

most responsible for dealing with the FISA Court, was recused from handling FISA applications on al-Qa'ida because she had worked with prosecutors on the embassy bombing prosecution.

The Attorney General issued procedures in 1995 regulating FBI foreign intelligence investigations in which FISA was used and potential criminal activity was discovered. These procedures required notice and coordination among the FBI, DOJ's Criminal Division, and its Office of Intelligence Policy and Review (OIPR). In November 2001, the FISA Court adopted these procedures.

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The wall in FISA matters became thicker and higher over time, as the FISA Court explained in a May 2002 opinion rejecting procedural changes proposed by the Attorney General:

[T]o preserve . . . the appearance and the fact that FISA [was] not being used *sub rosa* for criminal investigations, the Court routinely approved the use of information screening "walls" proposed by the government in its applications. Under the normal "wall" procedures, where there were separate intelligence and criminal investigations, or a single counter-espionage investigation with overlapping intelligence and criminal interests, FBI criminal investigators and [DOJ] prosecutors were not allowed to review all of the raw FISA [information] lest they become *de facto* partners in the FISA [operations]. Instead, a screening mechanism, or person, usually the chief legal counsel in an FBI field office, or an assistant U.S. attorney not involved in the overlapping criminal investigation, would review all of the raw [information] and pass on only that information which might be relevant evidence. In unusual cases . . . , [DOJ] lawyers in OIPR acted as the "wall." In significant cases, . . . such as the bombings of the U.S. embassies in Africa, . . . where criminal investigations of FISA targets were being conducted concurrently, and prosecution was likely, this Court became the "wall" so that FISA information could not be disseminated to criminal prosecutors without the Court's approval.

The thicket of procedures, reviews, and certifications regarding FISA information and contact between foreign-intelligence and criminal investigators led to confusion and error. An FBI attorney noted in an interview that, as detail was added to certain FISA applications, the Court began to expect that level of detail in all applications. Thus, an application to renew a surveillance of an intelligence officer of a foreign government that might have originally required two paragraphs in support grew to many pages, increasing the possibility of error in details.

In March 2000, the Department of Justice discovered substantive errors in factual applications presented to the FISA Court. By September 2000, the Department identified errors in