

Uncertainty about a particular legal authority is shown in the FBI's decision-making surrounding the search of Zaccarias Moussaoui's computer. Minneapolis agent Rowley thought a FISA warrant could be obtained. Headquarters personnel thought not, because it was not clear Moussaoui was acting on behalf of an international terrorist organization.²⁵ More in-depth analysis of this issue might have resulted in a recommendation by our committees to revisit the legal definition, under FISA, of a "foreign power"-- a term that currently only includes foreign governments or international terrorist organizations. A warrant for surveillance of an individual is only granted under FISA if a court finds probable cause to believe the target of the warrant is linked either to a foreign government or an established organization. This may have made sense when the Foreign Intelligence Surveillance Act was enacted during the Cold War, but apparently, as noted, U.S. authorities did not try to obtain a FISA warrant to search Moussaoui in the summer of 2001 because the FBI could not prove he was linked to a specific terrorist group. Senator Kyl has offered a three-word change to the statute that would permit a FISA warrant to be obtained if the person suspected of terrorist activity is a foreign person. This change is supported by the Department of Justice.

Another change in the law that could improve the institutional framework would be further congressional legislation to enable the U.S. Government to deter and punish unauthorized disclosure of security-related information.

Leadership Failures

Al Qaeda's attack on Washington and New York occurred after a long period of poor leadership at the highest levels of the U.S. Government regarding terrorism. Despite repeated assaults on the United States and its interests -- the 1993 World Trade Center attack, the bombing of the American embassies in Kenya and Tanzania in 1998, the attack on the *USS Cole* in 2000, to name a few -- the U.S. Government was still unwilling to treat terrorism as a true national security issue until 9/11. Indeed, the previous administration strove mightily to treat terrorism strictly as a law-enforcement issue, often thinking in terms of what evidence could be gathered on

²⁵ "F.B.I. Denial of Search Warrant for Suspect's Belongings Is at Center of Inquiries," Philip Shenon, New York Times, June 7, 2002.