

about seventy-five FISA matters, and in March 2001 notified the FISA Court of additional errors. In response, the Court required that all DOJ personnel involved in FISA matters certify that they understood that FISA information could not be shared with criminal prosecutors without the Court's approval and an FBI agent involved with the erroneous filings was barred from the Court. While the Department attempted to correct the process that had led to erroneous [page 386] filings, a large number of FISA surveillances, including many related to international terrorism, expired in the spring and summer of 2001.

[The consequences of the FISA Court's approach to the Wall between intelligence gathering and law enforcement before September 11 were extensive. FBI personnel involved in FISA matters feared the fate of the agent who had been barred and began to avoid even the most pedestrian contact with personnel in criminal components of the Bureau or DOJ because it could result in intensive scrutiny by OIPR and the FISA Court. In addition, because NSA was not certain that it could identify reporting that came from FISA derived information, it began to indicate on all reports of terrorism-related information that the content could not be shared with law enforcement personnel without FISA Court approval].

The various walls have had other consequences of direct relevance to the Joint Inquiry. For example, a CIA employee spoke to two FBI employees in January 2000 about the activities of future hijacker Khalid al-Mihdhar in Malaysia, but did not tell them that he had a U.S. visa. The CIA officer stated in an e-mail at the time that the FBI would be brought "into the loop," only after "something concrete" was developed "leading us to the criminal arena or to known FBI cases." Perhaps reflecting the deadening effect of the long standing wall between CIA and FBI, the FBI agents reportedly thanked the CIA employee and "stated that this was a fine approach," although the FISA wall did not apply in this case.

Even in late August 2001, when the CIA told the FBI, State, INS, and Customs that Khalid al-Mihdhar, Nawaf al-Hazmi, and two other "Bin Laden-related individuals" were in the United States, FBI Headquarters refused to accede to the New York field office recommendation that a criminal investigation be opened, which might allow greater resources to be dedicated to the search for the future hijackers than would be available in an intelligence investigation. This was based on Headquarters' reluctance to utilize intelligence information to draw the connections