

Wall Dividing **FBI** Criminal, Intelligence Agents A Key To Pre 9-11 Failures

Associated Press

20:55:12

By Curt Anderson

April 11, 2004

WASHINGTON, DC -- The legal wall that for years divided **FBI** intelligence and criminal agents is blamed largely for the government's failure to grasp the threat posed by al-Qaida inside the United States before the 2001 attacks.

One **FBI** agent, frustrated at his inability to track two soon-to-be hijackers known to be in the United States, wrote in an August 2001 e-mail that "someday someone will die, and wall or not, the public will not understand why we were not more effective and throwing every resource at certain problems." The Sept. 11 attacks killed almost 3,000 people. The problem, since resolved, is expected to be among the topics when current and former **Justice Department** and **FBI** officials testify Tuesday and Wednesday before the independent commission investigating the Sept. 11 attacks. Former **FBI** Director Louis Freeh, former Attorney General Janet Reno, Attorney General **John Ashcroft** and **FBI Director Robert Mueller** are among those scheduled to appear.

In the months after the 11 attacks, the wall was dismantled by the Patriot Act and a court ruling allowing the **FBI** to seek special warrants allowing agents to wiretap phones and conduct other secret surveillance inside the United States of suspected foreign terrorists, government agents and spies. Former Sen. Slade Gorton, R-Wash., a commission member, said Sunday the **FBI's** lack of internal communication, not just the intelligence-criminal wall, will be the principal topic of this week's hearings. Exhibit A will be President Bush's daily briefing of Aug. 6, 2001, which the White House declassified and made public Saturday night, he said. "The most important feature of the PDB ... is the line that the **FBI** is conducting 70 full field investigations," Gorton said on "Fox News Sunday."

"I don't know where those 70 full field investigations were," Bush's national security adviser, Condoleezza Rice, talked about such investigations Thursday in her appearance before the commission. She came under fire from commissioner Tim Roemer, a former Democratic congressman from Indiana. "We have done thousands of interviews here at the 9-11 commission. We've gone through literally millions of pieces of paper. To date, we have found nobody, nobody at the **FBI**, who knows anything about a tasking of field offices," Roemer said. Senior law enforcement officials said the 70 represented every case the bureau was handling that related to terrorism, including even financial crimes and terror groups outside al-Qaida.

Roemer said the acting **FBI** director at the time, Tom Pickard, testified he had not issued specific new directives regarding the al-Qaida threat and special agents in charge of field offices testified they had no knowledge of one. Because of such lapses, law enforcement officials say the liberalized rules governing the **FBI's** activities are the most significant legal changes that might help prevent another catastrophic terror attack in the United States. Rice told the commission that a chief reason the **FBI** knew so little about al-Qaida's presence in the United States was the inability of intelligence agents to share information with criminal investigators.

"We had a structural problem in the United States, and that structural problem was that we did not share domestic and foreign intelligence in a way to make a product for policy-makers," Rice testified. Nowhere was the problem better illustrated than in the case of Sept. 11 hijackers Khalid al-Mihdhar and Nawaf al-Hazmi; both were linked by the CIA to al-Qaida and the agency knew they had entered the United States in summer 2001. On Sept. 11, they were aboard American Airlines Flight 77 that slammed into the Pentagon. The legal wall, according to an **FBI** agent who worked the case, prevented New York agents involved in an al-Qaida criminal investigation from trying to track the two men down because officials at the **FBI** National Security Law Unit decided it had to remain as an intelligence case.

The agent, according to congressional investigators, responded with the Aug. 29, 2001, e-mail to an **FBI** analyst he was working with wondering how the **FBI** legal decision would be viewed in the event of a catastrophic attack, "especially since the biggest threat to us now, UBL (Osama bin Laden), is getting the most 'protection.'" The e-mail came out as part of Congress' joint intelligence inquiry into the Sept. 11 attacks. The wall dates to the 1978 Foreign Intelligence Surveillance Act. Courts have interpreted it as prohibiting the routine sharing of information gathered in U.S. intelligence investigations with law enforcement officials pursuing criminal probes. In 1995, then-Attorney General Janet Reno issued guidelines for **FBI** handling of intelligence information that limited contact with criminal investigators.

In practice, according to court documents, the guidelines prevented **FBI** intelligence agents from communicating with the criminal division on intelligence or counterintelligence cases. The Patriot Act, enacted in October 2001, sought to weaken the wall. It led Attorney General **John Ashcroft** to issue new guidelines that eliminated many of the old barriers and permitted "complete exchange of information and advice" between intelligence and law enforcement officials. After a special court ordered modifications to the guidelines, **Ashcroft** appealed. On Nov. 18, 2002, the U.S. Foreign Intelligence Surveillance Court of Review determined that past legal decisions were wrong and that the wall never existed as a matter of law.