

The "Wall", the USA PATRIOT Act and the Evolution of FBI International
Terrorism Investigations Since 9/11

(U) A major benefit of the USA PATRIOT Act ("the Act"), as it pertains to the so-called "Wall" that existed prior to 9/11 between the law enforcement and intelligence communities, has to do with speed and efficiency. There are specific provisions in the Act that authorized the sharing of intelligence information gathered via criminal investigative techniques with the intelligence community. These include Section 203, which, for example, allowed federal grand jury and wiretap information to be shared with the intelligence community. The sections of the Act having to do with the activities of the intelligence community were geared towards harmonizing the law to fit contemporary technological realities. They were also meant to ease somewhat the thresholds required to obtain certain types of information in intelligence investigations. The broad effect of the Act was thus to foster an environment in which information could flow between the two communities robustly and sensibly. Law enforcement and intelligence personnel are now able to work together at the earliest possible stages in order to combat international terrorism. Nothing can replace the raw investigative effort exerted by criminal and intelligence investigators. But the PATRIOT Act has enabled these investigators to do their jobs more quickly, with fewer barriers and with more ability to integrate information.

(U) ~~(S)~~ Once the PATRIOT Act had been passed in October 2001, information began to flow more readily between law enforcement and the intelligence community. One of the more crucial examples of this movement was the sharing of information between the national security side of the FBI and the DOJ Criminal Divisions and U.S. Attorneys. In March 2002, the Attorney General issued intelligence sharing procedures mandating that FBI counterterrorism officials would be required to provide international terrorism case file information with criminal prosecutors. This sharing initially began as a review of files and later evolved into a close working relationship between the FBI Counterterrorism Division (CTD) and the DOJ Criminal Division's Counterterrorism Section (CTS). CTS, moreover, helps to act as a bridge between the FBI and the United States Attorneys throughout the country.

(U) ~~(S)~~ Later, in July 2002, the Foreign Intelligence Surveillance Court (FISC) added a new component to the spectrum of intelligence sharing. Up to that time, the minimization procedures adopted pursuant to the Foreign Intelligence Surveillance Act (FISA) did not allow for the dissemination -- from FBI to CIA or NSA -- of international terrorism foreign intelligence data that had been collected under FISA authority to be shared [redacted]. In other words, the FBI would have to have first minimized the data before sharing it with the CIA or the NSA. The FISC changed this by allowing NSA and CIA to have access to the data. Those agencies thus could greatly speed up the process of bringing their resources to bear in working on the common transnational terrorism threats we now face. Moreover, because the PATRIOT Act had brought the criminal investigators closer to the intelligence community through the FBI, by mid-2002 there began to emerge true integration among several of the agencies engaged in this effort.

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~~(S)~~ In August 2002, the Attorney General enhanced intelligence sharing with international partners. The AG issued procedures allowing [redacted]

[redacted]

[redacted] The Attorney General instead required that, [redacted] they had to report the disseminations to him in a report on at least an annual basis. Thus, the same protections could be kept while ensuring that vital information moved [redacted]

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(U) In September 2002, the Attorney General issued guidelines regarding the movement of intelligence information from criminal investigations and proceedings into the intelligence community. These guidelines focused on Sections 203 and 905 of the PATRIOT Act. Intelligence acquired during the course of criminal investigations is mandated by Section 905 to be disclosed to the Director of Central Intelligence and Homeland Security officials. Section 203 more specifically authorizes grand jury, electronic, wire and oral interception information to be shared with the intelligence community.

(U) Overall, the PATRIOT Act made a number of specific changes that directly benefited the FBI in its investigations. Section 505 allowed National Security Letters (NSLs) to be issued under a relevance standard. This requires the FBI to demonstrate that the request is relevant to an ongoing national security investigation. Section 206 gave the FBI roving wiretap authority under FISA. The roving provision operates like roving authority under criminal law statutes. Section 207 increased the duration of FISA coverage to permit FBI field offices to monitor FISAs for longer periods. All agents of a foreign power searches increased from 45 to 90 days and for Non-U.S. Person officers or employees of foreign powers the initial FISA period of coverage increased to 120 days. Renewals on such applications were extended to one year of coverage. Section 203 (mentioned above) has allowed intelligence gathered through certain criminal process to be shared with the intelligence community. Section 214 changed the FISA Pen Register/Trap and Trace standard to relevance. This has allowed for robust use of the Pen Register/Trap and Traces in the initial stages of national security investigations and has helped the FBI to build a better picture of connections among suspected international terrorist subjects. Finally, Section 208 modified the FISA statute by increasing the number of judges on the court. This has eased the burden on all involved in the FISA process. Moreover, three FISA judges are now located within fifty miles of Washington, DC. All of the above tools have greatly enabled the FBI to ensure that the law enforcement and intelligence communities have the ability to share information in the effort to confront international terrorism.

(U) In November 2002, the last vestiges of the "Wall" disintegrated when the Foreign Intelligence Surveillance Court of Review issued its very first opinion. In that opinion, the court affirmed the March 2002 Attorney General intelligence information sharing procedures (the FISC had limited them somewhat in May 2002). Further, the Foreign Intelligence Surveillance Court of Review opinion had the effect of declaring the

"Wall" to have been a misinterpretation of the FISA statute and other guidance. The court stated that under the FISA statute as originally written, the government needed to show that only "a purpose" for the collection or search was to gather foreign intelligence rather than the "sole purpose." The court noted that the PATRIOT Act modified the standard to a "significant purpose." The overall effect of the opinion was to bolster the push behind the PATRIOT Act to integrate law enforcement and intelligence efforts, within clear guidance, and to banish misperceptions about the "Wall."

(U) In January 2003, the President announced the creation of the Terrorist Threat Integration Center (TTIC) in his State of the Union Address. TTIC and its successor, the National Counterterrorism Center (NCTC)(created by executive order in August 2004 and affirmed by statute in December 2004), have been responsible for integrating all terrorism analytical threat reporting in a single entity. All intelligence community databases are accessible at NCTC. Intelligence information gleaned from criminal proceedings, such as federal grand juries, is disseminated to NCTC and is integrated into national intelligence reporting. Section 203 of the PATRIOT Act has allowed this to happen.

(U) ~~(S)~~ In October 2003, the Attorney General issued revised Guidelines for National Security Investigations and Foreign Intelligence Collection (NSIG). These guidelines reflect the evolution of changes in national security law, intelligence collection and international terrorism investigations that occurred over the preceding two years. The NSIG reflect the integrated nature of national security investigations and recognize the need to use all available investigative tools, both criminal and intelligence, to combat current transnational threats. The NSIG themselves are a powerful statement on new realities, ones that reflect the need for information integration between criminal investigations and intelligence investigations.

(U) In the year and a half since the creation of the NSIG, the 9/11 Commission has issued its reports and recommendations, and the President signed intelligence reform legislation. The FBI continues to evolve, working towards building a strong Directorate of Intelligence while continuing its law enforcement mission. As the integrated approach to battling International Terrorism evolves, the FBI continues to rely on the provisions of the PATRIOT Act. The Act has enabled the FBI to obtain important information more efficiently than before, allowing its investigators to focus more effectively on their cases. The Act is one of the underpinnings of bringing law enforcement and intelligence services together. If the Congress were to allow the Sunset provisions to lapse, it would be depriving the intelligence and law enforcement communities of valuable and necessary tools. It also would send a signal at odds with the evolution in national security investigations over the last three and half years. The intelligence community has been told repeatedly to "connect the dots" since 9/11. With the help of the law enforcement community, it has made progress. The 9/11 Commission has embraced the value of the PATRIOT Act. The FBI asks that Congress reinforce these views.

**Post 9/11 Timeline on Measures to Increase
Information Sharing and Create Fully Integrated
International Terrorism Investigations**

1. September 11, 2001

- (U) Terrorist attacks.

2. October 2001

- (U) Passage of the USA PATRIOT Act.
 - Makes technical changes to standards for securing NSLs, Business Records, Voicemail Communications, Computer Trespassing, etc.
 - Abolished the "Wall" for the sharing of Title III and Federal Grand Jury Rule 6(e) material with the U.S. Intelligence Community.

3. March 2002

- (U) Attorney General issues Intelligence Sharing Procedures for Foreign Intelligence and Counterintelligence Investigations. Procedures mandate that Federal Prosecutors will review FBI International Terrorism case files for relevant material on which to build criminal prosecutions.

4. May 2002

- (U) FISC accepts in part and modifies in part the AG March 2002 procedures. Creates a "chaperone" requirement instituting OIPR involvement in information sharing between intelligence investigators and criminal prosecutors.

5. July 2002

- (U) • ~~(S//NF)~~ [Redacted]

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6. August 2002

- (U) • ~~(S//NF)~~ Attorney General signs standing authorization for [Redacted]

7. **September 2002**

- (U) Attorney General issues "Guidelines Regarding the Disclosure to the Director of Central Intelligence and Homeland Security Officials of Foreign Intelligence Acquired in the Course of a Criminal Investigation." Explains implementation of PATRIOT Act Section 905(a).
- (U) Attorney General issues "Guidelines Regarding Prompt Handling of Reports of Criminal Activity Involving Foreign Intelligence Sources." Explains implementation of PATRIOT Act Section 905(b).
- (U) Attorney General issues "Guidelines for Disclosure of Grand Jury and Electronic, Wire and Oral Interception Information Identifying United States Persons." Explains implementation of PATRIOT Act Section 203.

8. **November 2002**

- (U) FISA Court of Review issues opinion rejecting the OIPR "chaperone" requirement and accepts AG March 2002 Information Sharing in full. FISA Court of Review also states that FISC and DOJ have incorrectly interpreted the FISA statute for years. FISA Court of Review opinion has effect of declaring the "Wall" to have been a misinterpretation of the statute and other guidance. The FISA Court of Review states that under the FISA statute as originally written the government needed to show that "a purpose" for the collection was to gather Foreign Intelligence rather than the "sole purpose." The FISA Court of Review notes that the PATRIOT Act modified the standard to a "significant purpose."

9. **December 2002**

- (U) The Deputy Attorney General (DAG) issues field guidance to all DOJ prosecutors and all FBI agents on Intelligence Sharing in FI and FCI Investigations. The DAG also explains the effect of the FISA Court of Review opinion.

10. **January 2003**

- (U) The Creation of the Terrorist Threat Integration Center ("TTIC") (now the National Counterterrorism Center) announced by the President.

11. **March 2003**

- (U) Department of Homeland Security is created.

12. October 2003

- (U) Attorney General issues revised Guidelines for National Security Investigations and Foreign Intelligence Collection. ("NSIG")

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Requests as of March 30, 2005

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Name & Docket #	Foreign Power	Description	Records Requested	Recipient of Order	Declarant	Date Approved	Results of 215
					N/A	5/21/04	Received
					N/A	8/13/04	Order never served because it was too old.
					b7D		b7D

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DATE: 07-30-2007
CLASSIFIED BY 65179dah/ksr/lmf
REASON: 1.4 (c,d)
DECLASSIFY ON: 07-30-2032

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Requests as of March 30, 2005

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[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	SSA [Redacted]	10/27/04	SSA [Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted] CONUS		"This was the first PR/TT acquired under this protocol. Litigated by OIPR Counsel James A. Baker. No [Redacted] information was obtained [Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	1		
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	N/A	11/23/04	215 not yet served.
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	b6 b7C		b6 b7C b2 b7E
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	b4 b7D		

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Requests as of March 30, 2005

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[Redacted]	[Redacted]	[Redacted]	N/A	11/23/04	[Redacted]
[Redacted]	[Redacted]	[Redacted]	SSA [Redacted] [Redacted] CONUS 1	2/9/05	SSA [Redacted] [Redacted] [Redacted]
[Redacted]	[Redacted]	[Redacted]	b6 b7C		[Redacted] [Redacted]
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[Redacted]	[Redacted]	[Redacted]	SSA [Redacted] [Redacted] CONUS IV (now SSA's [Redacted] [Redacted] & [Redacted]	2/10/05	SD Case Agent [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]
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Requests as of March 30, 2005

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SSA [Redacted]
[Redacted] CONUS
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SSA [Redacted]
"Subject was determined to be [Redacted]"

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Requests as of March 30, 2005

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[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	b4 b7D	SSA [Redacted] [Redacted] CD-3D	b6 b7C
						2/10/05 b6 b7C b4 b7D	SSA [Redacted] "To date, we HAVE NOT received anything from the provider [Redacted]). We likely will by early next

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Requests as of March 30, 2005

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SSA [Redacted]
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CONUS III
(SSA [Redacted])
[Redacted]

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2/11/05

SSA [Redacted]

"per telcal with the [Redacted]

[Redacted]

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Requests as of March 30, 2005

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[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	SSA [Redacted] [Redacted] CD-4B	2/18/05	SSA [Redacted] [Redacted] [Redacted] [Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	SSA [Redacted] [Redacted] ITOS II, [Redacted] Unit,	2/16/05	SSA [Redacted] believed this wa [Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	b4 b7D	b6 b7C		b6 b7C b2 b7E

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NSL VIO-14052

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Requests as of March 30, 2005

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[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	SSA [Redacted] [Redacted] CONUS II	2/23/05	SSA [Redacted] [Redacted]
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[Redacted]

Requests as of March 30, 2005

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	agent			SSA [Redacted]	2/25/05	SSA [Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	CD-2D b6 b7C	[Redacted]	[Redacted] The case agent reports [Redacted] [Redacted] However [Redacted] [Redacted] [Redacted] [Redacted]

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Requests as of March 30, 2005

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[Redacted]	[Redacted]	[Redacted]	[Redacted] ITOS II, [Redacted]	[Redacted]	[Redacted]
			SSA [Redacted] 3/4/05 [Redacted] CONUS IV	[Redacted]	SSA [Redacted] [Redacted]
			SSA [Redacted] 3/9/05 [Redacted] CONUS I	[Redacted]	SSA [Redacted] [Redacted]
[Redacted]	[Redacted]	[Redacted]	SSA [Redacted] 3/10/05 [Redacted] CONUS II	[Redacted]	SSA [Redacted] [Redacted] [Redacted] [Redacted]
			b6 b7C	b6 b7C	[Redacted]

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Requests as of March 30, 2005

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[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
	[Redacted]	[Redacted]	SSA [Redacted] [Redacted] CONUS II	3/10/05	SSA [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] being [Redacted] SSA [Redacted] clarified
[Redacted]	[Redacted]	[Redacted]	SSA [Redacted] [Redacted] ITOS	3/11/05	SSA [Redacted] [Redacted]

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Requests as of March 30, 2005

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[Redacted]	[Redacted]	II, [Redacted] [Redacted] Unit	[Redacted]
	[Redacted]	SSA [Redacted] [Redacted] (& SSA [Redacted] CONUS I	3/18/05 SSA [Redacted] [Redacted]
	[Redacted]	SSA [Redacted] [Redacted] CONUS II	3/11/05 SSA [Redacted] checking w/ case agent.
	[Redacted]	SSA [Redacted] [Redacted] (& SSA [Redacted]	3/11/05 SSA [Redacted] [Redacted] checking on

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Requests as of March 30, 2005

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CONUS III

[Redacted] FO

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SSA [Redacted]

3/11/05

SSA [Redacted]

[Redacted] CONUS III

[Redacted] checking on

SSA [Redacted]

3/17/05

SSA [Redacted]

[Redacted] CD-4D (& SSA [Redacted])

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Requests as of March 30, 2005

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[Redacted]	[Redacted]	[Redacted]	[Redacted]	SSA [Redacted] [Redacted] CONUS II	3/18/05	SSA [Redacted] [Redacted] Per Case Agent [Redacted] [Redacted] and [Redacted] t [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]	

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SSA [Redacted] clarified in

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[Redacted] Requests as of March 30, 2005

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PR/TT, rather than the
215 records request.

SSA [Redacted]

3/23/05

SSA [Redacted]

CONUS I

The

Case Agent [Redacted]

SSA [Redacted]

3/24/05

CD-2C

Case agent reports [Redacted]

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NSL VIO-14063

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[redacted] as of March 30, 2005

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[redacted] Total [redacted]

General Comments from SSA [redacted] CONUS 1, who did the first and has done the most [redacted]

"This FISA technique allows the FBI to obtain the same type of information [redacted] Specific CTD advantages are:

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2 [redacted]

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NSL VIO-14064