

Coordination problems also arose in the Moussaoui case, in which FBI agents in the Minneapolis Field Office were desperate to search Moussaoui's personal effects for clues about his activity. Even though Moussaoui was in government custody, however, FBI agents were prohibited from looking through his computer and papers without court permission. FBI Headquarters actually *prohibited* intelligence investigators in Minneapolis from notifying the Criminal Division at the Justice Department about the Moussaoui situation, and *prohibited* agents from pursuing a criminal search warrant against him.¹⁰⁴

FBI Headquarters apparently barred the pursuit of a criminal warrant on the theory that any professed interest in criminal prosecution would jeopardize any chances of a FISA – a reasonable assumption given OIPR's longstanding approach to such matters.¹⁰⁵ When the FBI agents actually contacted Headquarters about obtaining such a FISA order, however, they were given inexcusably confused and inaccurate information from attorneys at the FBI's National Security Law Unit (NSLU). FBI attorneys at Headquarters told Minneapolis that in order to get a FISA, they had to produce evidence showing that Moussaoui was affiliated with one or more groups on the State Department's official list of "terrorist" organizations. This legal advice was patently false and has no basis either in the FISA statute or in DOJ policy or guidelines.

¹⁰⁴ JIS, written statement presented to joint SSCI/HPSCI hearing (September 24, 2002), at 17-18.

¹⁰⁵ During the Wen-Ho Lee affair, for instance, OIPR chief counsel Francis Fragos Townsend had rebuffed FBI attempts to get a FISA order in early 1999 because the FBI was by that point *considering* pursuing a criminal search warrant against Lee. According to contemporaneous notes taken by FBI officials, Townsend rejected the FBI's efforts to renew FISA discussions with the dismissal that the case had become "way too criminal." See Thompson & Lieberman, *supra*, at 13.