

FEDERAL BUREAU OF INVESTIGATION

Precedence: DEADLINE 03/19/2004

Date: 03/19/2004

To: General Counsel

Attn: [redacted]

Room 7326 b6

From: [redacted]

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Office of Division Counsel (ODC)

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Approved By: [redacted]

Drafted By: [redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 09-09-2005 BY 65179 DMH/KJ

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Case ID #: 66F-HQ-C1364260 (Pending) -41
66F-[redacted]-C1384970 (Pending)
66-[redacted]-5618

05-CV-0845

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Title: USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: To advise the Office of the General Counsel (OGC) of provisions of the Patriot Act used by [redacted] that are set to expire on 12/31/2005.

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Reference: 66F-HQ-C1364260 Serial 5
66F-HQ-C1384970 Serial 7564

Details: Referenced Bureau communication requested field offices to report the usage of provisions of the USA Patriot Act set to expire on 12/31/2005. [redacted] has used several of these provisions to its investigative advantage in general criminal and counterintelligence cases, but has made the most use of these provisions in counterterrorism cases. Initially, however, [redacted] reports that Agents on several occasions have requested to make appropriate use of important tools legislated in the Patriot Act and each request has been denied by the Department of Justice (DOJ), Office of Intelligence Policy and Review (OIPR). Specifically, [redacted] has requested OIPR approval for "roving FISA surveillance" under Section 206 regarding known Intelligence Officers (IOs) who employ counterintelligence techniques to avoid detection. All of [redacted] requests have been denied. In addition, WFO has requested the use of the new standard to obtain business records under FISA and has been denied on each occasion. [redacted] notes that the same records may be obtained in criminal cases by

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use of subpoena, yet the legislated tool in counterintelligence and counterterrorism cases goes unused.¹

In regard to Section 220 and the ability to obtain nation-wide search warrants, [redacted] has benefitted not only in regard to the efficiency in which it can conduct its own investigations [redacted], but also in regard to the personnel resources it does not have to expend in obtaining search warrants to be served in America On Line (AOL). In the past [redacted] had expended significant resources in regard to the liaison with the U.S. Attorney's Office in the Eastern District of Virginia in drafting, and applying for AOL search warrants, as well as the service of these warrants.

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[redacted] has used the authority in Section 212 of the Patriot Act on occasions when the Assistant Director or the Special Agent in Charge has found that information developed revealed an emergency involving an immediate risk of death or serious injury. In a number of cases, this provision allowed [redacted] to obtain the content of e-mail in response to threats (usually over the Internet or e-mail), where the use of other more routine provisions would have been much less timely or would have required specific approval by the Attorney General. [redacted] used this provision to obtain access to e-mails wherein members of a known terrorist group had e-mail traffic involving a discussed attack (315S [redacted] 224164). The provision was also used in investigating a threat to a high ranking foreign official.

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The new information sharing procedures of Section 203(b) & (d) and the changes to the "primary purpose" standard for FISA have significantly changed the way [redacted] investigates terrorism cases for both intelligence value and for criminal prosecution. [redacted] has participated in numerous investigations in the last two years that have involved the participation of investigators in foreign countries, criminal investigative techniques, Assistant United States Attorneys and the use of FISA. On several occasions, [redacted] has obtained the express authorization of the Attorney General to use FISA information in criminal proceedings. Case Agents and others have commented that these investigations would never have operated as smoothly prior to these Patriot Act provisions, and in some cases, the matters would have been almost impossible to complete. These changes were most evident in [redacted] 3150-[redacted] 215590, and in the

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"Virginia Jihad" series of cases. In addition, the "significant purpose" standard has allowed the employment of the FISA technique on indicted individuals, wherein significant foreign intelligence has been developed. Such use of this technique would not have been practically employed in the past under DOJ's reading of the "primary purpose" standard.

Section 214 of the Patriot Act has enabled Agents conducting CI/CT investigations to obtain pen register data on the subjects of their investigations in a way that is much more like the way their counterparts on the criminal side obtain such authorization. However, significant resources could still be saved by streamlining the process even further, by giving FBI attorneys access to the FISA judges and by creating positions for FISA magistrates. Pen register/trap trace is an important investigative tool and could be used to a greater extent if the process is made easier. It has provided useful and invaluable information (65A [REDACTED]-220066) regarding previously unknown contacts on case subjects that may have gone unknown before when there was a requirement to identify the individual as an agent of a foreign power.

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[REDACTED] believes that all of these provisions, if utilized to their fullest intended extent, are useful tools and should be extended. Further, OGC and Congressional Affairs should continue to seek further legislation to assist in investigative efforts.

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LEAD(s) :

Set Lead 1: (Discretionary)

GENERAL COUNSEL

AT WASHINGTON, DC

Will include [REDACTED] use of the Patriot Act in justification to remove expiration dates from the various described provisions.

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