use to obtain this information, and he said to me, and I remember this quote sticks out in my head, and I gave a speech at the Heritage Foundation a year later which is still online, you can get a copy of it and listen to my speech as it was given then, that—he said, "I have got to show this to the man." And I said, the man? He said, "Yes, the President of the United States." So I gave him the chart.

Now, some say, why didn't you keep a copy of the chart? Well, my goal there wasn't to keep a copy of a chart involving something that just happened to destroy the lives of 3,000 people. I gave it to our Deputy National Security Advisor. That information was information gleaned from the work of Able Danger and the work being done by the team that wanted to testify today.

Chairman SPECTER. The FBI agent you referred to a few moments ago was Xanthie Mangum?

Representative WELDON. Yes.

Chairman SPECTER. Would you care to testify about those large charts you have up here?

Representative WELDON. Sure, if I could have my staff line them up on the side. The first chart is actually a reproduced version of what was provided to Steven Hadley. I wanted to reproduce this and asked if it could be reproduced, and this is what bothers me about the military saying the data was destroyed and why I suggested that perhaps the hard drives and the servers from the companies who did this work should be subpoenaed and brought in.

This is actually a chart of Al Qaeda and the various cells around the world. Much of this data—most of it was obtained prior to 9/11 by the work of Able Danger. This was the kind of work they did. The link analysis they did on this chart, as you see, there is actual photograph of Mohammed Atta—

Chairman SPECTER. What does that depict generally?

Representative WELDON. It depicts the organizational and activity associations of Al Qaeda operatives that were involved in 9/11 and related events. Much of this data was obtained before 9/11 from information that was gathered from the 1993 attack, the individuals involved in that attack, the attack on the U.S.S. Cole, the attack at the African embassies, and what they did, they identified five key cells of Al Qaeda worldwide, one of which was the Brooklyn cell, and so they were gathering this information and basically assembling it in the data mining process in 1999 and 2000. When I went to Hadley, the chart that I gave him was an assemblage of that information that they had, which was massive and which you will hear in a moment as equal to one-fourth of all the printed material in the Library of Congress.

Chairman SPECTER. And who prepared the chart?

Representative WELDON. The chart was prepared by a corporation, Orion Corporation, and my understanding from your staff is that they were not totally forthcoming to you. They told your staff initially they only produced two charts. When I pulled out 12 charts, because I have 12 charts that I kept on my own, your staff went back to the lawyer for Orion, which is now owned by another security firm. My understanding, and you can check with your staff, is that they have been delivered something like 20 charts.

But the initial response of Orion was they only produced two charts and they only produced charts on white backgrounds. Well, I have charts in my possession that they produced with their name on them, their insignia, their logo, that are in black, that are in green, that are in all kinds of colors. They were charts that dealt with Chinese proliferation, corruption in Russia, corruption in Serbia, charts that dealt with drug cartels and drug cells. All of this work was done by Orion. So Orion was the corporation.

And, in fact, one of the witnesses was an executive, I believe the Vice President of Orion, is that correct? He was the Vice President of Orion. He was a senior officer at Orion Corporation, and he was one of the people scheduled to appear before you today.

The second chart, Mr. Chairman, is for me the most important. This is what we have to have. This is Al Qaeda today. Now, I have

been told by the military liaisons of the NCTC that our NCTC cannot do this kind of massive data analysis and link chart analysis that has been done by our Information Dominance Centers, so what I have been working with is the Army and the Navy in generating a next-generation capability called Able Providence. In fact, the Navy has even supplied us the budget numbers and the line where they would want the money submitted so that we could create this kind of additional capability. This gives you a massive effort worldwide of what Al Qaeda is doing.

Mr. Chairman, to win the war on terrorism, it is not about classified information, and when I try to convey to the CIA against a road block of their mindset, which Senator Grassley referred to, they just didn't want to hear it. They didn't want to use open sources of information. And the bulk of the good information about terrorists, in fact, comes from open source information.

I will be glad to provide charts for the Committee so you have permanent records of each.

Chairman SPECTER. Thank you. My red light went on during your answer.

Senator Kyl? Senator Kyl raises a good point. Who prepared the charts? I would ask you that.

Senator KYL. Mr. Chairman, I think there might have been a miscommunication. When you asked about the chart, I immediately sensed a disconnect here. I believe that Representative Weldon was talking about who prepared the charts that were allegedly destroyed or may, in fact, have been destroyed that he took to Mr. Hadley. You may have been referring to this chart here, and perhaps that should be cleared up.

Chairman SPECTER. Thank you for the suggestion, Senator Kyl.

Congressman Weldon, who prepared those charts and when?

Representative WELDON. All the charts that I had that were given to me during the process that was being done by the LIWA, including the Able Danger charts, were prepared by the Orion Corporation and they had their insignia on the bottom. Now, there may have been other charts that were not prepared by Orion that I am not prepared to talk about.

Chairman SPECTER. Did Orion prepare the charts you have just referred to?

Representative WELDON. The charts that I have here were prepared by one of the Information Dominance Centers, which continues to operate today. I will have to give you the exact name of the producer of these charts. And these were made back in June of this year.

Chairman SPECTER. Senator Kyl?

Senator KYL. Might I just ask one more question? You remember the chart that you gave to Mr. Hadley and the first chart that you showed us there, you have just testified to. What degree of similarity or overlap—can you make a comparison of those two charts for us, just so we will have an idea of what Mr. Hadley saw?

Representative WELDON. It is hard to recollect, and I can tell you this. I talked to Mr. Hadley 3 months ago when I briefed him on another issue and I said, remember that chart that I gave you, and he said, "Yes, I remember it." Now, I don't know whether the White House still has it. They probably don't. It has been 4 years.

I can tell you my recollection of that chart is it was very similar to this, but not as comprehensive. This chart includes post-9/11 data, so obviously the chart that I gave them did not have post-9/11 data, but it was significant. It identified the cells, the five key cells they were working on, and to the best of my recollection, identified Mohammed Atta on the chart.

Chairman SPECTER. Thank you very much, Senator Kyl, and thank you, Congressman Weldon. I think you performed a real public service with what you have done here and what your analysis has been.

Representative WELDON. Thank you.

Chairman SPECTER. Perhaps when the Department of Defense knows the extent of your testimony and the questions raised, they will be responsive.

One final question. Do you think there is any need to modify the Posse Comitatus legislation?

Representative WELDON. You know, I will leave that up to you, Mr. Chairman. I am not an attorney. I respect your judgment. I certainly respect Jon Kyl's judgment as a former colleague of mine. I am still developing my own feelings, but as an attorney, I would respect your insights into that. From a policy standpoint, I have thoughts, but I would rather not convey them yet until I know the full parameters of what really happened here.

And I want to thank you, because I realize that putting this hearing on was not something—and there were people that were criticizing your intentions or perhaps my intentions. I have no intentions, Mr. Chairman, here, except to have the truth be known. I have made no public allegations against any person. I have not questioned the character or integrity of any Commissioner. I would never do that. In fact, I talked to two Commissioners. I was the one that brought the Defense Department in, Mr. Chairman, to give them a chance to get the information I had.

All I asked them was to protect the military personnel that were cooperating, and Jon, you went through this during the 1990s, where we saw whistleblower after whistleblower have their careers ruined, and now, unfortunately, it is happening in this administration. Tony Shaffer's career has been ruined, and to me, that is outrageous. It is unacceptable. That was my main concern.

Now, Mr. Chairman, if I might add one additional point, I did all this work, and I am not boasting because it was just something I had to do for 6 weeks, but I couldn't have done it without one person. I only had one staffer work it. My Chief of Staff, Russ Caso, who is in the room, a former Navy liaison for the U.S. Navy, did yeoman's work in tracking down all of these meetings and contacts, and I brought in, again as a volunteer, Jim Woolsey. Jim Woolsey is a close friend of mine. Jim Woolsey sat in on a number of meetings with these people early on to make sure that I wasn't going off the deep end and to counsel me to make sure that I wasn't jumping to conclusions, and so I would like to thank both Russ Caso and Jim Woolsey publicly for their outstanding cooperation in assisting in this effort.

This is not about embarrassing anybody. It is about answering the questions of what happened before 9/11. Thank you.

Chairman SPECTER. Congressman Weldon, do you think that DOD acted in this matter, if the allegations are true as to destruction of documents, because of their concern about violating Posse Comitatus?

Representative WELDON. No, I don't believe that is the reason right now that they did that.

Chairman SPECTER. OK. Thank you very much. Thank you very much.

Without objection, we will admit to the record the statement of Senator Leahy, who, as I announced earlier, was scheduled this morning to speak on the nomination of Judge Roberts for Chief Justice, and also without objection, the letter from former Senator Slade Gorton to Senator Leahy and myself dated September 20.

Chairman SPECTER. We now call the second panel. Mark Zaid, Esquire, and Mr. Erik Kleinsmith.

Mr. Mark Zaid is the managing partner of the Washington law firm Krieger and Zaid, specializing in litigation, also the Executive Director of the James Madison Project, a nonprofit organization which educates the public on issues relating to intelligence, and a former board member of the Public Law Policy Group of the International Law Students Association. He is a graduate of Albany Law School, where he was Associate Editor of the Law Review, and a cum laude graduate of the University of Rochester.

Thank you for joining us, Mr. Zaid, and we look forward to your testimony.

STATEMENT OF MARK S. ZAID, PARTNER, KRIEGER & ZAID, PLCC, WASHINGTON, D.C.

Mr. ZAID. Thank you, Senator. Mr. Chairman, distinguished members of the Committee, thank you for this opportunity. I have my law partner, Roy Krieger, next to me. I would respectfully ask for my full written statement to be placed into the record.

Chairman SPECTER. Without objection, it will be made a part of the record.

Mr. ZAID. I would like to first compliment Congressman Weldon. Were it not for his tenacious efforts, we would not be here today, and this is a very important day. Unfortunately, I am here as a surrogate speaker for several of the witnesses that were scheduled to appear and I put this testimony together hastily in a matter of a few hours yesterday.

As you said, I am a partner in the law firm of Krieger and Zaid. We primarily handle national security cases. Most of our clients are within the covert community and the military and the intelligence world. In particular, we represent Lieutenant Colonel Anthony Shaffer, a civilian employee of the Defense Intelligence Agency and a reserve officer in the Army, and Mr. James Smith, a defense contractor formerly with the company of Orion Scientific Systems. Both men, as was heard, are sitting behind me and were prepared to testify today and both worked for or with what is now known as Able Danger.

I am here to impart at least some degree of knowledge of certain aspects of Able Danger, what it accomplished, what it identified, and some crucial questions surrounding it. I have not had access to classified information on this. I haven't even had access to the

full scope of unclassified information, so my testimony is not intended to provide a complete picture. I guarantee you I am only providing a couple of facets of a multi-facet diamond, and to be sure, most of my testimony is either hearsay, since I am basing it on what I have been told by individuals associated with Able Danger or through the government, except to the extent that I participated in specific events.

My value, though, of the testimony doesn't come from the truth of the statements but from the ability to use this as a steppingstone to go forward.

This is not a partisan issue. There is enough blame to go around, and I am confident once the whole story of Able Danger comes out, you are going to see that much of the coverup that we are now seeing occur, particularly from the Department of Defense, is probably more typical Washington, D.C., you know, what we call CYA, than anything associated with the substantive work of Able Danger.

I want to make it clear I am not waiving attorney-client privilege. I am basing my statements on statements my clients have made publicly with third parties or from other sources. Nothing, as you said, is classified. I should say I have been involved with the Defense Department and DIA for weeks of this case. Not once has any official in the Department told me that they were concerned that my clients were saying anything classified.

Let me tell you a little bit about Able Danger, and I will try not to repeat anything that Congressman Weldon said. Formed in 1999, primarily working through SOCOM and LIWA, as you heard, which supports INSCOM. In the initial days, most of what they were doing was unclassified, and that is what I am going to focus on. There were two phases, a first phase that went from 1999 to mid-2000, and then mid-2000 into a little bit of 2001. That first phase was primarily unclassified, particularly with respect to Orion, and the second phase had much more to do with classified information, which we are not going to discuss today.

In the simplest and most understandable terms, the aspects of Able Danger that led to the infamous chart and charts to be created dealt with the searching and compiling of open sources of publicly available information regarding specific Al Qaeda targets or tasks that were connected through associational links—no classified information, no government data bases. The search and compilation efforts were primarily handled by the defense contractors, such as Mr. Smith, who didn't even know they were working with Able Danger at the time. That information was then given to Able Danger and they were to use it for whatever planning purposes they perceived.

The starting points, as was said, 1993 World Trade Center attack, 1998 bombings, the New York City plots, Sheik Omar Abdel-Rahman, known as the Blind Sheik. They took those names, they plugged them into the systems, and they created associational links like you see on the charts. By that, I mean they looked for who was the Sheik associated with? Person A. Who was Person A associated with? Person B, and so on and so on. Think of "Six Degrees of Kevin Bacon." This was the "Six Degrees of Sheik Rahman," essentially. Those links could have been nefarious. They could have been innocuous.

Every link on those charts had a drill-down capability. Those are from actual computer programs. So if you clicked on a name, there would be supporting data underneath, and what they would do is they would print out each of those charts and every bit of underlying data and hand those over to the Able Danger team members for them to use as necessary.

We heard about the attempts to go to the FBI and the preclusion of that. If a wall existed, whether due to Posse Comitatus or some other regulations, that is a wall that this Committee needs to explore fully within its jurisdiction, of course.

By the end of 2000, for a number of reasons, documents were all destroyed, not only by LIWA and those involved with Able Danger, which we will hear a little bit more, but also with the Defense Intelligence Agency.

I want to clear up two misconceptions that have been perpetrated within the press to some extent. At no time did Able Danger identify Mohammed Atta as being physically present in the United States, and no information at the time that they obtained would have led anyone to believe that criminal activity had taken place or that any specific terrorist activities were being planned. All they developed were associational links. It was impossible to tell, particularly using the unclassified work that was being used at the time, that those associations went anywhere further than that.

Let me just go through a couple of points as the time would end, Mr. Chairman.

Chairman SPECTER. Mr. Zaid, would you please summarize your testimony at this point.

Mr. ZAID. For one, as you heard, Lieutenant Colonel Shaffer did meet with the staff of the Commission in Afghanistan in 2003, provided over information. They took that quite seriously. They tasked DOD to provide them information. Whatever DOD provided them, and that is a question for DOD, whatever was in there didn't indicate or support what Lieutenant Colonel Shaffer had told them.

The issue that we have fought with the Commission, though, is if they had only gone back to Lieutenant Colonel Shaffer and asked him, how else could you support your information—

Chairman SPECTER. Are you talking about the 9/11 Commission?

Mr. ZAID. Correct, sir. He could have identified for them the additional members of the team or those who were working with them—Captain Philpott, Mr. Smith. And at the time, if the Commission had looked into this in early 2004, the charts that had Mohammed Atta on it still existed. There was a chart in Mr. Smith's office. There was the chart that still should have been in the Defense Intelligence Agency because it wasn't destroyed within Lieutenant Colonel Shaffer's flies until the spring of 2004, the same with the chart that Mr. Smith had, which was about the same size.

You heard Congressman Weldon mention that Lieutenant Colonel Shaffer's clearance was revoked. It was suspended shortly after it was made known that he had testified or provided information to the 9/11 Commission. It was revoked just 2 days ago. I have been authorized, and I am happy to go through any details with respect to the security clearance revocation, what the allegations were, and what our responses were.

What I would like to submit in closing, the primary concern we should focus on as far as not who to blame for the obvious disconnect that occurred with respect to sharing information—we know that problem existed, it still does. Instead, the focus should be on identifying the current location of the other several dozen possible terrorists that were on that Mohammed Atta chart as to whether or not they are planning to commit terrorist acts against the United States today, as well as to reconstitute the successful work initially started by Able Danger.

I applaud the Committee's tenacity in pursuing this topic—

Chairman SPECTER. Mr. Zaid, are you just about finished?

Mr. ZAID. I have got two sentences more, sir.

I truly hope you will help educate the country to the truth and ensure that the images of those associated with Able Danger are not tarnished by governmental spin when they should instead be rewarded with the accolades they deserve for their patriotism.

Thank you for this opportunity. I will try my best to answer questions.

Chairman SPECTER. Thank you, Mr. Zaid.

[The prepared statement of Mr. Zaid appears as a submission for the record.]

Chairman SPECTER. Senator Kyl has other commitments and I yield to him at this time.

Senator KYL. Thank you very much. At 10:45, I am supposed to be someplace else. I will just ask you one or two quick questions.

Obviously, it would be better if we had the best evidence, the people who were directly involved that could give us the first, or their direct knowledge of the facts. As a lawyer, other than the matters relating to the revocation of the security clearance with which you have been involved, do you have the firsthand knowledge of any of these facts, the things that you have stated here, or are they representations of what has been told to you by others?

Mr. ZAID. Unfortunately, Senator, they are representations of what I have been told by others—several of the team members, those associated, those on the Hill who have done investigations.

Senator KYL. So the best evidence of that obviously comes from them—

Mr. ZAID. Absolutely.

Senator KYL. And we would need to hear from them.

Mr. ZAID. And all of them, as I understand, were willing to testify today.

Senator KYL. I appreciate that very much and I regret that I have to go right now, but I will perhaps submit some questions to you for the record.

Mr. ZAID. I would be happy to address them.

Senator KYL. Thank you all for being here.

Mr. ZAID. Thank you very much, Senator Kyl.

Chairman SPECTER. Our next witness is Mr. Erik Kleinsmith, Project Manager for Intelligence Analytical Training with the Lockheed Martin Company. He has a very extensive resume in intelligence activity, a number of commendations, including a Meritorious Service Medal, Army Commendation Medal, Armed Forces Expeditionary Medal, and the National Defense Service Medal. He

had been a member of the United States Army from 1988 to 2001 with the rank of Major.

Thank you very much for joining us, Mr. Kleinsmith. I appreciate your coming forward under difficult circumstances. The floor is yours.

STATEMENT OF ERIK KLEINSMITH, FORMER ARMY MAJOR AND CHIEF OF INTELLIGENCE, LAND INFORMATION WARFARE ANALYSIS ACTIVITY, AND PROJECT MANAGER FOR INTELLIGENCE ANALYTICAL TRAINING, LOCKHEED MARTIN, NEWINGTON, VIRGINIA

Mr. KLEINSMITH. Thank you, Mr. Chairman. As you said before, currently, I am an employee of Lockheed Martin Information and Technology, although my employment with Lockheed Martin has nothing to do with my involvement in Able Danger beyond my passion to continue to do this work as a private citizen.

I do have an intelligence analysis training team of about 20 instructors. Five of them are on the ground in Iraq today training intelligence analysis with data mining technology. My primary customer is the U.S. Army Intelligence and Security Command, to include the Information Dominance Center and the Information Operations Center and its extensions. I also teach a counterterrorism analysis course for INSCOM.

From March 1999 until February of 2001, I was an active duty Army Major and the Chief of Intelligence of the Land Information Warfare Activity. My branch provided as a typical mission analytical support to Army information operations, but because of the data mining capabilities that we possessed in the Information Dominance Center, we routinely provided direct analytical support to several combatant commands, as well as other customers.

And as Congressman Weldon alluded to earlier, one of our most prominent operations was in support of a data mining proof of concept demonstration for, from our level, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, or ASDCIII. That was called the JCAG project. It demonstrated how data mining and intelligence analysis could be conducted in a counterintelligence and technology protection capacity.

That project ran through the latter half of 1999 and our results were ultimately subpoenaed by Congressman Dan Burton's office through the House Reform Committee on November 16 of 1999.

In December 1999, we were approached by U.S. Special Operations Command to support Able Danger. I assigned the same core team of analysts that worked the JCAG project, along with Dr. Eileen Preisser as the analytical lead. Four of us conducted data mining analysis on the Al Qaeda terrorist network, coordinating with SOCOM and other organizations throughout that time. In the months that followed, we were able to collect an immense amount of data for analysis that allowed us to map Al Qaeda as a worldwide threat with a surprisingly significant presence within the United States.

In approximately April of 2000, from my recollections, our support to Able Danger became severely restricted and ultimately shut down due to intelligence oversight concerns. I was supported vigorously by both the LIWA and the INSCOM chain of commands and

we actively worked to overcome this shutdown for the next several months. In the midst of this shutdown, I, along with one of my analysts, Chief Warrant Officer 3 Terri Stephens, were forced to destroy all data, charts, and other analytical products that we had not already passed on to SOCOM-related Able Danger. This destruction was dictated by and conducted in accordance with the intelligence oversight procedures that we lived by.

Ultimately, we were able to restart our support to SOCOM at the end of September of 2000. Additionally, the bombing of the U.S.S. Cole on October 12 brought U.S. CENTCOM to the IDC and who became our primary customer until my departure from active duty on April 1, 2001.

I thank you for the opportunity to appear, sir, and understand that I can only talk in an unclassified nature in terms of the operations and administrative coordination that was conducted, not the actual analytical results or anything that would jeopardize classifications.

Chairman SPECTER. Thank you very much, Mr. Kleinsmith.

[The prepared statement of Mr. Kleinsmith appears as a submission for the record.]

Chairman SPECTER. Mr. Kleinsmith, what knowledge, if any, do you have about the allegation of a destruction of documents?

Mr. KLEINSMITH. The allegation of destruction of documents is correct. I am the one who deleted all the documentation that we had gathered at the IDC.

Chairman SPECTER. And you deleted the data?

Mr. KLEINSMITH. Yes, sir.

Chairman SPECTER. Precisely what do you mean by that?

Mr. KLEINSMITH. We had collected data from all of our different harvests and we had two different sets, so we had an unclassified or Internet polls that we had done. We also had what we termed as all-source, and this is data that was combined together from both classified and unclassified sources. We also had printouts or charts that we had produced, as well as some—I take that back—charts that we had produced as well as one chart or two that Orion Scientific had provided to us. But we had already gone beyond their analysis. So all, both soft copy and hard copy, was deleted or destroyed.

Chairman SPECTER. What kind of information was deleted?

Mr. KLEINSMITH. Everything, everything that we had—

Chairman SPECTER. What was the essential substance of it?

Mr. KLEINSMITH. We had done Internet polls related to a preliminary analysis of Able Danger, and what I mean by that is we were trying to get a worldwide perspective of exactly where this organization functioned and operated, just as a start, and that was in terms of Al Qaeda.

Chairman SPECTER. And did part of that involve operations within the United States?

Mr. KLEINSMITH. No specific operation in the United States, only a presence that was known, and we were unable to get to the details for specific persons or information in the United States before we were shut down.

Chairman SPECTER. And when was that information deleted?

Mr. KLEINSMITH. I deleted that information roughly May-June timeframe of 19—I am sorry, 2000.

Chairman SPECTER. May-June of 2000?

Mr. KLEINSMITH. Yes, sir.

Chairman SPECTER. Did somebody instruct you to delete the information?

Mr. KLEINSMITH. We were visited by our—the INSCOM's General Counsel, and the man was named Tony Gentry. But he was only there 10 days prior to remind me of the intelligence regulations that we were operating under. With that, the intelligence oversight regulation we referred to was Army Regulation 381–10, and in that—I brought a copy with me—we are allowed to—under Procedure 3, allows us to temporarily retain information about United States persons, may be retained temporarily for a period not to exceed 90 days solely for the purpose of determining whether that information may be permanently retained under the other procedures.

So while we were shut down, we were unable to do any further analysis, vetting of data, or investigation into the data that we had pulled. Because of that, the 90-day mark had hit and he came back down to remind me again, and it was more of a friendly visit, not an adversarial visit, and that was actually when he told me jokingly to remember, just delete this data or you guys will go to jail. Ha, ha, very funny, understanding completely we abide by the regulation, so we deleted the data and destroyed the charts that we had also created.

Chairman SPECTER. When you say, abide by regulations, what do you mean by that?

Mr. KLEINSMITH. We had to abide specifically by the Army intelligence oversight regulations that said we could only retain this information for 90 days.

Chairman SPECTER. Is there some relationship between those regulations and the Posse Comitatus Act?

Mr. KLEINSMITH. The Army regulation was in direct correlation with DOD Regulation 5140-point-R, which follows Executive Order 12333.

Chairman SPECTER. You are giving me a lot of—

Mr. KLEINSMITH. Yes, and I apologize—

Chairman SPECTER [continuing].—documents. That is OK—

Mr. KLEINSMITH. It is more of a—

Chairman SPECTER. Excuse me. Does any of it trace back to the Posse Comitatus Act?

Mr. KLEINSMITH. Only from an intelligence analysis perspective, not from an operational or mission perspective.

Chairman SPECTER. Well, what do you mean by that, intelligence but not operational?

Mr. KLEINSMITH. It allowed us to—

Chairman SPECTER. I was only a first lieutenant, so you are going to have to explain it to me.

[Laughter.]

Mr. KLEINSMITH. Yes, sir. It allowed us to conduct intelligence analysis and to incidentally collect information on U.S. persons. We didn't consider, or Posse Comitatus was never brought up at our level that we had worked at. We stayed strictly with AR 381–10—

Chairman SPECTER. Was there any reason for you to conclude that the deletion order for these documents went up the chain of command to officials relying on the regulations and Posse Comitatus?

Mr. KLEINSMITH. Not from my perspective or from my level, and I can't answer that fully, sir.

Chairman SPECTER. Are you in a position to evaluate the credibility of Captain Philpott, Colonel Shaffer, Mr. Westphal, Ms. Preisser, or Mr. J.D. Smith, as to their credibility when they say they saw Mohammed Atta on the chart?

Mr. KLEINSMITH. Yes, sir. I believe them implicitly from the time that I had worked with all of them, and everyone you had mentioned was part and I had contact with during this time. I cannot—

Chairman SPECTER. You had contact with all of them?

Mr. KLEINSMITH. Yes, sir. I cannot corroborate them completely and say that, yes, they saw it, because I myself do not remember seeing either a picture or his name on any charts, but I believe them implicitly. When they say they do, I believe them.

Chairman SPECTER. My red light just went on, but I am going to take the liberty of asking one more question, notwithstanding my insistence on adherence to the red light by everybody.

Senator SESSIONS. Go ahead, Mr. Chairman. You have unanimous support from the Committee.

[Laughter.]

Chairman SPECTER. That is extensive license, more than I really have as Chairman.

I have a report that you feel very strongly about this matter, so strongly that you were quoted as saying—and I want to know if this is an accurate quote—that every night when you go to bed, you believe that if the program had not shut down the U.S. intelligence on these subjects, that 9/11 could have been prevented.

Mr. KLEINSMITH. That is not completely accurate. What I had said is, yes, I do go to bed every night, and other members of our team do, as well, that if we had not been shut down, we would have been able to at least present something or assist the United States in some way. Could we have prevented 9/11? I don't think—I can never speculate to that extent we could have done that.

Chairman SPECTER. But you think you might have been able to glean some intelligence that could have been helpful along that line?

Mr. KLEINSMITH. Yes, sir.

Chairman SPECTER. Senator Sessions?

Senator SESSIONS. Thank you. Major Kleinsmith, you are not a lawyer and have not studied the origins of all these regulations, is that what I hear you saying?

Mr. KLEINSMITH. Yes, sir.

Senator SESSIONS. You simply, as an officer, were bound by AR 381–10, as you understood it?

Mr. KLEINSMITH. Yes, sir.

Senator SESSIONS. And do I understand you to say that AR 381–10, for whatever good reason somebody may have had for passing it, was the culprit that got you into this or required these deletions, or do you think that the deletions could have been—were not necessary even under the Army regulation?

Mr. KLEINSMITH. Sir, I am actually the one who made the decision to delete the documents, and so if it came to the point where, was I ordered, I was ordered by whoever wrote the regulation, and I understood that the regulation was written before the Internet, before data mining, and so it was a natural result. Yes, I could have conveniently forgot to delete the data and we could have kept it, but I would have been in violation and I knowingly would have been in violation of the regulation.

Senator SESSIONS. I would just like to first say that one moment, we are giving the military a hard time because they don't follow the regulations, and the next minute, we give you a hard time for following the regulations. Is it your understanding from the Legal Counsel that—you discussed this with Legal Counsel at some point before you deleted the information?

Mr. KLEINSMITH. Yes, sir.

Senator SESSIONS. And they can confirm that, in their view, that it was your obligation to delete this, to comply with it—

Mr. KLEINSMITH. Yes, sir.

Senator SESSIONS. And at this time, who was Secretary of Defense?

Mr. KLEINSMITH. I am sorry, I think it was William Cohen at the time.

Senator SESSIONS. It wasn't Mr. Rumsfeld during any of this. And do you think, or just from your perspective, having been there and worked on this, do you feel like that the regulation and the policies behind it should be modified to allow this kind of activity and that it would not adversely impact our traditional view that the military should not be involved in domestic law enforcement?

Mr. KLEINSMITH. Sir, again—yes, you are correct, I am not a lawyer. I would only, if I had one recommendation to make, is that a review would be conducted that involved data mining and the technology and the capability, but I could not give you an answer on how it should be changed specifically.

Senator SESSIONS. Mr. Zaid, would you want to comment on that point, on what the policy ought to be and—

Mr. ZAID. Sure, Senator. One of the questions—

Senator SESSIONS. And you represent—

Mr. ZAID. I represent Lieutenant Colonel Shaffer and Mr. Smith.

Senator SESSIONS. And these were the individuals involved in this data mining that had apparently come up with Mr. Atta's name—

Mr. ZAID. Correct.

Senator SESSIONS. and information about that. As a lawyer, have you, recognizing our concern about—and I take this very seriously, the Posse Comitatus Act. I don't think we would blithely change that Act. But as to this data mining and the kinds of things that they did, do you think we ought to change that policy?

Mr. ZAID. Let me say, first, understand that much of the data mining, and there are differences as to the technical definitions as to what exactly was happening with respect to that, were done by the contractors, the defense contractors. The rules are somewhat different for them. They have no restrictions as far as what data they are maintaining.

The other aspect is that we are not entirely sure what specific legal interpretations were being applied in this case other than obviously with respect to the destruction on the Army side. I would encourage the Committee, if they haven't already, to try and obtain the undoubted legal memoranda that exists within the Department of Defense. This wasn't the first time, obviously, the issue came up.

Plus, from my somewhat understanding of Posse Comitatus—I represent military officers all the time but I have never been a military lawyer—Posse Comitatus, of course, pertains to law enforcement activities of the military. In the aftermath of Waco, the Army took a PR hit because it had apparently helped support or provide activities, more than they were supposed to, with respect to the FBI raid on the Waco compound.

Senator SESSIONS. Well, let us talk about that. So the Army provided information that assisted ATF and FBI in the Waco activity, is that correct?

Mr. ZAID. And I don't remember the specifics—

Senator SESSIONS. But they were criticized for not staying within their role.

Mr. ZAID. Absolutely.

Senator SESSIONS. So it is a matter you took seriously—the military, Major Kleinsmith, I mean, the military takes the rules they are given seriously.

Mr. KLEINSMITH. Yes, sir. This is a requirement to be trained on intelligence oversight every year for every intelligence soldier and it is tracked.

Mr. ZAID. But there is case law and there are DOD regulations that pertain to the sharing of information compiled by the military with law enforcement. What my understanding of Able Danger's activities, it does not appear as if it would have crossed over that line. Now, whether there is an inconsistency between this Army regulation and other DOD regulations and the case law is something this Committee could obviously look at within its jurisdiction. It doesn't appear that there would have—there should have been any conflict. So it is not—

Senator SESSIONS. So to sum up—my time is expiring—to sum up, you would say that—

Chairman SPECTER. You can take some more time, Senator.

Senator SESSIONS [continuing]. It may have been in violation of AR 381–10, but not necessarily in violation of the case law or the Posse Comitatus theories that we have tried to operate under?

Mr. ZAID. There is absolutely evidence of that, plus there is a concern that this was too zealously applied. Those within Able Danger were confident they actually weren't compiling information on U.S. persons. They were potentially people connected to U.S. persons. Again, I said they never identified Mohammed Atta in the United States. Apparently, the problem that came up was on the chart where his image was, he was listed under Brooklyn, New York, or something to that effect. It had Brooklyn, and those within the Army, either in the legal level or some of the policy levels, were apparently showing apprehension and concern that somehow that was then linking to data compilation of U.S. persons, whether that is U.S. citizens or individuals, foreigners here legally.

Now, the other thing I should add as far as the destruction, Lieutenant Colonel Shaffer was the liaison between the DIA, Defense Intelligence Agency, and Able Danger. Because he was located here in Washington/Arlington, he maintained an extensive amount of files that pertained to the work that Able Danger was compiling in Orion Scientific. That data was not destroyed by Major Kleinsmith. That data, which may very well have included this Mohammed Atta chart, sat in his office at the Defense Intelligence Agency until some time in the spring of 2004, when DIA destroyed it. We have no idea why.

By that time, Lieutenant Colonel Shaffer had been suspended and put on administrative leave because his clearance had been suspended. DIA apparently claims that they sent him an e-mail asking, well, what do you want us to do with all these boxes of documents? He never—I don't know if they did send it. I can tell you he never received the e-mail. I don't understand why they would have destroyed any documents, particularly if they were classified, and there was classified information within these boxes, why would they destroy any documents presuming he would get a fair shake at challenging his clearance suspension and ultimately come back to work within the DIA and hopefully use the documents again. So those documents were not necessarily subject to AR 381–10 and the DIA should be required to explain who destroyed the documents and why they destroyed them.

Senator SESSIONS. Good point. Thank you, Mr. Chairman.

Chairman SPECTER. Thank you very much, Senator Sessions.

Mr. Zaid, you are representing Lieutenant Colonel Shaffer and Mr. J.D. Smith?

Mr. ZAID. Correct.

Chairman SPECTER. And they are present in the hearing room this morning?

Mr. ZAID. They are, sir. Lieutenant Colonel Shaffer is in uniform and Mr. Smith is right next to him.

Chairman SPECTER. Would you gentlemen mind standing, please? OK. Would you, for the record, identify Lieutenant Colonel Shaffer?

Mr. ZAID. Sure. Lieutenant Colonel Shaffer is to the left in the uniform, of course, and Mr. J.D. Smith is here in his business attire.

Chairman SPECTER. You may be seated, gentlemen.

You speak as their counsel?

Mr. ZAID. Yes, sir.

Chairman SPECTER. And they have consented to your testimony?

Mr. ZAID. Yes, sir.

Chairman SPECTER. Why are they not permitted to speak for themselves?

Mr. ZAID. Because the Defense Department has prohibited. I received both phone calls and a letter from the Defense Intelligence Agency, as well as the Department of Defense General Counsel's office, specifically prohibiting Lieutenant Colonel Shaffer from testifying. Mr. Smith admittedly has not been explicitly prohibited, but being an individual who still works within the classified environment with numerous agencies of the Federal Government, I ad-

vised him it would be preferable not to testify until the classification issue with the Department is taken care of.

Chairman SPECTER. And was any effort made to have you not testify?

Mr. ZAID. I am not aware of any, no indication from the Department of Defense or DIA that I not testify. And as I said earlier, I never have been told, and I work with these attorneys over in the agencies all the time, never have I been told that there was any concern that Lieutenant Colonel Shaffer specifically had been saying anything classified within his public comments, and I have routinely been told by agencies of the Federal Government, particularly when we represent intelligence officers, when one of them has potentially crossed the line and we have been told to reel them back.

Chairman SPECTER. But you are saying that there has never been any suggestion, either as to Lieutenant Colonel Shaffer or Mr. Smith, that the DOD was concerned about the disclosure of classified information?

Mr. ZAID. At least with respect to what they have publicly stated to the press, to the Committees, et cetera. Without a doubt—well, I should say two things. J.D. Smith's contract with Orion through whichever part of the Defense Department engaged him was completely unclassified, no questions about that. Lieutenant Colonel Shaffer and Able Danger, of course, did have access to classified information, but the work that prepared or led to the creation of the Mohammed Atta chart was unclassified.

Chairman SPECTER. And the information which has been in the public domain, which is what this Committee was looking for, was not classified?

Mr. ZAID. It is all of our indications that nothing was classified. It could certainly have been spoken to today and then elaborated on in executive session.

Chairman SPECTER. Obviously, it would be preferable, as Senator Kyl pointed out, to have the witnesses testify firsthand, but in the absence of that, we can hear hearsay. What would Lieutenant Colonel Shaffer have testified to had he been permitted to do so?

Mr. ZAID. Predominately, he would have testified to the fact of the work that Able Danger had been doing, both in the certainly unclassified environment, that they had created numerous charts that had dealt with Al Qaeda, one of which had identified Mohammed Atta, had a photograph of him. That photograph was not the same photograph that we have all seen in the news, not a photograph released by a U.S. Government agency or the 9/11 Commission. It was a very grainy photograph. He remembers it specifically because of the essentially evil death look in Mohammed Atta's eyes and his narrow, drawn face. Of course, the name itself didn't necessarily mean anything to them until after 9/11. He conversed with other members of his team, found that they had gone to meet with Mr. Hadley and turn over the chart, thought, well, my job is taken care of. The information has been passed.

He would have talked about the capabilities that LIWA and the contractors were undertaking and the successful enterprises they were doing that was revelation and novel within the intelligence and military community.

He also would have indicated that, finally, he came and he met with members of the 9/11 staff, to include its Executive Director, while he was on active duty risking his life in Afghanistan, that he had told them that his team had identified two of the successful cells of 9/11, to include Atta. That statement, of course, is in dispute by the 9/11 staff that were present. There were also DOD staff that were present there, who have not come forward and have not been questioned so far as we know.

He also would have indicated that after that, he met Mr. Zelikoff, gave him his business card, and said, "I want you to call us when you get back to the United States so we can follow this up." He did so in January of 2004. He called the Commission and said, "Mr. Zelikoff told me to call. I would like to come in and give more information." They never called him back. A week later, he called again and was told, "That is OK, we don't need to talk to you."

Chairman SPECTER. My red light went on during your answer. Senator Sessions?

Senator SESSIONS. I just briefly, Mr. Chairman, would followup with Mr. Kleinsmith. We found in the PATRIOT Act work that we did that there were clear prohibitions, unbelievable prohibitions, on the sharing of information such as an FBI investigation involving a grand jury could not share with a CIA matters and vice-versa. The CIA felt they couldn't share information in certain ways. I guess I want to ask again, did you think, when this lawyer talked to you about your requirement to destroy this information, that—I believe you said you felt that was—that the advice was existing with the existing Army regulations, did you not?

Mr. KLEINSMITH. Yes, sir.

Senator SESSIONS. Mr. Zaid, were you saying that you felt your clients did not feel that the existing regulations required the deletion of that information, or at least some of it?

Mr. ZAID. From my discussions with those involved with Able Danger, they were well aware of this concern and they felt they had put into place numerous safeguards that would ensure that that concern would not rise to a significant level of necessitating the destruction. They were all ensure—they said they were taking, in fact, numerous steps beyond what they felt were even necessary to allay any concerns by the attorneys. But obviously, as you heard, at the end of the day, I guess the attorneys won out.

Senator SESSIONS. I think it is important for us to review these matters. The first thing I would like to say, and I think it is very important for the American people to understand, somehow, there is a belief in this country that we give regulations and directives to the military and that they think we don't comply with them, that the military does not comply with them. I used to have to teach in the Army Reserve and certify every year or every other year that I taught the Geneva Conventions to Army Reserve privates in a transportation unit.

The military does what we tell them to do, and when we have these kind of crazy rules that do this, I think it is us in the Congress that really deserve the criticism here, first. And second, if a lawyer was too aggressive in requiring the deletion of things that they shouldn't, I think we need to look into that.

Mr. Chairman, I will yield back my time to you.

Chairman SPECTER. Thank you. Thank you very much, Senator Sessions.

Mr. Zaid, just one final question. Again, we would like to hear from Mr. Smith, but we are precluded. If he were to testify, what would he say?

Mr. ZAID. Mr. Smith would have indicated that he was tasked by individuals associated with Able Danger, again, not knowing it was Able Danger, to compile unclassified information that they then can put into charts like Congressman Weldon had brought today, looked somewhat similar—some were that size, some were smaller—containing massive amounts of data, that these were associational links, that at least one chart in particular which he, in fact, kept on his office wall until the summer of 2004, when it had been destroyed after he tried to move it for an office move and then junked it, had Mohammed Atta and potentially, according to other team members—he doesn't recall this—three others of the 20 hijackers of 9/11, in fact, as well.

He would have made one mention that at some point in time—he was not there at this time—that government—Federal agents, armed Federal agents came to Orion in around March or April of 2000 and confiscated many or much of the data that Orion had compiled with respect to this contract. They never obtained his data or his charts because given that it was unclassified, they actually were in the trunk of his car, and so that is why he was able to maintain these charts.

After the summer of 2000 or even the spring of 2000, that contract ceased to exist, so he no longer participated in any of the efforts.

Chairman SPECTER. When you say Mohammed Atta, is it the Mohammed Atta who turned out to be the hijacker?

Mr. ZAID. Yes. Without a doubt, his recollection is that, again, by the photograph—and he obtained the photograph through a subcontractor that Congressman Weldon mentioned, bought through, and he understood it to be a foreign source, and it was the look of this photograph—it wasn't the same photograph that we have all seen, and he, post-9/11, when he had this chart on his wall in his office, would bring in anybody who would come by and say, "Look what we had. Look what we had compiled." They would be shown, here was the photograph of Mohammed Atta, and he would just shake his head, what if, what if, what if.

Chairman SPECTER. Do you know where the chart is now?

Mr. ZAID. The chart, unfortunately, was destroyed. I am not sure what the paper is of those, but many of the charts were on a type of paper almost like tissue paper to some extent, from what I understand, and he had it taped to the wall, and when he tried to take it down, it had become so torn and tattered after, at that time, 3 years that he threw it out.

Chairman SPECTER. Anything further, Senator Sessions?

Senator SESSIONS. No, Mr. Chairman.

Chairman SPECTER. Thank you very much, Mr. Kleinsmith. Thank you very much, Mr. Zaid. And in absentia, though present, thank you very much, Colonel Shaffer and Mr. Smith. It is pretty hard to be in absentia and present at the same time, but you are.

[Laughter.]

Chairman SPECTER. We now call our third panel, Mr. Gary Bald and Mr. William Dugan. Mr. Gary Bald is Executive Assistant Director of the FBI for the National Security Branch, appointed on August 12 of this year, a branch created at the recommendation of the Commission on Intelligence Capabilities of the WMD Commission, responsible for integrating the FBI's national security mission with the Director of National Intelligence. He has been in the FBI since 1977 and has a very extensive, laudatory record there. He has a Bachelor of Science from the University of South Carolina and a Master's in forensic science from George Washington University.

Thank you for joining us, Mr. Bald, and we look forward to your testimony.

STATEMENT OF GARY M. BALD, EXECUTIVE ASSISTANT DIRECTOR, NATIONAL SECURITY BRANCH, FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

Mr. BALD. Thank you, Senator. Thank you, Chairman. I have submitted a written statement, if I could ask that it be made a part of the record, and I will briefly—

Chairman SPECTER. Without objection, it will be made a part of the record.

Mr. BALD. Thank you, sir. Good morning, Mr. Chairman, Senator Leahy, and members of the Committee. Thank you for this opportunity to update you on the progress the FBI has made since 9/11 in sharing information with our partners in law enforcement and the intelligence community. As you requested, I will focus my remarks on collaboration with the Department of Defense.

I am testifying today in my new capacity as Executive Assistant Director of the National Security Branch of the FBI, which was established on September 12, pending final administration approval. Created in response to the President's directive to implement the recommendations of the Weapons of Mass Destruction Commission, the National Security Branch combines the resources, missions, and capabilities of the counterterrorism, counterintelligence, and intelligence elements of the FBI and in doing so will help us build on the tremendous strides that we have already made since 9/11 in strengthening our intelligence and information sharing capabilities and coordinating with other intelligence agencies.

Before 9/11, our ability to share information was hampered by legal and procedural restrictions, often referred to as the wall that separated intelligence and criminal investigations within the FBI. Those restrictions contributed to a situation in which our relationships with other intelligence agencies on counterterrorism investigations were driven by case-specific needs.

Since 9/11, the passage of the PATRIOT Act, and other major legal developments eliminated the wall between criminal and intelligence investigations within the FBI and these actions removed real and perceived barriers to coordination among the FBI and other intelligence agencies and changed the way the FBI conducts international terrorism investigations.

In addition, the FBI now places great emphasis on producing intelligence reports and disseminating them through our partners in

the intelligence and law enforcement communities. Our policy is to share by rule and withhold by exception. To ensure that this policy is implemented, we have created a senior-level Information Policy Sharing Group to provide guidance within the FBI for internal and external information sharing initiatives.

The FBI has also developed a National Information Sharing Strategy as part of the Department of Justice's Law Enforcement Information Sharing Program, which aims to ensure that those charged with protecting the public have the information that they need to take action.

There are three components of this strategy, the National Data Exchange, or what we refer to as N–DEx, which will provide a nationwide capability to exchange data from incident and event reports with other agencies; the Regional Data Exchange, or as we refer to it as R–DEx, which will enable the FBI to join participating Federal, State, tribal, and local law enforcement agencies in regional, full-text information sharing systems; and our Law Enforcement Online, which provides a Web-based platform for the law enforcement community to exchange information.

The FBI also participates in a variety of interagency centers, working groups, and committees that were established to improve information sharing. In each of the FBI's 56 field offices and in most major United States cities, we now have a Joint Terrorism Task Force, which combines the resources of the FBI, other Federal agencies, with the expertise of the State and local law enforcement agencies in those areas to prevent acts of terrorism and investigate the activities of terrorists in the United States.

To support the Joint Terrorism Task Forces throughout the country and to provide a point of fusion for terrorism intelligence, we also created the National Joint Terrorism Task Force. The Department of Defense is strongly represented in the Joint Terrorism Task Forces and on the National Joint Terrorism Task Force.

The FBI also has a significant complement of personnel working at the interagency National Counterterrorism Center, which integrates the Federal Government's intelligence and analysis and presents a comprehensive view of the terrorist threat for the President and other senior policy makers.

The FBI is proud of its efforts in partnership with the Department of Defense. We are working together on numerous fronts to share information to support the global war on terrorism, and as an example of our joint activities, the FBI's Criminal Justice Information Services Division has been working with the Department of Defense's Biometric Fusion Center to store and disseminate data collected by military troops deployed overseas. The data consists of fingerprints, photographs, and biographical data of enemy prisoners of war or individuals of interest as national security threats. The FBI currently has special agents assigned as liaison officers to several Department of Defense combatant commands and additional FBI personnel are embedded with the Department of Defense in military operations in Iraq, Afghanistan, and Guantanamo Bay.

The Department of Defense and FBI are also collaborating on the Foreign Terrorist Tracking Task Force, which uses analytic techniques and technologies to enable terrorist identification and track-

ing. In addition, the two agencies share information as participants in the Terrorist Explosive Device analytic Center, which coordinates and manages a unified national effort to gather and technically and forensically exploit terrorists who improvise explosive devices worldwide.

With the intelligence gathered throughout these and other partnerships as well as her own investigations, the FBI produces intelligence products that we disseminate to the intelligence and law enforcement communities, primarily through six information sharing networks: The FBI Intranet, INTELINK top secret, INTELINK secret, Law Enforcement Online, the Homeland Security Information Network, and a secure automated message network.

Over the past several years, the FBI has significantly increased the number of intelligence products disseminated via these networks. A primary route for the Department of Defense components to receive FBI intelligence products is through the Defense Intelligence Agency—

Chairman SPECTER. Mr. Bald, could you summarize your testimony at this point, please?

Mr. BALD. I will, sir. Thank you. Through the Defense Intelligence Agency, which is the primary distribution list for FBI intelligence products.

In conclusion, Mr. Chairman and members of this Committee, the FBI has made significant progress in our efforts to share information with our partners in the intelligence and law enforcement communities. We have established policies and developed tools that make it easier for us to disseminate intelligence and provide access to those who need it, and we are working collaboratively on many fronts with the Department of Defense and other agencies to develop the capabilities we need to succeed against the threats of the future.

Thank you, Mr. Chairman.

Chairman SPECTER. Thank you, Mr. Bald.

[The prepared statement of Mr. Bald appears as a submission for the record.]

Chairman SPECTER. We turn now to Mr. William Dugan, Acting Assistant Secretary of Defense for Intelligence Oversight. Mr. Dugan is a retired Air Force Colonel and has served as a Minuteman missile combat crew commander. He has a Bachelor of Arts degree from the University of Florida, a law degree from the University of Kansas, and is also a graduate of the Army War College.

The floor is yours, Mr. Dugan.

STATEMENT OF WILLIAM DUGAN, ACTING ASSISTANT TO THE SECRETARY OF DEFENSE FOR INTELLIGENCE OVERSIGHT, DEPARTMENT OF DEFENSE, WASHINGTON, D.C.

Mr. DUGAN. Thank you, Mr. Chairman. Good morning. Senator Sessions, members of the Committee, it is my privilege to appear before you today. I am Bill Dugan. I am the Acting Assistant to the Secretary of Defense for Intelligence Oversight and I am here to discuss the intelligence oversight program in the Department of Defense and also to talk about information sharing.

I am responsible to the Secretary and the Deputy Secretary for the DOD's Intelligence Oversight Program, and the purpose of the

Intelligence Oversight Program is to enable DOD intelligence components to carry out their authorized functions while at the same time ensuring that their activities that affect U.S. persons, United States persons, are carried out in a manner that protects their constitutional rights and privacy.

Now, I have used the term "United States persons," and I would like to define it because it is an important term. It is a broad term. It refers to more than just United States citizens. The term also includes permanent resident aliens, corporations incorporated in the United States unless directed or controlled by foreign governments, and associations composed of permanent resident aliens and United States citizens. So you can see it is broader than just U.S. citizens.

We operate under Executive Order 12333, entitled United States Intelligence Activities, which was issued by President Reagan in December 1981. The DOD implementing regulation is DOD 5240.1–R, entitled Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons. This DOD regulation was approved by the Attorney General and was issued in December 1982. So these are the Attorney General-approved guidelines for the DOD intelligence community regarding activities that affect United States persons and they have been in place for more than 20 years.

The Office of the Assistant to the Secretary of Defense was established in 1976 to implement the original Executive Order, which was one issued by President Ford, and that was in response to the investigations, including those done by this Committee, that revealed the misuse of intelligence assets, both DOD and non-DOD, to collect information on civil rights protestors, anti-Vietnam War demonstrators, community and religious leaders, et cetera. The lack of clear rules, mission creep, and the lack of meaningful oversight caused an abuse of the constitutional rights of United States persons by Defense intelligence and counterintelligence personnel. The result, President Ford's first Executive Order and the one we operate under currently by President Reagan in 1981.

I would like to describe how the process works regarding the collection of United States person information by DOD intelligence components. First, no one in DOD intelligence has a mission to collect information on United States persons. What we have are missions such as foreign intelligence, counterintelligence, counterterrorism, signals intelligence, and the like. In the course of performing our mission, we run across or find information that identifies United States persons. That is when the rules in the DOD regulation that I mentioned, 5240.1–R, kick in, the Attorney General-approved guidelines.

If the information is necessary to the conduct of the mission, as I just described, for example, counterterrorism, and if it falls within one of the 13 categories prescribed by the Executive Order and the DOD regulation, then the intelligence component can collect it. The 13 categories, I won't list them all. They are in my prepared remarks. But the ones most likely to be used in the war on terrorism are information obtained with consent, publicly available information, foreign intelligence, counterintelligence, and threats to safety from international terrorist organizations.

If the intelligence component is unsure if the information they have obtained is proper for them to keep regarding U.S. persons, the intelligence oversight rules allow them to temporarily retain the information for up to 90 days solely to determine whether it may be permanently retained, and thus, we have intelligence components who have properly collected U.S. person information in their holdings.

Finally, if an intelligence component is in receipt of information that pertains to the function of other DOD components or agencies outside DOD, such as the FBI, the intelligence component can transmit or deliver the information to them for their independent determination whether it can be collected, retained, or disseminated in accordance with their governing policy.

Thank you.

Chairman SPECTER. Thank you, Mr. Dugan.

[The prepared statement of Mr. Dugan appears as a submission for the record.]

Chairman SPECTER. Mr. Dugan, you were present during the entire hearing today?

Mr. DUGAN. Yes, I was.

Chairman SPECTER. I didn't hear you object to any classified information being presented.

Mr. DUGAN. Sir, I listened to your reading of the statement from your legal counsel regarding my responsibility to object if there was classified information revealed. My knowledge of Able Danger is very limited. The information that I heard discussed by the previous two panels, based on my limited knowledge of Able Danger, did not cause me to rise and say that I thought classified information was being revealed. Had I—

Chairman SPECTER. So you didn't—

Mr. DUGAN. Had I believed so, I would have done so.

Chairman SPECTER. OK. So you didn't hear any classified information?

Mr. DUGAN. No, I didn't hear what I believe to be classified information.

Chairman SPECTER. Well, we are not looking for anybody else's belief. Is there anybody else present from the Department of Defense here today?

Mr. DUGAN. I have some folks from the OSD Legislative Affairs, but I don't believe they are in a position—

Chairman SPECTER. But it was your job to object if you heard something you thought was classified?

Mr. DUGAN. Yes, sir, that is correct.

Chairman SPECTER. Is there anything in Posse Comitatus which would have prevented the Department of Defense from telling the FBI about an Al Qaeda cell and Mohammed Atta?

Mr. DUGAN. No, sir, I don't think so. I don't think this is a Posse Comitatus issue. I think this is an intelligence oversight, Executive Order 12333 compliance issue. The Army regulation that previous speaker referred to, Army Regulation 381–10, is an implementation of the DOD regulation, which is an implementation of the Executive Order, and that is what they followed. Posse Comitatus, I don't think bears on this.

Chairman SPECTER. Well, is there any basis under Posse Comitatus for the deletion of materials as testified by Mr. Kleinsmith or the destruction of other records relating to Mohammed Atta and the charts?

Mr. DUGAN. I don't think so, under Posse Comitatus.

Chairman SPECTER. Any basis for the destruction of those records or deletion on any ground?

Mr. DUGAN. Well, perhaps under the intelligence oversight rules and the 90-day retention determination period that I spoke of. That is, under the DOD guidance, the Attorney General-approved guidelines, if information identifies a U.S. person, the intelligence component concern has 90 days to determine if they have a reasonable belief that it can be related to one of the 13 categories in Procedure 2 of the DOD directive. The Army directive is the same.

Chairman SPECTER. In the rather extensive record for this Committee today, albeit by hearsay, to some substantial extent, Congressman Weldon's testimony and the other testimony has established the existence of intelligence information in the hands of the Department of Defense, including the identity of Mohammed Atta. That evidence having been presented and factually ascertainable, did the Department of Defense make a mistake in not telling the FBI about that prior to 9/11?

Mr. DUGAN. Not having reviewed the evidence that—

Chairman SPECTER. Well, you were here today and you heard all the testimony.

Mr. DUGAN. Yes, sir, I was.

Chairman SPECTER. You heard a lot of testimony that there was a cell uncovered on Al Qaeda and that Mohammed Atta was identified—the same Mohammed Atta who later turned out to be a ringleader. Now, I don't know whether it is true or not because we haven't had the firsthand testimony, but we have to accept what we can get. That is for a first hearing. We may have some more hearings.

Mr. DUGAN. Certainly.

Chairman SPECTER. The Secretary of Defense is coming in to brief the Senate this afternoon at four o'clock. He may have some extra time. He may be able to lend some substance to what we have heard here today. But all we can do is accept the testimony we have heard. Now, accepting that testimony, if the Department of Defense knew about an Al Qaeda cell and about Mohammed Atta, the ringleader, wasn't it a mistake not to turn that over to the FBI?

Mr. DUGAN. If the INSCOM folks, following the regulation and their intelligence oversight rules, found that the information was properly collected and collectable, then it is, under the Attorney General-approved guidelines, they can retain it and disseminate it, and it the dissemination under Procedure 4 of the regulation would be lawful to the FBI.

Chairman SPECTER. Should it have been disclosed? That is my question. Your last answer was circuitous and not to the point. Should it have been disclosed if it might have prevented 9/11?

Mr. DUGAN. If it was properly collected, yes.

Chairman SPECTER. Well, it wasn't properly collected?

Mr. DUGAN. I don't know, sir.

Chairman SPECTER. Well, you say there is nothing that you heard about which puts it at variance with the Posse Comitatus Act.

Mr. DUGAN. Correct, but I haven't heard testimony whether, and from the Army, and I understand they are not here and the reasons for that, but as to what they collected, how they collected it, and why they determined it was not properly collectable, and when it then could not be retained and then disseminated.

Chairman SPECTER. Do you know why the decision was made not to retain it?

Mr. DUGAN. I assume, based on the previous testimony of the previous panel, and from what he said was that the 90-day period had run, and since the 90-day period had run, they had not made a collectability determination that it fit into one of the 13 categories, that it was excluded.

Chairman SPECTER. Since you are the only representative from the Department of Defense here, we can only ask you to respond to the Committee and to make a determination as to whether, No. 1, the Department of Defense had information about an Al Qaeda cell and Mohammed Atta, the ringleader. That is question No. 1. Did they have that information? If so, was there any reason under Posse Comitatus why they could not disclose it to the FBI or other intelligence agencies? And question No. 3, was it a mistake not to make that information available to prevent 9/11 or perhaps contribute to the prevention of 9/11?

Mr. DUGAN. Mr. Chairman, with respect to your first question, did we have information that identified Mohammed Atta, I have heard the testimony here, but I don't know.

Chairman SPECTER. The question was, since you are the only representative of DOD here, the Committee would like you to find out the answers to those questions.

Mr. DUGAN. Very good. May I take—

Chairman SPECTER. If we had the Secretary here, we would ask him. If we had somebody with knowledge of Able Danger, like General Schoomaker, who was very intimately involved in it—he is not too far away, he is the Chief of Staff. He was confirmed by the Senate the last time he was up. If we had somebody who knew more about the matter, we would ask him. I understand that you were sent over in a very limited capacity with perhaps a calculation that you didn't have this information. But those are the questions which the Committee would like to have answered—

Mr. DUGAN. Yes, sir.

Chairman SPECTER. And if you would undertake the task of finding out the answers or having your superiors find out the answers, the Committee would appreciate it.

Mr. DUGAN. Yes, sir. Thank you.

Chairman SPECTER. Senator Sessions?

Senator SESSIONS. Mr. Dugan, to get this ancestry of how we get into these walls that make life in government more difficult, there were Church hearings and other abuse hearings that resulted in President Reagan—President Ford and then President Reagan issuing directives to constrain the activities of the Department of Defense in things that could be considered domestic investigations or domestic law enforcement, is that correct?

Mr. DUGAN. Yes, sir, that is correct. There was also an intervening order from—Executive Order from President Carter.

Senator SESSIONS. And as a result of that, DOD Regulation 12333 was issued?

Mr. DUGAN. I believe you are referring to Executive Order 12333.

Senator SESSIONS. All right.

Mr. DUGAN. That was issued by President Reagan.

Senator SESSIONS. And you referred in your remarks here to a DOD regulation that governed the issue, and is that the regulation from which Major Kleinsmith referred when he talked about AR 381–10?

Mr. DUGAN. Yes, sir, I believe it is.

Senator SESSIONS. So the Army implemented that DOD regulation and that became, for the officers and men and women in the Army, their binding authority?

Mr. DUGAN. Yes, sir, that is correct. All the other services have a similar regulation, as well as the Defense Intelligence Agencies.

Senator SESSIONS. And is your understanding that that regulation really was not founded on the Posse Comitatus Act, but some other principle or concern to the executive and legislative branches that led to that?

Mr. DUGAN. Yes, sir, that is correct.

Senator SESSIONS. Are there any statutory provisions that underlay this Executive Order and the AR 381–10?

Mr. DUGAN. The provisions in President Reagan's Executive Order grow out of the abuses committed by DOD and non-DOD intelligence organizations during the 1960s and 1970s, as I explained, and investigated by Senator Ervin, Senator Church, the Church Committee, Representative Pike, as well as the Rockefeller Commissioner. So it is a fear that you have the military collecting intelligence on, let me use the term U.S. citizens, but U.S. persons within this country.

Senator SESSIONS. I think that is a big issue. I think it is an important issue. I don't dispute that, and I am not for eroding that principle in any significant way. But the Chairman is, I guess—I think we need to ascertain whether or not there was any statutory requirement that resulted in 381–10 that impacted this particular matter, or was that the results purely of an Executive Order which could be changed by the chief executive.

Mr. DUGAN. I believe it is the result of the Executive Order. I do not believe it is a Posse Comitatus statute issue that—

Senator SESSIONS. And you are not aware of any statutory requirement that requires this?

Mr. DUGAN. No.

Senator SESSIONS. Now, with regard to—let me see if I can followup on the Chairman's question about sharing this information. There was this 90-day rule that the Major and others, I guess, felt they were confronted with. Do you have an explanation of why they couldn't just call Mr. Bald at the FBI and say, we can't hold these documents anymore. We turn them over to you. What would be the difficulty in doing that?

Mr. DUGAN. We are a lot smarter now than we were in 1999 and 2000 and we think we could do that, give them—provide that information to the FBI and say, you need to review this with your au-

thorities in mind to determine whether it is lawful for you to keep. Now, we are faced with that same situation when law enforcement information is given to us for us to look at, and we look at that information in the light of the Executive Order and the DOD directive and say, is it proper for us to keep this information? Is this of intelligence value to us, and we make our decision and determination in accordance with the DOD directive or the Army regulation.

Senator SESSIONS. Well, so those decisions were made, and I guess we will follow up, and the Chairman has asked, what about this ultimate destruction of the documents? Was that called for under the regulations or was that necessary?

Mr. DUGAN. The 90-day rule is what is referred to as a collectability determination. I have this information. I don't know if I have a reasonable belief relating to U.S. person information, relating to U.S. persons, and they have this 90-day period within which to make a determination. If the determination after day ten is this does not relate to one of the 13 categories that I have just described, then the 90-day clock stops, but they have a full 90 days to make that determination. Once that 90-day period goes by and they have not made the information, then it is not properly collected.

Senator SESSIONS. Is it deemed not to be properly collected, and under criminal law, when the police officer improperly collects something, he does not have to destroy the evidence, but he can't utilize it—

Mr. DUGAN. We destroy it.

Senator SESSIONS. So you destroy. So if you delay and haven't made your determination in 90 days, it is to be destroyed? Could it not be shared? It can't be shared? What if it is improperly gathered, so it can't be maintained? Can it then be shared?

Mr. DUGAN. We think the information can be shared, for instance, with the FBI, as I indicated earlier, for them to review it with their authorities and to make a similar decision or determination of whether, for their agency, they can. Now, why wasn't it done in this case? I can't tell you. Information sharing obviously has increased in significance and importance since the 2001 attacks. We are doing a better job of sharing information, both from law enforcement to intelligence and intelligence to law enforcement. I am sure there are plenty of areas necessary and open for improvement, but in 1999–2000, I guess I wish to convey to the Committee that U.S. person information is something that we are skittish about in the Defense Department. We follow the rules strictly on it and we want to do the right thing and follow the Attorney General guidelines.

Senator SESSIONS. Thank you. Mr. Chairman, I had the honor to serve with Congressman Weldon on the Armed Services Committee, he in the House and I in the Senate, and there is no stronger proponent of America's defense, no stronger supporter of the United States Army and the Defense Department and a healthy, strong America. Congressman, thank you for your leadership and for you information you have provided us.

Chairman SPECTER. Thank you, Senator Sessions.

Mr. Dugan, Mohammed Atta was not a U.S. person, was he?

Mr. DUGAN. Based on what I have read in the press since September 11, 2001, I don't believe he was. He wasn't a permanent resident alien. He wasn't a U.S. citizen. He wasn't in any of the other categories. He wasn't in the country lawfully. For instance, a student visa or a tourist visa, that is not the same thing as a permanent resident alien. So—

Chairman SPECTER. Mr. Dugan, you are the Acting Assistant Secretary of Defense for Intelligence Oversight. Can't you give us a more definitive answer to a very direct and fundamental and simple question like, was Mohammed Atta a U.S. person?

Mr. DUGAN. No, he was not.

Chairman SPECTER. Well, maybe we ought to continue, since we got a direct answer. Mr. Dugan, I know you were sent here by your superiors to do the best you could. I think the Department of Defense owes the American people an explanation as to what went on here. There are very credible questions which have been raised, and these credible questions have been raised by Congressman Weldon, whose reputation is impeccable as to credibility and thoroughness, and these questions have also been raised by five witnesses, all of whom have been prohibited from testifying.

We are not dealing here with a matter of minor consequence. We are dealing with the intelligence gathering data of the Department of Defense and prima facie reasons to believe that there was credible evidence as to Mohammed Atta, the Mohammed Atta, the ringleader, and an Al Qaeda cell. Had that information been shared—and the FBI was trying to get it—9/11 might have been prevented.

The other Senators have expressed the same point of view. Senator Biden finds it inexplicable, can't figure out why the Department of Defense is stonewalling this, and I can't, either.

I hope you will go back and talk to the Secretary and tell him that the American people and this Committee are entitled to some answers, because if there is a problem with Posse Comitatus, it is our duty to try to correct it.

I want to thank the staff especially for pursuing this investigation and this hearing. This hearing preparation was one of the most difficult that I have seen, and I am in my 25th year and no stranger to investigations. I spent a lot of time investigating the Mafia, organized crime, and racketeers of all sorts and never faced a more fundamental question than fighting terrorism, which is the No. 1 problem we have here today. We need answers.

I want to thank Ivy Johnson, Adam Turner, Adam Caudle, John Noor, Kathy Michalko, and Josh Latourette, and especially Carolyn Short, General Counsel, and Evan Kelly for the work they have done here.

We are going to suspend the hearing on this subject at this point in the hopes that we will get some better answers.

[Whereupon, at 11:50 a.m., the Committee was adjourned.]

[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

Statement of
Gary M. Bald
Executive Assistant Director
National Security Branch
Federal Bureau of Investigation

Before the
United States Senate
Committee on the Judiciary

September 21, 2005

Good morning Mr. Chairman, Senator Leahy, and Members of the Committee. Thank you for this opportunity to discuss the FBI's progress in enhancing information sharing with the Department of Defense (DOD), as well as other members of the Intelligence Community (IC) and our partners in law enforcement.

I am testifying today in my new capacity as Executive Assistant Director of the FBI's National Security Branch (NSB), which was established September 12 (pending Administration approval of the new organizational structure). The NSB combines the missions, capabilities, and resources of the counterterrorism, counterintelligence, and intelligence elements of the FBI. It was created in response to a directive by the President to implement the recommendations of the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction (WMD Commission). While the WMD Commission recognized that the FBI has made substantial progress in building our intelligence program, it wanted to ensure our intelligence elements were responsive to the Director of National Intelligence (DNI) and were fully integrated into the IC. The creation of a unified management structure to oversee the FBI's national security components will help ensure that NSB activities will be coordinated with other IC agencies under the DNI's leadership. We are working with the DNI to assist the Attorney General in preparing a Report to the President from the Attorney General further defining the NSB.

Information Sharing

The FBI has a dual role as both an intelligence agency and a law enforcement agency. Since the terrorist attacks of 9/11, the FBI has made great strides in strengthening our intelligence capabilities and disseminating intelligence throughout the FBI, to other members of the IC, and to our partners in federal, state, local, and tribal law enforcement. We are doing so while

protecting sensitive intelligence and investigative sources and methods, maintaining the integrity of criminal prosecutions, and safeguarding the constitutional and civil rights of the American people.

Changes since 9/11

Prior to 9/11, legal and procedural restrictions, often referred to as the "wall", were created to separate intelligence and criminal investigations. Although intelligence information, including that gathered by DOD, could be passed over the wall and shared with FBI criminal investigators, this process was subject to cumbersome procedures that limited and discouraged information-sharing.

Three significant legal developments after 9/11 affected the FBI's approach to international terrorism investigations and lowered the wall between criminal and intelligence investigations:

1. The Oct. 26, 2001, enactment of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act).

2. DOJ's March 6, 2002, issuance of Intelligence Sharing Procedures for Foreign Intelligence and Foreign Counterintelligence Investigations Conducted by the FBI.

3. The Foreign Intelligence Surveillance Court of Review's Nov. 18, 2002, issuance of an opinion regarding the wall between intelligence and law enforcement.

These developments removed real and perceived barriers to coordination among the FBI and the IC, including DOD. This facilitated a fundamental change in the way international terrorism investigations are pursued by the FBI.

Among the changes are that the FBI now places great emphasis on producing Intelligence Information Reports (IIRs), Intelligence Assessments (IAs) and Intelligence Bulletins (IBs) on national security threats to our country. The reports we now produce are disseminated to our partners in the intelligence and law enforcement communities and have enhanced our contributions to the rest of the IC.

Policy

Our policy now is to share by rule and withhold by exception. As part of our efforts to ensure that this policy is implemented, we have created a senior-level "Information Sharing Policy Group" (ISPG). The FBI's Executive Assistant Director (EAD) for Administration and the former EAD for Intelligence co-chaired

the ISPG. As the EAD for the NSB, I will now take a leadership role in this group, which brings together the FBI entities that generate and disseminate intelligence. Since its establishment in February 2004, this body has provided authoritative FBI policy guidance for internal and external information-sharing initiatives.

We have just completed the first installment of our new Intelligence Policy Manual. The manual implements the policies on intelligence and information sharing set forth by the President, by Congress in the Intelligence Reform and Terrorism Prevention Act, and by the DNI. One of the key areas of focus for the manual is how to strike the proper balance between the need to share information versus the need to protect intelligence sources and methods.

Part of this guidance includes a new, comprehensive policy on "write-for-release," which will improve the ease of sharing intelligence with our partners in law enforcement and intelligence. "Write-for-release" techniques include portion marking, the use of "tearlines," and sanitizing sensitive text.

The FBI shares information and ensures collaboration through our National Information Sharing Strategy (NISS), which is part of the Department of Justice (DOJ) Law Enforcement Information Sharing Program (LEISP) that aims to ensure that those charged with protecting the public have the information they need to take action. NISS has three components: the National Data Exchange (N-DEx), which will provide a nationwide capability to exchange data derived from incident and event reports with other agencies; the Regional Data Exchange (R-DEx), which will enable the FBI to join participating federal, state, tribal, and local law enforcement agencies in regional, full-text information-sharing systems under standard technical procedures and policy agreements; and Law Enforcement Online (LEO), which provides a web-based platform for the law enforcement community to exchange information.

Interagency Efforts

The FBI also participates in a variety of interagency centers, working groups, and committees that were established to improve information sharing. For example, the FBI participates in and chairs the Justice Intelligence Coordinating Council (JICC), which was established by the Attorney General (AG) in 2004 to increase coordination among the DOJ's intelligence activities, communicate with the IC, and coordinate with law enforcement. The JICC will soon submit a report to the Attorney General on its progress toward implementing the following goals: document DOJ intelligence capabilities and resources to drive an analysis of capability strengths, weaknesses and gaps; engage in a threat-based planning process to identify common threats and prioritized intelligence needs for FY07; recommend the inclusion of Law Enforcement intelligence priorities in the National Intelligence Priorities Framework (NIPF); create new avenues for electronic data sharing with Law

Enforcement and Homeland Security agencies; and introduce security, coordination, and user flexibility measures to enhance the LEISP.

The FBI also participates in the GLOBAL Intelligence Working Group and the GLOBAL Criminal Intelligence Coordinating Council (CICC), which were established in 2004 to set national-level policies to improve the flow of intelligence information among U.S. law enforcement agencies. The CICC has developed standards for the law enforcement intelligence component of Fusion Centers and Regional Intelligence Centers (RICs), which are collaborative efforts sponsored by state, local, or federal agencies. The FBI currently sponsors nine RICs, has contributed personnel to 25, and is co-located with 18 of them. The FBI is committed to developing relationships with all active RICs.

In each of the FBI's 56 field offices and in most major U.S. cities, the FBI has created Joint Terrorism Task Forces (JTTFs) to combine the resources of the FBI and other federal agencies with the expertise of state and local law enforcement agencies to prevent acts of terrorism and investigate the activities of terrorists in the United States. Nearly 150 personnel representing five DOD agencies – Defense Intelligence Agency (DIA), U.S. Army Intelligence and Security Command (INSCOM), Air Force Office of Special Investigations (AFOSI), Defense Criminal Investigative Service (DCIS), Naval Criminal Investigative Service (NCIS), and the Coast Guard Intelligence and Criminal Investigative Program – are assigned to the 103 JTTFs that are currently in operation.

At FBI Headquarters, the FBI created the National Joint Terrorism Task Force (NJTTF), to enhance communications, coordination, and cooperation between federal, state, and local government agencies representing the intelligence, law enforcement, defense, diplomatic, public safety and homeland security communities. Through the NJTTF, we provide a point of fusion for terrorism intelligence and support the JTTFs throughout the United States. Nine different DOD agencies are represented on the NJTTF by 10 full-time and seven part-time representatives. The NJTTF holds a daily counterterrorism intelligence briefing for all members. All JTTF and NJTTF members have access to FBI information systems (Automated Case File and Guardian), and a memorandum of understanding guides the use of material outside the JTTF and the NJTTF.

In addition, the FBI participates in the National Counterterrorism Center (NCTC) and the National Virtual Translation Center (NVTC), and intends to participate in the National Counter Proliferation Center (NCPC). NCPC was established to coordinate and oversee the Intelligence Community's efforts against proliferation of weapons of mass destruction. NCTC serves as the primary organization in the United States Government for integrating and analyzing all intelligence pertaining to terrorism possessed or acquired by the United States Government. The FBI currently has 67 personnel at NCTC. NVTC serves as a clearinghouse to facilitate timely and accurate translation of foreign

intelligence for all elements of the IC. The FBI is the executive agent for this interagency center.

The FBI is proud of its efforts and partnership with DOD. In an effort to support the Global War on Terrorism and information sharing initiatives, the FBI's Criminal Justice Information Services Division (CJIS), in conjunction with DOD's Biometric Fusion Center (BFC), has been working to share data collected by military troops deployed internationally. The data consists of fingerprints, photographs, and biographical data of military detainees, enemy prisoners of war, or individuals of interest as national security threats to the United States. Together, CJIS and DOD have researched and developed an Automated Biometric Identification System (ABIS). The DOD ABIS consolidates, formats, and exchanges data equivalent and consistent to the FBI's current State/County/Local law enforcement model. The ABIS provides the DOD the ability to gather, store, share, and enter the information into the FBI's Integrated Automated Fingerprint Identification System (IAFIS), which allows the FBI to disseminate the information to other government and law enforcement agencies.

The FBI currently has Special Agents assigned as liaison officers to several DOD Combatant Commands, including Central Command (CENTCOM), European Command (EUCOM), Northern Command (NORTHCOM), Special Operations Command (SOCOM), and Joint Special Operations Command (JSOC). JSOC currently has a detailee assigned to the FBI's Counterterrorism Division (CTD) and NORTHCOM and SOCOM have detailees to the National JTTF. The FBI and the National Security Agency also have detailees assigned to each other's headquarters.

DOD and the FBI are also collaborating on the Foreign Terrorist Tracking Task Force (FTTTF), which uses analytical techniques and technologies to enable and enhance terrorist identification and tracking. The Deputy Director of FTTTF is a DOD Counterintelligence Field Activity (CIFA) employee and CIFA provides three contract analysts assigned to the FTTF. The director of FTTTF meets with the director of CIFA on a bi-weekly basis. The two agencies share data and collaborate on the development of analytical tools.

In addition, the two agencies share information as participants in the Terrorist Explosive Device Analytical Center (TEDAC), which coordinates and manages a unified national effort to gather and technically and forensically exploit terrorist improvised explosive devices (IEDs) worldwide. The FBI supports DOD's Combined Explosive Exploitation Cell (CEXC) mission with Special Agent Bomb Technician (SABT) rotations through both Iraq and Afghanistan.

Additional FBI personnel are embedded with DOD in military operations in Iraq, Afghanistan, and Guantanamo Bay, Cuba (GTMO).

In support of those operations and others, the FBI has developed the Intelligence and Terrorist Photograph Identification Database (INTREPID), a web-based repository of images and videos of individuals affiliated with terrorist organizations. More than 12,000 photos collected by the FBI and DOD in GTMO, Iraq and Afghanistan are being included in the database, which allows investigators to link vital information captured world wide, as well as create photo lineups, produce individual information photo cards, and store video clips for online retrieval. All photos of FBI's terrorism subjects are accessible to DOD through NCTC's Terrorist Identities Datamart Environment (TIDE). The entire INTREPID database is also accessible to JTTF members through the FBI's Sensitive Compartmented Information Operational Network (SCION).

Dissemination

The FBI has a responsibility to the nation, the IC, and federal, state, and local, and tribal law enforcement to disseminate relevant information. Doing so is an inherent part of our mission. Sharing FBI information will be the rule, unless sharing is legally or procedurally unacceptable.

The FBI primarily uses six information-sharing tools to disseminate its intelligence products: the FBI Intranet, INTELINK-TS, INTELINK-S, Law Enforcement Online (LEO), Homeland Security Information Network (HSIN), and Secure Automated Message Network (SAMNET).

Products up to and including the Secret level are disseminated throughout the FBI via the FBI Intranet.

The FBI uses the Intelligence Community's INTELINK-TS to facilitate sharing intelligence products up to the Top Secret /Sensitive Compartmented Information (SCI) level. INTELINK-TS is carried on the Defense Department's Joint Worldwide Intelligence Communications System (JWICS) and is known in the FBI as the SCI Operational Network (SCION). The SCION project was initiated in September 2001 and has met all schedule, budget, and performance requirements.

Information sharing with other government agencies at the SECRET level requires access to the DOD Secret Internet Protocol Router Network (SIPRNET). SIPRNET provides the communications backbone for INTELINK-S, the Secret intelligence Intranet. INTELINK-S contains classified information from more than 200 Web servers supporting the intelligence, homeland security, military, counterintelligence, and law enforcement communities.

The FBI's LEO network is a core capability for information sharing. LEO provides Web-based communications to the law enforcement community to exchange information, conduct online education programs, and participate in professional special interest and topically focused dialogue. The FBI intelligence

products are disseminated weekly via LEO to its more than 40,000 users, providing information about terrorism, criminal, and cyber threats to patrol officers and other local law enforcement personnel who have direct daily contacts with the general public.

The FBI shares intelligence products posted on LEO with HSIN users as well. HSIN provides states and major urban areas real-time interactive connectivity with the Homeland Security Operations Center through a secure system carrying information on a Sensitive But Unclassified level to all users.

The FBI's SAMNET provides the capability to share Intelligence Information Reports (IIRs) within the FBI and with IC members. To convert IIRs to the proper teletype format for dissemination, the FBI uses the FBI IIR Dissemination System (FIDS) – a web-based form to create and track draft IIRs through an approval process. Eventually, the FBI Automated Messaging System (FAMS), which enables users to exchange information with more than 40,000 addresses on the Defense Messaging System, will replace SAMNET.

So far in calendar year 2005 (as of August 31, 2005), the FBI has issued 254 finished intelligence products (Intelligence Assessments and Intelligence Bulletins) on SIPRNET, 333 on INTELINK, and 149 on LEO. During the same time period, the FBI has posted 202 IIRs on INTELINK, 330 on SIPRNET, and 698 on LEO. This is a significant increase over previous years.

The primary route for DOD components to receive FBI intelligence products is through DIA, which is on the primary distribution list for all FBI intelligence products, and is responsible for forwarding them to all DOD customers that have a counterterrorism reporting requirement. The FBI also sends appropriate messages to specific DOD elements, such as NORTHCOM, and provides tearlines for sharing with partner nations. A secondary route for DOD commands to access FBI intelligence products is via the FBI SIPRNET website.

Conclusion

The FBI has made significant progress in its efforts to share information with partners in the intelligence and law enforcement communities. We have established policies and created the necessary organizational structures to make it easier for us to disseminate our intelligence and provide access to those who need it. We are collaborating on many fronts with DOD and other members of the Intelligence Community. As Director Mueller stated in recent testimony, in this era of globalization, working side-by-side is not just the best option, it is the only option.

By building our intelligence capabilities, improving our technology, and working together, we can and we will develop the capabilities we need to succeed against the threats of the future.

Thank you for your continued support and interest in the FBI.

Statement of
William Dugan
Acting Assistant to the Secretary of Defense for Intelligence Oversight
Department of Defense

Before the
United States Senate
Committee on the Judiciary

September 21, 2005

Good morning Mr. Chairman, Senator Leahy, and Members of the Committee. It is my privilege to appear before you today. I am Bill Dugan. I am the Acting Assistant to the Secretary of Defense for Intelligence Oversight (ATSD(IO)). I am here to discuss the Intelligence Oversight program of the Department of Defense.

I am responsible to the Secretary and Deputy Secretary of Defense for the Department of Defense Intelligence Oversight program. The purpose of the Intelligence Oversight program is to enable DoD intelligence components to effectively carry out their authorized functions, while at the same time ensuring their activities that affect United States persons are carried out in a manner that protects their Constitutional rights and privacy.

I've used the term "United States persons." It is an important one because it refers to more than just United States citizens. The term also includes lawful permanent residents, corporations incorporated in the United States (unless directed or controlled by a foreign government), and unincorporated associations substantially composed of lawful permanent residents and/or U.S. citizens.

We operate under Executive Order 12333, "United States Intelligence Activities," which was issued by President Reagan in December 1981. The DoD implementing Regulation is DoD 5240.1-R, entitled "Procedures Governing the Activities of DoD Intelligence Components That Affect United States Persons." This DoD regulation was approved by the Attorney General and was issued in December 1982; these are the Attorney General

approved guidelines for the DoD intelligence community regarding activities that affect United States Persons.

The Secretary of Defense established the predecessor office to the Office of the Assistant to the Secretary of Defense for Intelligence Oversight (ATSD(IO)) in 1976, to implement the original Executive Order on U.S. Intelligence Activities issued by President Ford. President Ford's executive order was issued in response to the investigations that revealed the misuse of intelligence assets, both DoD and non-DoD, to collect information on civil rights protestors, anti-Vietnam war demonstrators, as well as community and religious leaders and labor leaders during the 1960's and early 1970's. What began as a force protection mission for DoD organizations, evolved, through mission creep, lack of clear rules, and the lack of meaningful oversight, into an abuse of the Constitutional rights of United States persons by Defense intelligence and counterintelligence personnel. These matters were thoroughly investigated by the Congress, including this committee, in the 1970s - I am referring to the investigations conducted by Senator Ervin, as well as Senator Church - the Church Committee - and Representative Pike - the Pike Committee. Since 1976, the ATSD(IO) has been charged with preventing a recurrence of these types of transgressions and we do this through our Intelligence Oversight program which I will describe.

We are a very small office, by design; I have 10 personnel slots. We sit at the head of a proactive partnership with the intelligence staffs, Inspectors General, and General Counsel and legal advisors of the Joint Staff, Combatant Commands, Military Services, and the Defense intelligence agencies to include the National Security Agency, Defense Intelligence Agency, National Reconnaissance Office, and the National Geospatial-Intelligence Agency in the management and direction of the DoD Intelligence Oversight program.

We seek to ensure DoD intelligence, counterintelligence, and intelligence-related organizations, as well as all intelligence activities performed by non-intelligence units, conduct their activities in accordance with federal law, Executive Order 12333, Presidential directives, and DoD directives, regulations, and policies. We place special emphasis on the protection of information on United States persons. Our second area of emphasis is on ensuring improper activity by intelligence personnel is identified, reported, investigated, and then action taken to keep it from happening again.

Each quarter we prepare the Defense Department's Intelligence Oversight Report. This report describes any significant Defense Intelligence Oversight issues that warrant the attention of the Secretary and Deputy Secretary of Defense and the President's Foreign Intelligence Advisory Board. To prepare it, we receive each quarter the reports of the Joint Staff, the Combatant Commands, the Military Services, and the Defense intelligence agencies. It is reviewed and signed jointly by the DoD General Counsel and the ATSD(IO) and then approved by the Deputy Secretary of Defense. The Quarterly Intelligence Oversight Report is then provided to the Intelligence Oversight Board of the President's Foreign Intelligence Advisory Board.

Personnel in my office also conduct intelligence oversight inspections of DoD intelligence activities worldwide to ensure that DoD intelligence activities are conducted in accordance with law, executive order, DoD regulation and policy. We are assisted in this inspection process by the Inspectors General of the combatant commands, the military services, and the Defense intelligence agencies.

I would like to describe how the process works regarding the collection of United States person information by DoD intelligence components.

First, no one in DoD intelligence has a mission to collect information on United States persons. What we have are missions such as foreign intelligence, counterintelligence, counterterrorism, Signals intelligence, and the like.

In the course of performing our mission, we run across or find information that identifies United States persons. That is when the rules in the DoD Regulation, DoD 5240.1-R, kick in. If the information is necessary to the conduct of the mission such as I just described, for example, counterterrorism, and if it falls within one of the 13 categories prescribed by the Executive Order 12333 and DoD regulation, then the intelligence component can collect the information. The 13 categories are:

1. Information obtained with consent.
2. Publicly available information.
3. Foreign intelligence.

4. Counterintelligence.
5. Potential sources of assistance to intelligence activities.
6. Protection of intelligence sources and methods.
7. Physical security. [with a foreign nexus/connection]
8. Personnel security.
9. Communications security.
10. Narcotics. [international narcotics activity]
11. Threats to safety. [with a foreign nexus/connection – such as international terrorist organizations]
12. Overhead reconnaissance.
13. Administrative purposes. [training records – a narrowly drawn category]

If the intelligence component is unsure if the information they have obtained is proper for them to keep, the Intelligence Oversight rules allow them to temporarily retain the information for 90 days solely to determine whether it may be permanently retained.

Thus it is possible for DoD intelligence components to have information on United States persons in their holdings.

Finally, if an intelligence component is in receipt of information that pertains to the function of other DoD components or agencies outside DoD, such as the FBI, the intelligence component can transmit or deliver the information to them for their independent determination whether it can be collected, retained, or disseminated in accordance with their governing policy.

Thank you.

9/11

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September 20, 2005

The Honorable Arlen Specter, Chairman
The Honorable Patrick J. Leahy, Ranking Member
Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Senators Specter and Leahy:

The 9/11 Commission has never claimed to be the last word on the topic of the September 11th terrorist attacks. The Commission acknowledged in the preface to its Report: "New information will inevitably come to light." We are open to new information that will help the American people to understand better the 9/11 story. As new evidence becomes available, it should be taken into account. Nothing that we have heard from Lt. Colonel Shaffer, Captain Phillpott or Representative Weldon has caused us to revise our account. Unless and until new documentary evidence is brought forward, the Commission stands by its Report.

There has been a great deal of publicity with respect to statements by Lt. Col. Shaffer, Captain Phillpott and Representative Weldon that merits comment.

Claims by Lt. Col. Shaffer. The Commission's Executive Director and two senior staff met Lt. Colonel Shaffer in Bagram, Afghanistan in October 2003. They were accompanied by a White House lawyer. Lt. Col Shaffer advised that group about the existence of the Able Danger program, which staff proceeded to investigate.

The Commission immediately requested all documents on the Able Danger program related to terrorism and Afghanistan. The Commission reviewed those documents. The Pentagon confirms that it provided all relevant Able Danger documents to the Commission.

Lt. Col. Shaffer also claims he told Commission staff in that same meeting that Able Danger had identified Mohamed Atta: It didn't happen.

The three Commission staff present were investigating the 9/11 plot and, of course, Mohamed Atta as leader of the plot. They would have certainly remembered if they had been told that someone in the government had identified Mohamed Atta before 9/11. Their notes make no mention of Atta or the other hijackers. The White House lawyer present at that

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meeting agrees with the account of Commission staff. Shaffer's own talking points prepared for the meeting make no mention of Atta or the other hijackers. Mr. Shaffer's own public accounts of this meeting have changed repeatedly: for example, he said on Fox News' *Hannity and Colmes* on August 18 that he did *not* discuss the names of the terrorists in the Afghanistan meeting, contrary to his prior assertions.

In the Commission's review of Able Danger documents, there was no mention of Mohamed Atta. There were no charts, no data sets, and no analysis identifying Mohamed Atta or any of the other hijackers pre-9/11. There was no evidence whatsoever that future hijacker Mohamed Atta had been identified as an individual of interest to the U.S. government.

Lt. Col. Shaffer further asserts that on three occasions in summer of 2000 he and others involved in the Able Danger program scheduled appointments with the FBI Washington Field Office to pass Atta's name and photo and the names and photos of other al Qaeda terrorists Able Danger had allegedly identified He claims Special Operations Command lawyers strongly advised against the meetings because the suspected al Qaeda operatives were in the United States legally. He claims that an Able Danger commanding general ordered him to refrain from passing information to the FBI. The Department of Defense has interviewed the relevant lawyers and the general who was in command at the time. They do not substantiate Shaffer's claims; the general specifically rejects Shaffer's claims. The documentary record does not support Shaffer's claims.

According to the Department of Defense, Lt. Col. Shaffer worked on the Able Danger program for a total of 27 days during the life of a program that lasted approximately 18 months. In March 2004, Lt. Col. Shaffer lost his security clearance and was placed on paid administrative leave with respect to inaccurate characterizations of his past actions.

Meeting with Captain Phillpott. On July 12, 2004, 9/11 Commission Senior Counsel Dieter Snell interviewed Captain Phillpott, who requested the meeting. Mr. Snell led the investigation of the 19 hijackers. Mr. Snell is a Deputy Attorney General of the State of New York. Mr. Snell led the prosecution team that convicted Ramzi Yousef, the first World Trade Center bomber, and put him behind bars for 240 years.

Captain Phillpott told the Commission he recalled seeing before 9/11 the name and photo of Mohamed Atta on an "analyst's notebook chart" assembled by another officer. He said he saw this material only briefly, and that it dated from the period February to April 2000. He had no documentary evidence. He himself had not performed the analysis, nor could he explain what information led to this supposed identification of Atta.

The Commission had already requested and reviewed all relevant Able Danger documents, and had found no documentary evidence that DOD had identified Atta before 9/11. There was no corroboration of Phillpott's account with any information from U.S. government or German government sources. His account did not match up with detailed evidence documenting Atta's travels, activities, and entry into the United States, including INS and State Department records.

Senior Counsel Snell concluded – correctly, in our judgment – that the officer's account was not sufficiently reliable to warrant inclusion in the report or further investigation. This conclusion is not a challenge to Captain Phillpott's good intentions – the tip he provided just did not check out.

Claims by Representative Weldon. In his book *Countdown to Terror*, published in June 2005, Rep. Weldon writes the following (p.18):

> "On September 25, 2001, just two weeks after 9/11, I met in the White House with Stephen Hadley, the deputy national security adviser to the President. I presented him with a 2' x 3' chart I had been given in the aftermath of 9/11. The chart was developed in 1999, as part of a Defense Department initiative dubbed 'Able Danger.' It diagrammed the affiliations of al Qaeda and showed Mohammed Atta and the infamous Brooklyn Cell. Hadley's response was 'I have to show this to the big man.'"

Representative Weldon apparently did not keep a copy of the chart. He never informed the FBI's PENTTBOM investigation of this chart, a vitally important piece of information. He never informed the Congressional Joint Inquiry of this chart. He never informed the 9/11 Commission of this chart, even as he had several conversations with 9/11 Commissioners and his office was in contact with Commission staff.

Mr. Stephen Hadley, at that time the President's Deputy National Security Adviser, never reported the existence of such a chart to either the Congressional Joint Inquiry or the 9/11 Commission. He does not acknowledge the existence of any such chart.

On May 23, 2002, Rep. Weldon displayed a chart at a Heritage Foundation briefing. He said the following: "This is the unclassified chart that was done by the Special Forces command briefing center one year before 9/11. It is the complete architecture of al Qaeda…" Rep. Weldon made no mention of Mohamed Atta in connection with this chart.

If Rep. Weldon's charge is correct that he provided a pre-9/11 chart with the name Mohamed Atta on it to Mr. Hadley, both he and Mr. Hadley are guilty of withholding vitally important evidence, at a time when they had an obligation and duty to disclose it. Mr. Hadley is a distinguished public servant and I believe he would have come forward with such information had he possessed it.

No such documents have been found. Since the statements by Lt. Col Shaffer, Captain Phillpott and Rep. Weldon, the Pentagon has conducted its own internal investigation. The Pentagon describes its probe as "broad," "deep," and "aggressive." It has uncovered no chart and no documentary evidence to support the allegation that Able Danger identified Mohamed Atta before 9/11. The Pentagon interviewed 80 individuals, and reviewed 9.5 million records, including the emails and electronic records of Shaffer and others involved in the Able Danger project. It reviewed hundreds of link analysis charts produced before 9/11 – none of which mentions Atta or the other hijackers.

The Pentagon reviewed the hard drives and files of the three contractors who performed the actual link analysis and prepared link analysis charts for Able Danger. They do not recall the name Atta on pre-9/11 charts. One contractor states flatly that there was no chart with Atta's name or photo on it before 9/11 and those who assert otherwise are mistaken. That analyst asserts that, given his responsibilities, it would have been impossible for him not to have been aware of such a chart.

Those who now claim they saw such a chart before 9/11 have come forward several years after they claim to have seen such a chart with Atta's name and photo; they did not produce such a chart; they cannot explain how link analysis produced such a chart; they cannot reproduce the analysis; and they cannot now provide a copy of such a chart.

Each has an excuse as to why he can no longer provide the chart: not saving a copy; changing offices; and most recently, claiming that someone else destroyed the documents.

Skepticism about the Destruction of Documents. The claim is made that documents with the relevant information about Mohamed Atta were destroyed. Several questions deserve the Committee's attention.

If all such documents were destroyed, why do hundreds of pre-9/11 link analysis charts with the names of terrorists still exist – none of which contain the name Atta?

If all documents mentioning the names of U.S. persons were destroyed, then why do pre-9/11 charts exist with the names of terrorists who are U.S. persons by virtue of the fact they are in U.S. prisons? None of these charts contain the name Atta.

If all such documents were destroyed, why did Congressman Weldon write he had such a chart in his possession, and provided it to the Deputy National Security Adviser immediately after 9/11?

Memories are Faulty. So what happened? Why are there people making claims that they saw Atta's name and picture on a chart?

In any high-profile investigation, many, many people come forward. They believe they have information that is important.

Any investigator in a high-profile investigation can tell you that most tips – tips provided by good people -- don't check out. No evidence turns up to corroborate what people think they saw. Any investigator can tell you that cross-ethnic identifications are difficult. Any investigator can tell you that Arabic names are subject to many different spellings in English, confusion and mis-identification. Any investigator can tell you that memories – years after the fact – are faulty.

We do know that there is a chart from 1999 that mentions those involved in the first World Trade Center bombing – those involved in a "Brooklyn cell." The chart mentions Ahmad

AJAJ and Mohammed ATEF, not Mohamed ATTA. Mohammed ATEF was a well-known senior leader in al Qaeda at the time.

We do know that there is a chart, similar to the one described by Captain Phillpott and others involved, which depicts a cell that could be described as a "Brooklyn cell." This chart, and that particular cell, includes a picture of a young Egyptian terrorist, Eyad Ismoil. He resembles Atta, and he is currently serving a 240 year prison sentence as a convicted conspirator in the first World Trade Center bombing.

We know that the picture post-9/11 of Mohamed Atta on his Florida's drivers license is a picture burned into people's memory. Author Terry McDermott, a *Los Angeles Times* staff writer, has spent the better part of the past four years investigating the life of Mohamed Atta. He writes the following:

> Over the last four years I have interviewed dozens of people who swore they saw Atta somewhere he wasn't. This includes an assortment of waiters, students, flight instructors, taxi drivers and, more dramatically, two women who each claim to have been married to Atta, this despite the fact that they were never in the same city at the same time.

We appreciate that the above is speculation about reasons for mistaken identity, by good people who want to help.

<u>What are the Facts?</u> Returning from speculation to facts, the 9/11 Commission based its report on: (1) Facts obtained from documentary evidence; and (2) Witnesses who had direct, firsthand knowledge of documents they produced and events they described.

Those now making claims about Atta's name on a chart cannot produce the chart, did not do the analysis, and cannot reproduce the analysis.

If others had in their possession such charts or documents that had identified Mohamed Atta before 9/11, many serious questions must be addressed to them: What did they do with this information? Did those with such a chart tell anybody up the chain of command? None of their commanding officers seem to remember a thing about such a chart. Why did they wait three or four years to come forward?

In the Department of Defense, the 9/11 Commission interviewed General Schoomaker, who was Commander of the Special Operations Command at the time Able Danger was created. The Commission interviewed General Hugh Shelton, who was Chairman of the Joint Chiefs of Staff, Admiral Scott Fry and General Gregory Newbold, successive directors of operations for the Joint Staff. The Commission interviewed Brian Sheridan, the Assistant Secretary for Special Operations and Low Intensity Conflict (SOLIC) during the period Able Danger was in existence; as well as several other senior and mid-level managers in SOLIC. Despite direct questions for any information relevant to the 9/11 attacks, they mentioned nothing about a chart. They mentioned nothing about identifying Mohamed Atta, even in response to questions about the Able Danger program.

The 9/11 Commission interviewed Mr. Stephen Hadley for 3 hours. Mr. Hadley also responded to questions from the Congressional Joint Inquiry. He mentioned nothing about a chart and mentioned nothing about the name of Mohamed Atta on a chart.

The 9/11 Commission interviewed his boss, Condoleezza Rice for over 4 hours. She said nothing about a chart and mentioned nothing about the name Mohamed Atta on a chart.

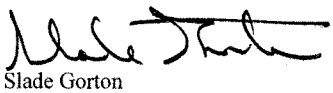
The 9/11 Commission interviewed her boss, President Bush, for nearly three hours. Neither he nor the Vice President said anything about a chart or the name Mohamed Atta on a chart.

The White House has not confirmed the existence of such a chart. There is no evidence to document that such a chart ever existed.

One final point: Claims about Mohamed Atta—even if they were true—would not change the Commission's recommendations. The Commission documented in great detail many examples of the failure to share information. The Commission made several recommendations to improve information sharing across the government. Action on those recommendations is still necessary.

I appreciate your time and attention, and ask that this letter be made part of the Able Danger hearing record.

With best regards,



Slade Gorton
United States Senator, 1981-87; 1989-2001
Member, National Commission on Terrorist Attacks Upon the United States

CC: Senator Pat Roberts, Senator Orrin G. Hatch, Senator Charles E. Grassley, Senator Jon Kyl, Senator Mike DeWine, Senator Jeff Sessions, Senator Lindsey Graham, Senator John Cornyn, Senator Sam Brownback, Senator Tom Coburn, Senator Edward M. Kennedy, Senator Joseph R. Biden, Senator Herb Kohl, Senator Dianne Feinstein, Senator Russell D. Feingold, Senator Charles E. Schumer, Senator Richard J. Durbin

Able Danger and Information Sharing
Hearing before the Senate Committee on the Judiciary
September 21, 2005

Opening Statement of Senator Charles Grassley

Chairman Specter, thank you for holding this hearing. Apparently some folks over in the Defense Department didn't want this hearing to happen today, so I appreciate your commitment to begin getting to the bottom of this on behalf of the American people. You have my support in doing what it takes to get through any opposition and get to the facts.

Four years after the attacks on 9/11 and more than a year after the 9/11 Commission issued its final report, many Americans still wonder whether we have heard the whole story. The 9/11 Commission did an excellent job. Its report provides a detailed account of our government's many failures and missed opportunities before the attacks. The report was thorough, but some are now claiming it may not be complete because it did not mention a data mining project called "Able Danger." The Committee is now aware of four witnesses who worked on the Able Danger project who claim that their data mining software identified 9/11 ring-leader Mohammed Atta as a potential terrorist more than a year before the attacks.

Even though two of these four witnesses say they provided this information to the 9/11 Commission, the key issue here is not whether the 9/11 Commission might have missed something. The key issue is whether these claims are true. Some of these witnesses also claim that Pentagon lawyers argued that their data had to be deleted rather than shared with the FBI because of concerns about violating rules against intelligence agencies collecting data on U.S. citizens and permanent residents. Were the lawyers being overly cautious and tying the hands of military and law enforcement personnel more than is actually required by the law? Does the law need to be revised to ensure that the FBI receives information from DOD about possible terrorists operating on U.S. soil?

The American people deserve to know the answers to these questions. Unfortunately, the Defense Department hasn't been fully cooperative in helping us get answers. The first step is to have these witnesses make their claims to the Committee officially and under oath. However, I understand that the Defense Department instructed some of these witnesses, who are still either government employees or contractors, not to testify — not even in a closed session. That is just plain unhelpful. It feeds conspiracy theories and gives the impression that DOD is not being upfront and open with Congress. There are legitimate concerns about classified information. No one on this Committee wants to release information that would compromise sources and methods. So, DOD should work with the Committee to address legitimate concerns while declassifying as much information as possible so that the public can get a complete picture of what happened.

To those who are worried about the details coming out because of fear that DOD will somehow be blamed for not preventing 9/11, I would urge them to have more faith in the American people. If it is true that one or two charts created by an intelligence program had some preliminary information about one of the hijackers possibly being connected to al Qaeda, that doesn't necessarily mean that DOD should have been able to prevent the attacks. People are capable of understanding that distinction. By prohibiting the witnesses from testifying here today, however, DOD is giving ammunition to those who want to argue that there is some sort of cover-up. I would urge DOD to reconsider its decision, make the witnesses available, comply with the Committee's document requests, and help set the record straight.

Testimony of Erik Kleinsmith to the Senate Judiciary Committee for Able Danger and Intelligence Information Sharing, 21 September 2005

Good Morning. My name is Erik Kleinsmith. I was asked to testify as a witness today on my involvement in the Able Danger program.

Currently, I am an employee for Lockheed Martin Information Technology. I manage an intelligence analysis training team of about 28 instructors that specialize in integrating counterterrorism and asymmetric threat analysis with data mining technology. My primary customer is Headquarters, US Army Intelligence and Security Command or INSCOM. As part of the program, I also teach a counterterrorism analysis course for INSCOM.

From March of 1999 until February of 2001, I was an active duty Army Major and the Chief of Intelligence of what was then called the Land Information Warfare Activity or LIWA. My branch provided analytical support to Army Information Operations, but because of the data mining capabilities we possessed in the Information Dominance Center, we routinely provided direct analytical support to several combatant commands as well as other customers. One of our most prominent operations was in support of the data mining proof of concept demonstration for the Assistant Security of Defense for Command, Control, Communications, and Intelligence or ASD-C3I. Called the JCAG project, it demonstrated how data mining and intelligence analysis could be conducted in a counterintelligence and technology protection capacity. That project ran throughout the later half of 1999 and our results were ultimately subpoenaed by Congressman Dan Burton's office through the House Reform Committee on November 16th, 1999.

In December of 1999 we were approached by US Special Operations Command to support Able Danger. I assigned the same core team of analysts that worked the JCAG project, and with Dr. Eileen Preisser as the analytical lead, four of us conducted data mining and analysis of the Al Qaeda terrorist network coordinating with SOCOM and other organizations throughout that time. In the months that followed, we were able collect an immense amount of data for analysis that allowed us to map Al Qaeda as a world-wide threat with a surprisingly significant presence within the United States.

In approximately April of 2000 our support to Able Danger became severely restricted and ultimately shut down due to intelligence oversight concerns. Supported vigorously by the LIWA and INSCOM chains of command, we actively worked to overcome this shut down for the next several months. In the midst of this shut down, I along with CW3 Terri Stephens were forced to destroy all the data, charts, and other analytical products that we had not already passed on to SOCOM related to Able Danger. This destruction was dictated by, and conducted in accordance with intelligence oversight procedures.

Ultimately, we were able to restart our support to SOCOM at the end of September 2000. Additionally, the bombing of the USS Cole on October 12th, brought USCENTCOM to the IDC, who then became our primary customer until my departure from active duty on April 1st 2001.

I thank you for the opportunity to appear before you and am happy to answer any questions that you may have.

Opening Statement Of Senator Patrick Leahy,
Ranking Member, Senate Judiciary Committee
Hearing On "Able Danger And Intelligence Information Sharing"
September 21, 2005

I thank the Chairman for convening today's hearing and commend his efforts to investigate the allegations that have been raised, arising from this program. He and I have a long history of conducting vigorous oversight investigations together, and I appreciate the energy he has dedicated to continuing this tradition since assuming his role as our Committee's chairman.

Several participants in the Able Danger project have recently come forward to say that the project identified Mohammed Atta, the leader of the hijackers who engineered the September 11th attacks, one year prior to those horrific attacks. These individuals further allege that they were rebuffed in their attempts to share this information with the FBI. Their accusations merit a thorough investigation. If they are proven accurate, the FBI, the Administration and the Congress must address the problems that prevented this intelligence from being shared with the appropriate agencies.

We have already taken significant steps to improve information sharing within and between agencies with the enactment of the USA PATRIOT Act and the National Intelligence Reform Act. Congress established the 9/11 Commission to investigate the attacks and then implemented many of the important unanimous recommendations contained in the Commission report. We must continue to evaluate what went wrong before 9/11and take all necessary steps to prevent terrorist attacks in the future.

There are many questions raised by the Able Danger project, including the use of data-mining by the military and intelligence community in their efforts to combat terrorism. While data-mining can have some useful, effective applications for enhancing law enforcement and national security, Congress must fulfill its constitutional oversight obligation to assess how federal departments and agencies are using this technology. Advances have allowed us broader and faster access to more and more information. In using this technology, we also have the challenge and the responsibility to ensure that it is being used effectively and that guidance and oversight are sufficient to prevent its being abused to undermine the privacy and the civil liberties of the American people.

In recent weeks, many individuals have spoken publicly about the Able Danger project. Some of the statements have included personal attacks on members of the 9/11 Commission. Some have implied that the Administration is attempting to thwart any real investigation into Able Danger. The review of this project should remain above the political fray and without resort to personal attacks. I recall the words of 9/11 Commission member and former Senator Slade Gorton, who said that in conducting its investigation, the commissioners checked their politics at the door. I hope everyone involved in this investigation does the same. Terrorists do not attack Democrats or Republicans or independents when they strike; they attack all of us as Americans. I

believe that the Chairman is committed to this approach, and I look forward to working with him as we pursue this inquiry.

# # # # #

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United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

September 8, 2005

The Honorable Donald H. Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Secretary Rumsfeld:

The Judiciary Committee, in its oversight capacity, is reviewing the activities of the Department of Justice including the FBI on the issue of information-sharing relating to terrorism. It has come to our attention that the FBI was denied access by the Department of Defense to critical information on Mohammed Atta prior to September 11, 2001. We have scheduled a hearing for September 21, 2005 in connection with multiple military projects run by the Land Information Warfare Activity (LIWA), now known as the Information Dominance Center (IDC), including, but not limited to a project known as ABLE DANGER. It is my understanding that LIWA/ IDC is a Department of the Army operation that supports the activities of the U.S. Army Intelligence and Security Command (INSCOM). It is further my understanding that LIWA/IDC specialized in data mining and analysis to, among other things, detect and target al Qaeda terrorists worldwide. Project ABLE DANGER has received extensive press coverage over the past month, including reports that this project may have identified the names of the 9-11 terrorists more than a year prior to 9-11, but that this information was not shared with the FBI on advice of legal counsel. It is my intention to determine if the state of the law is such that it impedes the sharing of information among military and non military agencies, placing our nation in danger of another terrorist attack. It is further my intention to ensure, by legislation or otherwise, that the most sophisticated information available to us to fight terrorism be shared at all levels of government while protecting the privacy of our citizens.

ABLE DANGER and other ensuing projects were reportedly initiated by General Peter Schoomaker, who was then Commander of U.S. Special Operations Command ("USSOCOM") and is now Chief of Staff, U.S. Army. According to Lt. Colonel Anthony Shaffer and Navy Captain Scott Phillpott, at some point during 1999 or 2000, ABLE DANGER identified two of the three Al Qaeda cells that conducted the attacks on September 11, 2001, including the "Brooklyn cell" to which Mohammed Atta belonged. Because some Brooklyn cell members were in the United States legally (and therefore defined as U.S. persons by Department of Defense Directive No. 5240.1), USSOCOM lawyers reportedly advised Shaffer, Phillpott and others that they could take no action with regard to the information gathered against the suspected Al Qaeda terrorists.

Specifically, it has been reported to my staff that lawyers Tony Gentry and Richard Schiffren advised the LIWA/IDC staff that they could not continue with the ABLE DANGER project, could not share any of the information collected with law enforcement agencies and were required to delete all related documents and information stored on back–up tapes. The former LIWA/IDC Chief of Intelligence, Army Major Erik Kleinsmith confirms this account.

It is my understanding that DOD and DIA have conducted an investigation into the assertions made by these individuals and have concluded that there are no documents or other support for the claim that the ABLE DANGER project identified Mohammed Atta as an Al Quaeda member prior to September 11, 2001. Nevertheless, it was reported to my staff at a recent meeting with military officials that both Captain Phillpott and former Army Major Erik Kleinsmith are well respected and valued members of the military community and that there is no reason to believe that they are lying. In fact, they stated that they found Phillpott and Kleinsmith to be credible.

Although Kleinsmith apparently does not recall whether or not Atta's name was on a chart produced prior to 9-11, Phillpott, Shaffer, an independent contractor, J.D. Smith, and a SOCOM intelligence analyst, Edward Westfall, firmly believe that they saw Atta's name on this chart. At least five witnesses report that LIWA/IDC created "picture charts" prior to 9-11 that depicted multiple suspected al Qaeda terrorists residing in the U.S. Several of these charts were reportedly shown to General Schoomaker and Army Lieutenant General Keith B. Alexander, the commanding officer of INSCOM from February 2001 to July 2003, now Director of the National Security Agency and Chief of the Central Security Service.

I would like to pursue this matter further by reviewing any documents and investigation files and by speaking with certain witnesses. This is an official request that you provide all information and documents, whether in electronic or paper form, related to LIWA/IDC terrorist data mining, including, but not limited to project ABLE DANGER. Such information, records or documents should include, but not be limited to, charts, e-mail messages, handwritten notes, phone message slips, letters or memos, chronologies, mission statements, investigation file materials and interview reports. Further, I would like to review the entire investigation into this matter and would be happy to send a member of my staff to your designated location to do so early next week.

Lt. Colonel Shaffer has asserted that, in connection with his work in support of Able Danger, he kept a full set of Able Danger authorizing documents, cover support documents, charts and graphs. Shaffer has reported that, as of March 2004, these documents were located on the third floor of the Defense Intelligence Agency facility in Clarendon, Virginia. He does not now know where these documents are located. He further states that there are a series of e-mail messages discussing the events described

above on the "TS/SCI DIA LAN." In addition, it is our understanding that DIA has e-mail messages in its possession related to Able Danger. My staff has requested and I now request copies of these emails or any other documents as described herein. My staff further requested that DIA permit Lt. Colonel Shaffer supervised access to its computer systems and files in order for him to assist in locating any pertinent information. This request has been denied. I reiterate this request to you and further request that you give authorization and direction to the following individuals to be interviewed by my staff: General Schoomaker, Lieutenant General Alexander, Navy Captain Scott Phillpott, Dr. Eileen Preisser, Erik Kleinsmith, Terri Stephens, Edward Westfall, Major General Geoffrey C. Lambert, Army Lieutenant General Robert Noonan, and lawyers Tony Gentry and Richard Schiffren.

The scheduling of document review and witness interviews should be coordinated through my General Counsel, Carolyn P. Short. Thank you for your attention to this important issue regarding interagency information sharing.

Sincerely,

Arlen Specter

Mr. Secretary
This requires your immediate personal attention

AS/cs

cc: Vice Admiral Lowell E. Jacoby
Director Defense Intelligence Agency

Daniel Stanley
Assistant Secretary of Defense for Legislative Affairs

William J. Haynes II
General Counsel of the Department of Defense

Kathleen Turner
Chief of Congressional Affairs, Defense Intelligence Agency

✓ Neely Moody
General Counsel, Defense Intelligence Agency

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BRUCE A. COHEN, *Democratic Chief Counsel and Staff Director*

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

September 20, 2005

Morgan J. Frankel, Deputy Senate Legal Counsel
642 Hart Senate Office Building
Washington, D.C. 20510-7250

Dear Mr. Frankel,

This is a joint request that you provide us with written legal advice concerning the legality of the Judiciary Committee proceeding with a September 21, 2005 hearing regarding a military planning program known as Able Danger. After noticing this hearing last week, Judiciary Committee staff provided 6 names of current and former military personnel to the Office of Legislative Affairs ("OLA") of the Secretary of Defense as potential witnesses at this hearing. After providing most of these witnesses to staff for interviews and after further allowing staff to take unclassified notes of those interviews, on September 19, 2005 staff was informed by OLA that these witnesses would not be permitted to testify in either open or closed session. OLA stated that the Secretary of Defense is asserting that the Senate Judiciary Committee is without jurisdiction and that the testimony could contain classified information.

The Committee would like to proceed with this hearing, but not at the expense of national security. Please advise on how this hearing can be conducted so as to prevent any violation of the laws of classification of sensitive information.

Thank you in advance for your opinion.

Sincerely,

Arlen Specter

Patrick Leahy

ATTORNEY CLIENT PRIVILEGED

MEMORANDUM

To: Senator Specter
From: Carolyn P. Short
Re: Legal guidance for Able Danger Hearing on 9/21/05
Date: September 20, 2005

You asked that I inquire of Senate Legal Counsel about the legality of holding a hearing tomorrow regarding Able Danger because the Department of Defense has indicated that the topic of the hearing may touch upon classified information. Six witnesses were scheduled to testify regarding their participation in the Able Danger project and all have been advised not to appear by DOD or risk prosecution for release of classified information. The DOD has agreed to produce the Assistant to the Secretary of Defense for Intelligence Oversight to testify in open session. This witness will testify about process, not about facts related to the Able Danger Project.

I spoke yesterday on the telephone to Morgan Frankel in the office of Senate Legal Counsel and inquired about the legality of holding this hearing regardless of DOD having advised the witnesses not to appear. He advised that you should state at the opening of the hearing that you are not seeking the disclosure of classified information and that you instruct the witnesses not to disclose any classified information. He further advised that you should instruct the witnesses that if there is classified information that they wish to present to the Committee that they so inform the Committee in order that at the conclusion of the public hearing the Committee can make the decision about whether to go into closed session under Senate Rule 26.5.

He also advised that it is likely that DOD representatives will be in the audience at the hearing and the Committee Staff could advise them that they should feel free to raise objections to staff when appropriate.

Mr. Frankel further reminded me of the protections of the Speech or Debate clause of the U. S. Constitution to Congressional Committee proceedings. He stated that the proactive measures described above to prevent the intentional disclosure of classified information combined with the absence of any other basis for believing that classified information will be disclosed at the hearing, will insure that there is no liability for those members who participate in the hearing. Further protection is provided by the Speech or Debate clause. All of this leads Mr. Frankel to the conclusion that it is acceptable and not in violation of any laws to hold this hearing.

Finally, Mr. Frankel informed me that the Office of Legal Counsel cannot put its advice in writing without the prior written request from both majority and minority members of the Committee.

The above memorandum accurately reflects the advice of our office.

Office of Senate Legal Counsel

Testimony
United States Senate Committee on the Judiciary
Able Danger and Intelligence Information Sharing
September 21, 2005

The Honorable Curt Weldon
United States Representative , [R-PA, 7th District]

I would like to thank you Chairman Specter and Ranking Member Leahy. I wish that a hearing such as this did not have to take place. Unfortunately, that is not the case. It is important that we – the House and Senate as the oversight bodies of the Executive Branch – not rush to move forward from the failures that led to September 11, 2001. The only way to move forward with new policies is to go back and really understand what went wrong – even if it means reexamining old territory. However, it is regretful that all of the Able Danger team members are not allowed to speak today. The victims and families of 9-11 and the Country deserve better.
I have served in the House of Representatives for 19 years. Currently, I am Vice Chairman of the Armed Services Committee and the Homeland Security Committee. The story that I will outline today is extremely troubling to me, and has raised significant questions that need to be answered.
In 1999, while serving as the Chair of the Research and Development Subcommittee, I had the responsibility of overseeing approximately $35 billion of the Defense budget that funded all military R&D. This included all funding for each of the military services' (USN, USMC, USA, UASF) information dominance centers that were being stood up to monitor and prevent hackers from penetrating classified and unclassified systems.
The Army's Information Dominance System, located at Fort Belvoir, was one of the most capable. Known as the Land and Information Warfare Analysis Center (LIWA), this Center was doing much more than just information dominance. Through several site visits and briefings, I witnessed the LIWA's state of the art facility and initiatives, which included massive data mining, data collaboration and data analysis. I was so impressed with this capability that I increased funding authorization for the LIWA. It was because of the great work at LIWA, that I felt it was important to raise the capababilites of LIWA to the attention of Dr. John Hamre, then Deputy Secretary of Defense. Equally impressed after getting briefed on LIWA's capabilities, Dr. Hamre tasked them with doing an analysis of proliferation of sensitive military technologies. The provocative outcome would later prove harmful to the LIWA.

In the spring of 1999, I had an opportunity to personally witness the amazing capability of the LIWA. Two weeks after the United States commenced the bombing of Belgrade, I was contacted by leaders of the major political factions within the Russian Federation. They were extremely concerned that our bombing of Serbia was premature causing the Russian people to distrust the United States. The Russians believed that this conflict could be avoided if they were asked to play a role in dealing with Milosevic.

Leaders of Russia's major political parties suggested that I put together a bi-partisan congressional delegation to travel to Belgrade with a similar one from the Russian Duma to meet with Milosevic directly. They were convinced that, with Russia's help, the ethnic cleansing and human rights abuses could be stopped.

Working with Steny Hoyer, we arranged a meeting with Strobe Talbot at the State Department to review the Russian offer. In our meeting Talbot expressed concern with any trip to Belgrade, because he was worried that it might send an adverse message. He did agree, however, to sending a bi-partisan Congressional Delegation to meet with the Russian leaders in Vienna. By the end of the week, I assembled an eleven member Congressional Delegation to meet with five Russian political leaders in

Vienna. The Russians had informed me that they were bringing along a Serbian citizen who could establish and maintain contact with Milosevic. I was concerned that the Serb might be a part of the Milosevic regime and I also wanted to know more about this individual before agreeing to meet with him.

I asked then CIA Director George Tenet for a profile the Serb who would join the Russians. The next day I received a call from Tenet saying that the CIA did not know much – he only provided me with two sentences about this Serb. I made the same request from the Army's LIWA, who, within a matter of hours, provided me with multiple pages of information about the Serb and his family. I shared this information with my colleagues on the military flight to Vienna, which proved to be very useful and enabled the delegation to be better prepared.

Our meetings in Vienna were extremely successful – so much that we developed a two page document that laid the foundation for a final and peaceful resolution to the conflict. In fact, while in Vienna, Milosevic offered us travel by bus to Belgrade, at which time he would embrace the framework and release three American POW's to the Congressional Delegation. However, after consultation with both the White House and the State Department, I decided that we would not travel to Belgrade and return to Washington.

On May 17, 1999, approximately two weeks after returning from Vienna, the FBI requested to be debriefed on the Serb whom my delegation had met in Vienna. I immediately scheduled a meeting for that following Monday, May 24, 1999, at 3:30pm. On the Friday before the FBI briefing, the CIA requested to be briefed as well. I was informed that the State Department had tasked the CIA to brief our Ambassador who was negotiating the final terms of the agreement to end the war in Kosovo. I convinced the CIA to join in the FBI briefing. That Monday, I briefed four agents in my office. Following the briefing, I asked the agents if they knew where I had obtained this information on the Serbian. They said the information either must have been provided by the Russians or the Serb himself. I told the agents they were wrong, and that I had obtained the information on the Serb from the LIWA before I left Washington. The agents indicated to me that they did not know what the LIWA was. It was then that I knew our government had a serious problem on it hands of stove-piped intelligence agencies, insufficient information sharing and redundant classified systems. It was also during that time I learned that the CIA, and much of the intelligence community, was not using open-source information in developing their intelligence estimates and profiles.

Following these events, I convened an adhoc group of intelligence officials to strategize on the creation of a national collaborative center modeled after the LIWA proto-type. This effort led to the development of a nine-page brief entitled NOAH - National Operations and Analysis Hub. I briefed the NOAH concept to Dr. John Hamre, then-Deputy Secretary of Defense, who expressed interest in developing this initiative. In fact, he said that DOD could provide funding for such a Center, but that he would need my support in convincing the FBI and CIA to participate – noting that their participation was critical. At Hamre's suggestion, I convened a meeting in my office on November 4, 1999 to brief DOD, CIA and FBI on the NOAH concept. Senior officials from each agency were in attendance. At the conclusion of the brief, the CIA official said that the NOAH was unnecessary.

Despite the reluctance of the CIA, I continued to press for a national collaborative center in three successive Defense Authorization Bills, and also delivered speeches and presentations on the topic around the country. The FY01 Defense Authorization Bill required the CIA to provide the House Armed Services Committee with a Report on a National Collaborative Capability, in which the CIA responded that, the "overarching collaborative solution addressing the totality of the requirement is not practical." Not only was it practical, but it became a reality when President Bush announced the

TTIC (now the NCTC) in January of 2003. It should not have taken this long, considering Congress had called for this capability in prior years.

During 1999 and 2000, I was aware that the LIWA was providing massive data mining and analysis for a number of extremely important intelligence and anti-terrorism initiatives – including international drug cartels; corruption in Russia and Serbia; terrorist linkages in the Far East; proliferation activities both within and against the United States; as well as an extensive global analysis of Al Qaeda.

In fact, in the weeks following 9/11, I was provided an extensive analysis chart of Al Qaeda, which I immediately took to the White House and personally delivered to then-Deputy National Security Advisor Steven Hadley. Mr. Hadley was extremely interested in the chart and said that he would take it to the President.
I continued to vigorously support the concept of data mining and analysis, particularly when the TTIC was announced.
In the spring of 2005, I attempted to re-create the chart that I had presented to Hadley in 2001, so I queried my contact from LIWA. It was then that I received a brief to create a new expanded data mining and analysis capability known as Able Providence (which I would like to submit for the record). Able Providence was an initiative that would be supported through the Office of Naval Intelligence. The Navy was so enamored with getting Able Providence up and running that they even provided my Chief of Staff with the appropriate budget line number to direct any additional congressional funds.

It was during the briefings on Able Providence that I was provided additional information about Able Danger. I was told that Able Danger had amassed significant data about Al Qaeda and five worldwide cells – one of which had linkages to Brooklyn and has been referred to as the Brooklyn cell. I was told that Able Danger identified the Brooklyn cell – to include Mohammed Atta and three other 9/11 hijackers – more than one year before September 11, 2001. Additionally, I was informed of an effort to share specific information with the FBI about Al Qaeda in September 2000 – one year before 9/11 – and that three meetings for that purpose were abruptly cancelled hours before they were scheduled to take place.

This new information was startling, and caused me to review the 9/11 Commission Report to see if any reference to Able Danger was contained therein. Realizing that no such reference existed, I asked my Chief of Staff to personally contact the 9/11 Commission and determine if they had been briefed about Able Danger. On May 18, 2005, the 9/11 Commission Deputy Staff Director Chris Kojm said that the staff had been briefed, but had decided "not go down that route". Still puzzled that no mention of Able Danger had been made, I raised this question with 9/11 Commissioner Tim Roemer during a meeting in my office on May 23, 2005. He told me that he had never been briefed on Able Danger. 9/11 Commissioner John Lehman said the same thing during a lunch on June 29, 2005. He expressed dismay and suggested that I pursue the issue further.
How could it be possible that two 9/11 Commission staffers received two briefs, by two different members of Able Danger, in two different countries, on the same subject, yet no such information was brought to the level of a Commissioner. One is left to wonder if there was a similar information sharing problem within the commission.

On June 27, 2005, dismayed by the fact that Able Danger was omitted from the 9/11 Commission Report, I took to the floor of the House of Representatives to outline the entire Able Danger story for my colleagues and the American people. In the weeks following that speech, I methodically briefed the Chairs of House Armed Services, Intelligence, Homeland Security and FBI Appropriations

Oversight Committee.

The New York Times picked up the story in August and ran three straight days of stories. On each day, the 9/11 Commission changed their story.
• First, they said that they were never briefed.
• Second, they said that they were briefed and that there was never a mention of Mohammed Atta.
• Third, they said they were briefed, Atta was mentioned, but they found Able Danger to be 'historically insignificant".

As someone who had supported the creation of the 9/11 Commission and their recommendations, even though more then half were already recommended by the Gilmore Commission, I was incensed by this cavalier attitude. Along with my Chief of Staff, we pursued the operatives involved in Able Danger throughout the months of July and August. We identified five officials who confirmed the facts of Able Danger, as well as knowledge of massive data and materials tied to the effort. We identified an FBI agent who played a role in arranging meetings to share information on U.S. persons that were abruptly cancelled. We also identified a technician who did Able Danger analysis and an individual who admitted to destroying Able Danger data – up to 2.5 terabytes. This data contained information on U.S. persons with ties to terrorism that could have helped prevent 9-11 and possibly even be used to track terrorist movements today. The person who destroyed this data has also spoken about how Major General Lambert, the J3 at U.S. Special Operations Command, was extremely upset when he learned that his data had been destroyed without his knowledge or consent.
On at least four occasions, I personally tried to brief the 9/11 Commissioners on: NOAH; integrative data collaboration capabilities; my frustration with intelligence stovepipes; and Al Qaeda analysis. However, I was never able to achieve more than a five-minute telephone conversation with Commissioner Tom Kean. On March 24, 2004, I also had my Chief of Staff personally hand deliver a document about LIWA, along questions for George Tenet to the Commission, but neither was ever used. [I would like to submit for the record.] Had the Commission been more thorough, I would have provided all of the leads that I recently pursued on my own. In the end I was ignored by the Commission. In fact, on the day the Commission provided the first brief for House Members in the Cannon Caucus Room, I attended and was the first to be recognized. I asked the Commission why they did not meet with Members who had worked intelligence and security issues prior to 9/11, and Lee Hamilton told me that "the Commission did not have time to meet with every Member who had information to share."

I have never alleged any wrong doing, conspiracy or cover-up. However, I have been bewildered by the response to Able Danger – both by the 9-11 Commission and the Pentagon.

Fundamental questions need to be answered –
1. Why was Able Danger a historically insignificant event even thought we knew that Al Qaeda was responsible for
o 1993 Bombing on World Trade Center
o Khobar Towers
o Embassy Bombings in Africa
o USS COLE
2. Who ordered the destruction of 2.5 terabytes of data about Al Qaeda and why?
3. Any why wasn't the customer at SOCOM ever consulted or briefed?
4. Who stopped the meetings between the FBI and Able Danger personnel in September 2000 and why?
5. What was the extent of the 3 hour brief provided to General Shelton in January 2001 regarding Able Danger?

6. Why did the 9/11 Commission change their response several times when queried about Able Danger and attempt to spin Able Danger based on misinformation?
7. Why have threats been made to Able Danger witnesses who were simply telling their stories?

As it stands now, the 9/11 story has not been fully examined and told. The families of the victims and the American people deserve answers and we must not stop until we get them.

PREPARED STATEMENT OF MARK S. ZAID, ESQ.

BEFORE THE COMMITTEE ON JUDICIARY,
UNITED STATES SENATE

WEDNESDAY, SEPTEMBER 21, 2005

"Able Danger and Intelligence Information Sharing"

Mr. Chairman, distinguished members of the Committee, thank you for the opportunity to appear before you to discuss some very important matters relating to our country's national security interests. I would respectfully request that my statement be included as part of the Committee's official record.[1]

Unfortunately I am here today as a surrogate for several witnesses who the Department of Defense has forbidden from appearing before you. I am a partner in the Washington, D.C. law firm of Krieger & Zaid, PLLC, which primarily represents cases that pertain to national security issues. Our typical clients are active members of the U.S. Intelligence Community. We currently represent Lieutenant Colonel Anthony Shaffer, a civilian employee of the Defense Intelligence Agency and reserve officer within the U.S. Army, and Mr. James Smith, a defense contractor at the time with Orion Scientific Systems. Both men, who are sitting right behind me and were more than willing to appear before you today, actively worked on components of what is known as Able Danger.

I am here to impart to this Committee some degree of knowledge of what Able Danger was and what it accomplished, as well as identify some crucial questions surrounding related events. To be sure most of the information that will comprise my testimony is hearsay except to the extent I participated in specific

[1] A copy of my curriculum vitae is attached to my testimony.

activities. However, the value of my testimony does not derive from the truth of my statements but is to serve as a stepping stone to allow your Committee to undertake a proper and necessary investigation into matters that are very clearly within your jurisdiction.

I want to make it perfectly clear that nothing I say today constitutes a legal waiver of the attorney-client privilege that exists between my clients and I. My testimony primarily repeats information that has been discussed in open settings before third parties, or that I have obtained through non-client sources. Nor is anything I am stating today intended to be classified and, so far as I am aware, is classified. Although I have been in contact with the Department of Defense, and especially DIA, throughout the last several weeks about this matter, at no time did any government official inform me that classified information was at issue or that any concerns existed with respect to the public comments that had been made by my clients.

THE CREATION, OPERATION AND DISMANTLING OF ABLE DANGER

Able Danger was formed in 1999. General Peter Schoomaker, now the Chief of Staff for the Army, and General Hugh Shelton, then Chairman of the Joint Chiefs, were instrumental in creating Able Danger. To date, to my knowledge, neither has publicly commented about what they knew. Until approximately the Summer of 2000 it operated under the auspices of the U.S. Army, and particularly through the U.S. Special Operations Command (SOCOM) and the Land Information Warfare Center (LIWA), which supports the Intelligence and Security Command (INSCOM).

It was the understanding of those who worked on Able Danger during this time frame that their efforts were primarily unclassified. After LIWA severed its ties to Able Danger, the team shifted LIWA's responsibility to defense contractors. This effort, which some are calling Able Danger II, lasted from the Summer 2000 to no later than March 2001, and did handle a significant amount of classified information. The information I am presenting today derives from the initial activities of Able Danger.

In the most understandable and simplistic terms, Able Danger involved the searching out and compiling of open source or other publicly available information regarding specific targets or tasks that were connected through associational links. No classified information was used. No government database systems were used. In addition to examining Al Qaeda links, Able Danger also handled tasks relating to Bosnia and China. The search and compilation efforts were primarily handled by defense contractors, who did not necessarily know they were working for Able Danger, and that information was then to be utilized by the military members of Able Danger for whatever appropriate purposes.

With respect to Al Qaeda, the starting point were those terrorists who were associated with the 1993 World Trade Center bombing and the New York City terror plots. Sheik Omar Abdel-Rahman, known as the blind Sheik, was one of those individuals who served as a focal point. By that I mean those supporting Able Danger would take specific names and attempt to obtain a list of individuals who were known to associate with the target names. The information might have been, but was not limited to, that derived from the Internet, commercial services such as Lexis/Nexis or Westlaw, or purchased from subcontractors who obtained data from multiple sources including foreign.

Again, what was being explored were associational links between individuals, meaning person "A" who was associated with Sheik Abdel-Rahman, and then identifying person "B" who was associated with person "A' and so on. Essentially, think in your mind how the game "Six Degrees of Kevin Bacon" operates. That is a simplistic explanation of part of Able Danger's activities.

The compiled information would be uploaded into an interactive computer program designed by the contractor that would create depictions of the links accompanied by all the underlying data to support those links. When possible photographic images of the identified individuals would be obtained and entered into the system. Every link and the data that supported the link could be accessed electronically with "drill down" capabilities, and usually the data had multiple sources. Each visible screen would then be printed out as a hard copy for submission, along with all supporting documentation, to the Able Danger liaison. These are the infamous charts we have heard about.

As part of their efforts multiple individuals associated with Able Danger have stated that they identified four of the terrorists, including Mohammed Atta, who subsequently were involved in the terrorist attacks on 9/11. At least one chart, and possibly more, featured a photograph of Mohammed Atta and had him linked through associational activities to the blind Sheik and others operating in or around Brooklyn, New York.

On at least three occasions those involved with Able Danger attempted to provide the FBI with information they had obtained. Each attempt failed, as it has been said, as a result of Army lawyers who either precluded the sharing or prevented the Able Danger personnel from attending the meeting. The stated concern was whether legal limitations restricted Able Danger from compiling information on U.S. persons. Their definition apparently included foreigners legally present on our soil. Based on my

understanding of the law surrounding Posse Comitatus and the relevant DoD regulations, it would appear such an interpretation was unduly restrictive, and this is clearly an area for investigation by this Committee. I would specifically encourage the Committee to obtain the legal memoranda that would undoubtedly have been drafted and disseminated by the military lawyers. If a wall existed, it is imperative to understand if it still exists and how to dismantle it.

Eventually during the period December 2000 and March 2001, all records, both electronic and hard copy, were destroyed under orders of the Army. Additionally, we just recently learned that duplicate documentation that was maintained by Lt Col Shaffer at his civilian DIA office was apparently destroyed – for reasons unknown – by DIA in Spring 2004.

Let me emphasize two specific items for clarification purposes because they have been distorted and invited undue criticism from some.

- At no time did Able Danger identify Mohammed Atta as being physically present in the United States.

- No information obtained at the time would have led anyone to believe criminal activity had taken place or that any specific terrorist activities were being planned. Again, the identification of the four 9/11 hijackers was simply through associational activities. Those associations could have been completely innocuous or nefarious. It was impossible to tell which, and the unclassified work of Able Danger was not designed to address that question.

Additionally, let me also focus on several key points that led to this hearing being convened today.

First, those associated with Able Danger who remember the Atta photograph continue to believe that it was, in fact, the same Mohammed Atta who acted as one of the 9/11 hijackers. They specifically recall the photograph, which is not the same photograph published by any U.S. Government agency or the 9/11 Commission, because of the daunting and literally evil expression on his face.

Second, as has been stated repeatedly, Lt Col Shaffer met with staff members of the 9/11 Commission, to include its Executive Director, while serving on active duty in Afghanistan in October 2003. It is Lt Col Shaffer's specific recollection that he informed those in attendance, which included several Defense Department personnel, that Able Danger had identified two of the three successful 9/11 cells to include Atta. That statement is disputed by the 9/11 Commission and may never be resolved. Nevertheless, it is clear the 9/11 Commission took Lt Col Shaffer's comments, whatever the substance, very seriously and immediately attempted to obtain supporting documentation, which we now know had already been destroyed. Whatever documents the 9/11 Commission were given by the Department of Defense obviously did not support Lt Col Shaffer's statements. That is an issue best directed not at the 9/11 Commission but at the Department of Defense.

Where it would appear the Commission failed to fulfill its responsibility was to simply go back to Lt Col Shaffer and query him for additional information, such as to identify other members of Able Danger who could have supported his statements. Had they done that in January 2004 they would have been led directly to numerous individuals, including James Smith, Navy Captain Scott Philpott (who on his own initiative in July 2004 approached the Commission) and others, who would have confirmed Lt Col

Shaffer's information. Thus, where we are today could have been investigated more than 18 months ago.

Third, while we have never claimed that Lt Col Shaffer's security clearance problems were connected to his work on Able Danger, the coincidences of the timing should not be overlooked. An investigation was initiated and his security clearance suspended by the DIA shortly after it became known that he had provided information to the 9/11 Commission. The revocation of his security clearance conveniently took place two days ago just as he was preparing for his testimony before this Committee. As part of my law practice I specialize in security clearance cases. That is why I was retained by Lt Col Shaffer in the first place. Based on years of experience I can say categorically that the basis for the revocation was questionable at best. I am authorized and would be happy to discuss the specifics of Lt Col Shaffer's security clearance during questioning.

Fourth, unfortunately we are not aware of the continuing existence of any chart containing Mohammed Atta's name or photograph. The copies that would have been in the possession of the U.S. Army were apparently destroyed by March 2001. The copies within Lt Col Shaffer's files were destroyed by the DIA in approximately Spring 2004. The destruction of these files is an important element to this story and I encourage the Committee to investigate it further. It would appear, particularly given the Defense Department's outright refusal to allow those involved with Able Danger to testify today, that an obstructionist attitude exists. The question for this Committee is to investigate how far that position extends and why.

Additionally, James Smith maintained a copy of one chart that measured approximately 4 ½' x 5' through Summer 2004. But it was damaged in an office move and destroyed. Congressman Weldon was apparently in possession of either that specific or

similar chart in late September 2001 and delivered it Stephen Hadley, then Deputy National Security Advisor. To my knowledge neither Mr. Hadley or the NSC has ever commented upon this fact. Presumably one or more of the contractors would have retained copies of either the charts or at least some of the underlying data, and I would encourage the Committee to subpoena the information.

Finally, we will never know if the sharing of the Able Danger information with the FBI would have done anything to prevent or interfere with the terrorist plans of 9/11. Frankly, given what we know from the 9/11 Commission and other official investigations, there is no reason to believe anything would have changed.

However, according to the key members of the Able Danger team they identified four individuals who later became 9/11 hijackers. Those individuals were on a chart that had as many as five dozen names.

I would submit to you that the primary concern we should focus on is not who to blame for the obvious disconnect that occurred with respect to sharing information. We are already well aware of that problem, which still exists today. Instead, the focus should be on identifying the current location of the other several dozen possible terrorists on that list and what are they planning against us today, as well as to reconstitute the successful work initially started by Able Danger.

Thank you for this opportunity. I would be happy to try and answer any questions you might have.

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