

OIG'S PATRIOT ACT REVIEW

DOCUMENT REQUEST: DOJ-OIG REQUEST of MARCH 13, 2006

SUBJECT: ALL DOCUMENTS, SURVEYS, DATA, AND OTHER INFORMATION PROVIDED BY THE FBI TO THE DEPARTMENT OF JUSTICE FOR USE IN COMPILING "REPORTS FROM THE FIELD: THE USA PATRIOT ACT AT WORK," RELEASED 7/15/04, INCLUDING BUT NOT LIMITED TO EXAMPLES OF CASES IN WHICH THE USA PATRIOT ACT HAS BEEN USEFUL OR INSTRUMENTAL IN COUNTERTERRORISM INVESTIGATIONS.

FBI TRACKING #: OIG REQ-PAR (03-13-06) - ITEM #3

PACKET: #1

{AUGUST 22, 2006}

DATE	TYPE of DOCUMENT	SUBJECT	TOTAL PAGES	BATE STAMP #s
02/27/04	OGC EC	USA PATRIOT ACT SUNSET PROVISIONS	5	001-005
03/05/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	2	006-007
03/05/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	2	008-009
03/05/04	b2 [REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	2	010-011
03/08/04	b7E [REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	2	012-013
03/08/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	2	014-015
03/08/04	[REDACTED] EC	USA PATRIOT ACT; SUNSET PROVISIONS	2	016-017
03/08/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	2	018-019
03/09/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	4	020-023
03/11/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	2	024-025

DATE	TYPE of DOCUMENT	SUBJECT	TOTAL PAGES	BATE STAMP #s
03/15/04	[REDACTED] EC	USA PATRIOT ACT; SUNSET PROVISIONS	2	026-027
03/16/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	4	028-031
03/16/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	2	032-033
03/16/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	4	034-037
03/17/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	4	038-041
03/17/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	3	042-044
03/17/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	3	045-047
03/17/04	b2 b7E [REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	4	048-051
03/18/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	3	052-054
03/18/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	4	055-058
03/18/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	3	059-061
03/18/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	8	062-069
03/18/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS OKLAHOMA CITY DIVISION STATISTICS	3	070-072
03/18/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	3	073-075
03/18/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	2	076-077
03/18/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	2	078-079

DATE	TYPE of DOCUMENT	SUBJECT	TOTAL PAGES	BATE STAMP #s
03/18/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	3	080-082
03/18/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	3	083-085
03/19/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	3	086-088
03/19/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	4	089-092
03/19/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	4	093-096
03/19/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	3	097-099
03/19/04	b2 b7E [REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	5	100-104
03/19/04	[REDACTED]	USA PATRIOT ACT SUNSET PROVISIONS	4	105-108
03/19/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	4	109-112
03/19/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	2	113-114
03/19/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	4	115-118
03/22/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	8	119-126
03/23/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	2	127-128
03/24/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	3	129-131
03/31/04	[REDACTED] EC	USA PATRIOT ACT; SUNSET PROVISIONS	3	132-134
03/31/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	2	135-136
04/26/04	[REDACTED] EC	USA PATRIOT ACT SUNSET PROVISIONS	11	137-147

DATE	TYPE of DOCUMENT	SUBJECT	TOTAL PAGES	BATE STAMP #s
04/30/04	b2 [redacted] EC	USA PATRIOT ACT SUNSET PROVISIONS	6	148-153
05/16/04	b7E [redacted] EC	USA PATRIOT ACT SUNSET PROVISIONS	2	154-155
TOTAL PAGES			155	

FEDERAL BUREAU OF INVESTIGATION

Precedence: DEADLINE 03/19/2004

Date: 03/17/2004

To: General Counsel

Attn: ILU, Room 7326

Attention: [redacted]

From: [redacted]

Squad 21

Contact: SSA [redacted]

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Approved By: [redacted]

Drafted By: [redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 07-05-2007 BY 65179/dml/ksr/cak

Case ID #: 66F-HQ-C1364260

foipa 1073946

Title: USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: To provide a brief narrative summarizing [redacted] use of several authorities implemented by the USA Patriot Act which are subject to sunset provisions. Referenced lead covered.

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Reference: 66F-HQ-C1364260 Serial 5

Details: Above referenced communication requested offices to provide the Investigative Law Unit (ILU), Office of the General Counsel (OGC), with "statistics, good examples or anecdotes, or at the very least, a brief narrative summarizing the benefits the office has received from the provisions...."

To that end, [redacted] provides the following information: b2
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1. Voice Mail - Section 209 of the Act permits law enforcement to obtain a search warrant or court order for voice mail messages maintained by a communications provider under 18 USC 2510 or 2703.

[redacted] reports [redacted] this authority. Although this investigative technique [redacted] utilized to date, it is a valuable tool. In an emergency situation obtaining a search warrant would be much faster and less complicated than obtaining an emergency Title III. b2
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To: General Counsel From: [redacted]
Re: 66F-HQ-C1364260, 03/17/2004

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2. **Nationwide Search Warrants for email** - Section 220 of the Act permits the issuance of search warrants with nationwide jurisdiction to an electronic communications service provider under 18 USC 2703.

[redacted] has used this authority on [redacted] occasions on CT related matters.

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3. **Voluntary Disclosures by ISPs** - Section 212 of the Act permits communications providers to voluntarily disclose the contents of communications to protect life or limb or their rights or property.

[redacted] reports the use of this authority on [redacted] occasions on CT related matters.

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4. **Information Sharing** - Sections 203(b) and (d) of the Act permit the sharing of information between criminal and intelligence investigations.

All [redacted] CT investigations continue to benefit from the sharing of information between criminal and intelligence investigations. One particularly good example is the investigation of an IT subject where a concurrent White Collar Fraud case was subsequently opened. FISA coverage on a close associate provided invaluable information on the first subject, in particular the timing of his arrest, as he was in the process of leaving the country on extremely short notice (the arrest was made at the airport.) The IT subject ultimately pleaded guilty to a White Collar Criminal charge, was denaturalized, and deported out of the country. [redacted] can provide a more detailed, classified, case review upon request.)

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5. **Intercepting Communications of Computer Trespassers** - Section 217 of the Act permits a computer owner/operator to provide consent for law enforcement to monitor the activities of a computer trespasser.

[redacted] reports [redacted] this authority.

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6. **Expanded Title III Predicates** - Sections 201 and 202 of the Act permit the use of court authorized electronic surveillance (i.e. a Title III) in investigations involving chemical weapons (18 USC 229), terrorism (18 USC 2332a, 2332b, 2332d, 2339A and 2339B) or computer fraud and abuse (18 USC 1030.)

[redacted] reports [redacted] this authority.

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To: General Counsel From: [redacted]
Re: 66F-HQ-C1364260, 03/17/2004

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7. **Roving FISA Surveillance** - Section 206 of the Act permits roving surveillance where the target is attempting to thwart electronic surveillance.

[redacted] reports [redacted] this authority. However, [redacted] anticipates the increased use of this important authority to combat the increasingly sophisticated trade craft employed by IT and FCI subjects.

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8. **New Standard for FISA Pen/Trap** - Section 214 of the Act authorizes a FISA Order for a pen register or trap/trace based upon the standard that such is relevant to the investigation.

[redacted] reports [redacted] this authority.

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9. **Changes to the "Primary Purpose" Standard for FISA Court Orders** - Section 218 of the Act authorizes the issuance of a FISA Court Order where foreign intelligence gathering is a "significant purpose" rather than the "primary purpose" for the Order.

This provision along with the information sharing provisions are the cornerstones of the PATRIOT ACT. [redacted] has had great success in the sharing of FISA information to assist members of the Intelligence Community (IC) as well as other criminal agencies, and the US Attorneys Office. In one particularly noteworthy example, the subject of a two year long FISA was subsequently arrested on a weapons charge stemming from an incident that happened prior to 9/11/01. In preparation for the trial, [redacted] Division coordinated closely with the AUSA's office to identify potentially useful FISA cuts in preparation for a trial. While the subject ultimately pled guilty prior to trial, significant time and resources were committed to reviewing the FISA cuts in preparation and coordinating a unified strategy between the [redacted] Division, the AUSA's office and the arresting agency. [redacted] can provide a more detailed, classified, case review upon request.)

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10. **New Standard for Business Records Under FISA** - Section 215 of the Act permits the issuance of a FISA Court Order for record production where the information is relevant to an investigation.

[redacted] reports [redacted] this authority. Again, however, [redacted] considers this authority to be extremely valuable, in particular when the use of a National Security Letter (NSL) is not authorized or appropriate.

To: General Counsel From:
Re: 66F-HQ-C1364260, 03/17/2004

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LEAD(s) :

Set Lead 1: (Info)

GENERAL COUNSEL

AT WASHINGTON, DC

Read and Clear..

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(Rev. 01-31-2003)

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/18/2004

To: General Counsel

Attn: Investigative Law Unit

From: [redacted]

Squad 1

Contact: Acting CDC [redacted]

Approved By: [redacted]

Drafted By: [redacted]

dkb

Case ID #: 66F-HQ-C1364260 (Pending)
66F-HQ-C1384970 (Pending)

Title: USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: [redacted] response to USA Patriot Act survey regarding use of the particular provisions scheduled to expire on December 31, 2005.

Reference: 66F-HQ-1364260 Serial 5

Details: After a review of whether any of [redacted] investigations have utilized the enhanced investigative tools which are scheduled to expire as provided by the Patriot Act ("Act"), [redacted] advises that [redacted] the investigative tools which are scheduled to expire on December 31, 2005 have been utilized in this division to date.

[redacted] has used other investigative tools created by provisions of the Act and these tools have had a crucial impact on [redacted] investigations. The greatest positive impact is derived from the ease with which [redacted] can now issue National Security Letters ("NSLs") due to the reduced signature authority of NSLs and the relevance standard. Before passage of the Act, NSLs were less frequently used because of the lengthy process required for issuance of NSLs. OGC has access to the control file that would provide an accurate number of NSLs issued since the passage of the Act. To supplement that figure, [redacted] polled the majority of the agents who have used NSLs on the number of NSLs used and the importance that obtaining such information in a timely manner was to their investigations. Based on that effort, it appears that [redacted] has issued [redacted] NSLs since the passage of the Act. More importantly, the information obtained

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To: General Counsel From: [redacted]
Re: 66F-HQ-C1364260, 03/18/2004

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from these NSLs has represented the full range of information available to include financial records, E-mail account information, telephone toll records, and consumer credit reports. Invariably, the agents replied that the information was crucial to their investigations to the extent that the ability to succeed in the investigation hinged upon the ability to obtain such information in a timely manner.

Many of the cases in which the NSLs have produced positive impact are classified matters; accordingly, specific anecdotal examples will not be provided in this response. The Counter Terrorism squad supervisor has advised, in general terms, that the matters have concerned potential threats wherein the quick access to information from NSLs played a critical role in assessing the credibility of the potential threats. The Foreign Counter Intelligence squad has likewise show a dramatic increase in its utilization of NSLs and expressed the value that NSLs have provided to its efforts.

Furthermore, [redacted] anticipates that the new ability to obtain temporarily assigned network addresses by subpoena will play a critical role in its newly established Cyber Squad in intrusion cases. Thus far, that information has been already obtained by other divisions involved in the same investigations.

[redacted] will continue to educate its agents on the tools created by the Act, including the provisions scheduled to expire. If the investigative tools derived from the provisions with relevant expiration dates are employed in [redacted] prior to December 31, 2005, [redacted] will amend this response.

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To: General Counsel From:
Re: 66F-HQ-C1364260, 03/18/2004

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LEAD(s) :

Set Lead 1: (Info)

GENERAL COUNSEL

AT WASHINGTON, DC

Read and clear.

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(Rev. 01-31-2003)

foipa 1073946

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/18/2004

To: General Counsel

Attn: Investigative Law Unit

[Redacted]
Room 7326

From: [Redacted]
Legal Unit

Contact: CDC [Redacted]

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Approved By: [Redacted]

Drafted By: [Redacted]

Case ID #: 66F-HQ-C1364260 (Pending)
66F-HQ-C1384970

Title: USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: Summary of benefits [Redacted] Division has received from various provisions of the USA PATRIOT Act.

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Details: The following provides statistics, examples, and brief narratives summarizing some of the benefits the [Redacted] Division has received from various provisions of the USA PATRIOT Act:

Nationwide Search Warrants for E-mail and Associated Records - Section 220 of the Act. See 18 U.S.C. § 2703.

This technique has been used frequently for e-mail records. Without it service would have been much more time consuming and less successful.

(S) [Redacted]

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Information Sharing - Section 203(b) & (d) of the Act.

To: General Counsel From: [redacted]
Re: 66F-HQ-C1364260, 03/18/2004

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Generally speaking we are now able to discuss our cases with other agencies much more freely. This has streamlined and greatly facilitated our investigations.

(S) [redacted] (Closed): [redacted]

[redacted] Investigation revealed subject to be a con-man who was primarily raising money for his own personal benefit. However, investigation also revealed subject was engaged in various criminal activities. Sections 203(b) and 203(d) were utilized in allowing information from the criminal case to be shared with the intelligence investigator. The intelligence investigation produced an enormous amount of intelligence.

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[redacted]

Section 218 and Section 504 were utilized to share the pertinent parts of that intelligence with the criminal investigator, as well as the federal prosecutors. Without all three of these provisions, both the criminal and intelligence investigators would have been conducting simultaneous and parallel investigations, without the ability to have a complete picture of the subject, thereby, resulting in lengthy and duplicative investigative efforts. As a direct result of these enabling provisions of the USA Patriot Act, the subject was ultimately convicted on the criminal charges and, consequently, deported from the United States. However, prior to subject's deportation, subject provided a tremendous amount of valuable information which has been used in approximately a dozen New Orleans investigations alone, plus an additional half dozen cases in other divisions across the United States.

279B [redacted] 67142: The information sharing portion of the act has impacted the effectiveness of the [redacted] JTTF which participated in the referenced case which involved threat mailings. The ability to share information has enriched FBI liaison with State, Local and other Federal agencies, resulting in better relationships.

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When events broke in this case requiring JTTF response, the ability to organize an action plan among the agencies was greatly enhanced. A level of trust resonated among investigators which resulted in a style of teamwork imperative in the first few days after the threat mailings. The ability to share information relieved the case agent from being overwhelmed, and allowed for a much more effective investigation.

(S) [redacted]

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To: General Counsel From: [redacted]
Re: 66F-HQ-C1364260, 03/18/2004

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Information sharing with the [redacted] Sheriff's Office, the Bureau of Immigration and Customs Enforcement, and the Department of State is essential to identifying the subjects' associates, travel, and activities in support of this organization.

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(S) [redacted] In this case, we opened a parallel investigation on the criminal side. Subpoenas were used for financial information and NSLs for toll records. Previously, we would have had difficulty sharing the NSL results with the criminal side. When we obtained pertinent information from the criminal side, we had to send an NSL for the same information in order to use it for the intelligence side, duplicating voluminous work on the part of the Bureau and the service provider. Also, the criminal case agent would not have been apprized of significant developments on the intelligence side of the case. Recently, when our subject returned to the U.S. from overseas unexpectedly, we needed the criminal agent's help in coordinating surveillance and interviewing a potential source. The criminal case agent would not have been in a position to assist us if he had not been fully briefed in on the case. Due to the criminal agent's work, a valuable source was successfully recruited.

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Due to the complexities inherent in this cyber/terrorism investigation, this case has been a joint effort between the following agencies: FBI, IRS, INS, [redacted] DCIS, NCIS, Air Force OSI, Customs and the U.S. Attorney's Office in the Western District of [redacted]

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(S)

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The Information Sharing sections of the USA Patriot Act have been critical in that the investigation is being conducted jointly with the [redacted] State Police and the Bureau of Immigration and Customs Enforcement. Information sharing between the FBI and these agencies has been instrumental in identifying subjects, conducting surveillance and obtaining various records. Due to these Patriot Act provisions, intelligence information can

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To: General Counsel From: [REDACTED]
Re: 66F-HQ-C1364260, 03/18/2004

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be shared which greatly affects the utilization of resources and the focus of the case.

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(S)

[REDACTED] This investigation was initiated based on information sharing between intelligence agencies, [REDACTED] and FBI. This aspect of intelligence sharing between agencies in the intelligence community has been a tremendous asset in this investigation, particularly with the Immigration and Customs Enforcement agents present on our Joint Terrorism Task Force.

At the outset of this investigation, a parallel criminal investigation was initiated, which at the time was still under the mandate of the previous guidelines which forbid information sharing between intelligence and criminal investigations of the same subject. This was an excellent opportunity to witness the difference between the guidelines when a "wall" existed and the new guidelines where the "wall" was removed between criminal and intelligence investigations. Under the criminal investigation, subpoenas were issued for toll records and financial information. Since this was during the "wall" period, the criminal agent and the intelligence agent could not and would not be in the same room while there was information received as a result of the subpoenas. Likewise, when intelligence information was received from a linked FISA investigation, the criminal agent would remain completely unaware of the new intelligence which could aid in the direction of the criminal investigation. The AUSA assigned to the investigation was particularly uncomfortable with the investigation for fear of violating the guidelines of influencing the intelligence investigation. This placed the AUSA in a precarious position: needing to know all the information from both aspects of the investigation and yet not wanting to mistakenly report information from the criminal agent to the intelligence agent and vice versa. The "wall" procedures hindered the investigation of terrorism cases tremendously.

After the "wall" was removed, the difference in the investigation was obvious and significant. Meetings between the USA, AUSA, intelligence agents, criminal agents were regular and productive. This allowed a team aspect to investigations between the USA's office and the agents in the field.

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To: General Counsel From: [REDACTED]
Re: 66F-HQ-C1364260, 03/18/2004

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Practical aspects of information sharing involved less repetitive effort duplicating information. An example of this would be information from subpoenas and National Security Letters (NSL). Before, the criminal investigation could not have any information gathered as a result of a NSL and likewise with intelligence investigations having information gathered from a subpoena. This required two documents to be issued per one piece of information.

Since the implementation of the new provisions, information from this investigation has been shared with several other FBI field offices which has resulted in an expanded picture of potential terrorist activities within the United States. This provision is crucial to the ongoing effort against terrorist threats to the United States.

New Standard for FISA Pen/Trap - Section 214 of the Act.

- (S) [REDACTED] This investigation has utilized a pen register [REDACTED] [REDACTED] We have operated a FISA pen register on one phone line and five e-mail accounts. We have submitted and received three renewals on the FISA. We have issued [REDACTED] National Security Letters (NSLs) for subscriber information regarding the E-mail and telephone accounts.
- (S) [REDACTED] This investigation is utilizing a pen register on the main subject. The matter is an ongoing investigation to protect against clandestine intelligence activity. It would not have been possible under old standard. Statistics for initiation and renewal have been claimed. A number of associates have been identified. Several foreign numbers have been identified and passed on to another agency for further action.
- (S) [REDACTED] The old standard of "specific and articulable facts" that the line was used by an agent of a foreign power was changed to a relevance to terrorism standard. As a result, we obtained FISA pens on the phones used by both the subject and a close associate of his. Before the pens, insufficient information existed to establish whether or not the associate met the standard qualifying as an agent of a foreign power. Also, the only phone we could prove the subject used was a phone subscribed to by his associate. Complicating matters more, the subject used this phone only on an irregular basis to contact other terrorism subjects. Under the old standard, we might not have succeeded in getting the pens. The information provided by the pens was valuable in that it showed the extent that both the subject and associate were communicating with other individuals

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To: General Counsel From: [redacted]
Re: 66F-HQ-C1364260, 03/18/2004

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connected with terrorism investigations. We obtained pen registers on five telephones which were all renewed twice.

**Changes to "Primary Purpose" Standard for FISA -
Section 218. Section 504 amended FISA to allow personnel
involved in a FISA to consult with law enforcement officials.**

(S) 281F [redacted] 66686: Information was shared from the case agent in the above referenced [redacted] investigation under Section 218 and Section 504 with the criminal investigator and federal prosecutors to [redacted]. Having the criminal side fully apprized of all of the intelligence was of great benefit as this helped in the coordination of surveillance and the interviews of certain individuals connected to this investigation. After completing his sentence in federal prison, this particular subject of this criminal investigation will also be deported from the United States. All of this was facilitated by the sharing provisions under the USA Patriot Act.

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(S) [redacted] [redacted] Section 218 has enabled the intelligence received from a foreign intelligence/security agency regarding subject to be shared with federal prosecutors both in two Divisions. This is an ongoing investigation.

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(S) [redacted] This intelligence investigation was opened based solely on information provided by the subject of above referenced closed [redacted] investigation. This information alleged the subject of this investigation was a member of two terrorist organizations. Investigation revealed the subject had [redacted]

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[redacted] This subject was attempting to obtain an assignment in the intelligence field. Investigation further revealed subject had [redacted]

[redacted] Through the coordinated efforts of various divisions and resident agencies, information was received from several foreign intelligence services regarding subject.

[redacted]

As a direct result of being able to share this intelligence under Section 218 and Section 504 of the USA Patriot Act with other agencies involved with this investigation, subject was arrested without incident after it was learned he had [redacted]

~~SECRET~~

To: General Counsel From: [REDACTED]
Re: 66F-HQ-C1364260, 03/18/2004

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[REDACTED] Subject is currently in federal custody and awaiting trial. Without these referenced provisions of the USA Patriot Act, this coordinated investigative effort between a multitude of various federal, state, local, and international law enforcement agencies would have been much more difficult with possibly a much different result.

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- (S) [REDACTED] The changing of the FISA standard from a "primary purpose" to "a significant purpose" has had a dramatic impact on terrorism cases and this particular investigation would not have been possible without this change. This investigation centered on an individual with close ties to an alleged terrorist in the Middle East. The FISA coverage of the subject was initiated after intelligence indicated that he was possibly a recipient of information regarding a threat to a United States vessel. This information would fall primarily in the criminal aspect of a terrorist attack and negate the "primary purpose" standard for FISA coverage since the purpose was not to gather intelligence but to use the criminal justice system to stop a terrorist attack. As a result of the changing standard, FISA coverage was initiated and further information was gathered to accurately assess the threat.

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New Standard for Business Records under FISA - Section 215.

- (S) [REDACTED] We have obtained [REDACTED] NSLs for records from a communication carrier and a financial institution.

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To: General Counsel From:
Re: 66F-HQ-C1364260, 03/18/2004

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LEAD(s) :

Set Lead 1: (Info)

GENERAL COUNSEL

AT WASHINGTON, DC

Read and clear.

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FEDERAL BUREAU OF INVESTIGATION

Precedence: PRIORITY

Date: 03/18/2004

To: General Counsel

Attn: Investigative Law Unit

attn: [redacted] Rm 7326

From: [redacted]

CDC

Contact: SSA [redacted]

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Approved By: [redacted]

Drafted By: [redacted] mrs

Case ID #: 66F-HQ-C1364260 (Pending)
66F-HQ-C1384970

Title: USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: Providing OGC, ILU with information concerning provisions of the Patriot Act subject to the Sunset Provision.

Reference: 66F-HQ-1085160 Serial 57
66F-HQ-C1364260 Serial 1

Details: A survey conducted among the Supervisory Special Agents in the [redacted] division indicate that, by far, the most important and utilized provision of the Patriot Act has been the delegated authority to the field to utilize NSLs in appropriate investigations. Also the ability to share information between intelligence investigations and criminal investigations has proven invaluable.

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As to the specific provisions of the Patriot Act subject to sunset provisions [redacted] has no anecdotal or statistical information to provide ILU.

To: General Counsel From:
Re: 66F-HQ-C1364260, 03/18/2004

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LEAD(s) :

Set Lead 1: (Info)

GENERAL COUNSEL

AT INVESTIGATIVE LAW UNIT

Read and clear.

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(Rev. 01-31-2003)

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/18/2004

To: FBIHQ

Attn: Office of General Counsel
Investigative Law Unit
[Redacted]
Room 7326

From: [Redacted]

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Contact: ADC [Redacted] Ext. [Redacted]

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Approved By: [Redacted]

Drafted By: [Redacted] jaw

Case ID #: 66F-HQ-C1364260 (Pending)
66F-HQ-C1384970 (Pending)

Title: USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: [Redacted] response to Patriot Act survey.

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

Details: A canvas was conducted of all counterintelligence and counterterrorism squads regarding the provisions of the USA Patriot Act which are subject to the sunset provisions. The following details the results:

Voice Mail (Section 209)- This technique [Redacted] used by the [Redacted] Division. Although this investigative technique [Redacted] utilized to this day, it is a valuable tool. In an emergency situation obtaining a search warrant would be much faster and less complicated than obtaining an emergency Title III. This provision has been used on numerous occasions to obtain e-mail both as a precursor to a FISA and in conjunction with FISAs.

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Nationwide Search Warrants for E-mail (Section 220)- The [Redacted] has used this provision to obtain e-mail content in another district. This was in conjunction with a cyber FISA. Although [Redacted] this technique to obtain search warrants, with the [Redacted] this is a crucial provision for [Redacted] Prior to the USA Patriot Act a great deal of manpower was used obtaining search warrants for other divisions for e-mail carriers which are located in the

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To: FBIHQ From: [redacted]
Re: 66F-HQ-C1364260, 03/18/2004

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[redacted] Division. [redacted] still spends a great deal of time serving process for other divisions, however, it is nothing like the days after 9/11 when SAs were required to draft and swear to affidavits for all the other divisions.

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Voluntary Disclosures (Section 212) - Only [redacted] was reported in response to this survey. The information obtained was in response to an FBIHQ lead on a counterterrorism internet threat. This provision is essential to [redacted] for the same reasons as stated above. Due to the number of communication carriers in the division, it is imperative that we are able to request this type of information from communications carriers in an emergency situation. Obviously the provision is not being abused.

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Information Sharing (Section 203(b) &(d)) - [redacted] [redacted] has [redacted] this provision. A considerable amount of Grand Jury material has been shared, but to this date [redacted] [redacted] Title III investigations have generated information pertinent to any CI or CT investigations. However, due to the new 315 classification and the removal of the wall between the criminal and intelligence worlds, it is imperative that information be permitted to flow in both directions.

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Intercepting Communications of Computer Trespassers (Section 217) - This [redacted] done in the [redacted] Division. Although most of [redacted] computer hacking cases have [redacted] this technique, it is anticipated that [redacted] [redacted] in the near future.

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Expanded Predicates for Title III (Sections 201 & 202) - [redacted] obtained a Title III based upon the new predicates. It is very important that all tools be made available in the fight against terrorism. At this time, FISA is primarily being used to obtain ELSUR on [redacted] IT subjects, however, it is crucial that the FBI have the ability to neutralize terrorists where the danger they pose outweighs the value of the intelligence that we maybe able to collect. Title III is an excellent investigative tool that should be available in the fight against terrorism.

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Roving FISA Surveillance (Section 206) - [redacted] has obtained one FISA with roving authority. It was necessary to cover a subject's move. [redacted] also has a Roving FISA request pending. The subject has a documented history of attempting to evade detection by repeatedly switching cellular telephones.

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To: FBIHQ From: [redacted]
Re: 66F-HQ-C1364260, 03/18/2004

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[redacted] New Standard for FISA Pen/Trap (Section 214) - [redacted]
[redacted] has used a FISA Pen/Trap in [redacted] counterintelligence investigations. This technique has provided contacts for potential assets and has aided in developing the subject's personal profile. However, this is a under utilized technique due to the length of time it takes to obtain, most agents wait and request a FISA. One other FISA pen/trap was requested but the request was withdrawn.

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Changes to "Primary Purpose" Standard for FISA (Section 218) - The survey did not generate any responses in this category. However, it is arguable that this provision has aided in obtaining the majority of IT FISAs. It is necessary to maintain this provision in order to continue investigating counterterrorism under the 315 classification.

New Standard for Business Records under FISA (Section 215) - The [redacted] Division has applied for [redacted] FISAs for Business Records, none of them went through to the FISA court. [redacted] were for brokerage account information, which is now available via National Security Letters.

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FEDERAL BUREAU OF INVESTIGATION

Precedence: PRIORITY

Date: 03/22/2004

To: General Counsel

Attn: Investigative Law Unit

[Redacted]
Room 1326

From: [Redacted]

Legal Unit

Contact: ADC [Redacted]

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Approved By: [Redacted]

Drafted By: [Redacted] nk

Case ID #: 66F-HQ-C1364260 (Pending)
66F-HQ-C1384970 (Pending)

Title: USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: To provide [Redacted] response to request for examples and summaries of use of investigative tools created by the USA PATRIOT Act. Lead covered.

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Reference: 66F-HQ-C134260 Serial 5

Details: This EC provides a brief narrative summarizing [Redacted] use of investigative tools created by the USA PATRIOT Act. A canvas was conducted of all squads in the [Redacted] Division and the following details the results:

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Voice Mail - Section 209 of the Act enabled law enforcement to obtain all voice mail which is stored by a communications provider, including unopened voice mail, using the procedures set forth in 18 U.S.C. §2703 (such as a search warrant). This also applies to other wire communications as defined by the statute. Voice messages stored and in the possession of the user, such as messages on an answering machine, are not covered by this statute. Previously the law was vague on the standard required to compel production of a stored voice mail message, leaving the possibility for argument that a wiretap order was required. See 18 U.S.C. § 2510; 18 U.S.C. § 2703.

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This technique has [Redacted] been utilized by FBI [Redacted] [Redacted] would be invaluable in any intelligence investigation.

To: General Counsel From: [redacted]
Re: 66F-HQ-C1364260, 03/22/2004

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Nationwide Search Warrants for E-mail and Associated Records - Section 220 of the Act enabled courts with jurisdiction over an investigation to issue a search warrant with nationwide jurisdiction to compel the production of information held by a service provider, such as unopened e-mail. Previously, the search warrant had to be issued by a court in the district where the service provider was located. See 18 U.S.C. § 2703.

This technique was utilized by the [redacted] Division following the shooting on July 4, 2002 at [redacted] International Airport. It was extremely helpful in this investigation for the Central District [redacted] to be able to issue nationwide search warrants for information on the subject's email.

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Voluntary Disclosures - Section 212 of the law explicitly permits, but does not require, a service provider to disclose to law enforcement either content or non-content customer records in emergencies involving an immediate risk of death or serious physical injury to any person. This voluntary disclosure, however, does not create an affirmative obligation to review customer communications in search of such imminent dangers. This provision also allows a communications service provider to disclose non-content records to protect their rights and property. This portion of the provision will most often be used when the communications service provider itself is a victim of computer hacking. See 18 U.S.C. § 2702(b) & (c)(3); 18 U.S.C. § 2703(c)(2)(F).

For about ten months (January 2003-November 2003) there was a mandatory reporting requirement for the receipt of content information (usually e-mail content) under this emergency disclosure provision. (See the Homeland Security Act and EC 66F-HQ-C1384970 Serial 501.) During that time, offices were only required to report the number of e-mail messages that were received under this voluntary disclosure provision. Offices were not required to report the receipt of records and were also not required to provide case information. For this reason, it would be beneficial for offices to now report more detail on these voluntary disclosures. Examples where voluntary disclosures led to valuable foreign intelligence or arrests would be particularly helpful.

[redacted] this technique specifically but would argue that it is invaluable to any intelligence investigation. Moreover, this was the practice after 9-11, where service providers voluntarily provided FBI [redacted] [redacted] with the information requested. In an emergency or crisis situation it would be imperative to the investigation for

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To: General Counsel From: [redacted]
Re: 66F-HQ-C1364260, 03/22/2004

b2
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service providers to have this ability to voluntarily provide the FBI with this information. Where time is of the essence, giving service providers the option of revealing this information without a court order or grand jury subpoena is crucial to receiving the information quickly. This is what occurred after 9-11 and should continue to be in place in the eventuality of another such attack.

Information Sharing - Section 203(b) & (d) of the Act provided new information sharing capabilities between criminal and intelligence investigations for foreign intelligence information and information obtained via a Title III electronic surveillance. (See EC 66F-HQ-A1247863-71 dated 10/26/01 for additional information.) Recognizing that this tool has become a regular part of how the FBI operates, especially in terrorism cases, no statistics are necessary. However, case examples that demonstrate the importance of this tool should be provided.

All [redacted] CT and CI investigation continue to benefit from this provision of the USA PATRIOT Act. A good example of this in [redacted] is the case where the intelligence investigation of [redacted]

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[redacted]
to share with a criminal squad for prosecution on criminal charges. Information sharing has also been invaluable between CT/CI investigations and criminal investigations into violations of neutrality, fraudulent document production, passport/visa violations, immigration violations, white collar crimes, drug cases, and all types of fraud schemes.

Intercepting Communications of Computer Trespassers - Section 217 of the Act clarified an ambiguity in the law by explicitly providing victims of computer attacks the ability to invite law enforcement into a protected computer to monitor the computer trespasser's communications. Before monitoring can occur, however, four requirements must be met. First, consent from the owner or operator of the protected computer must be obtained. Second, law enforcement must be acting pursuant to an ongoing investigation. Both criminal and intelligence investigations qualify, but the authority to intercept ceases at the conclusion of the investigation. Third, law enforcement must have reasonable grounds to believe that the contents of the communication to be intercepted will be relevant to the ongoing investigation. And fourth, investigators must only intercept the communications sent or received by trespassers. Thus, this section would only apply where the configuration of the computer system allows the interception of communications to and from the trespasser, and not the interception of non-consenting authorized users. Additionally, based on the definition of a "computer

To: General Counsel From: [redacted]
Re: 66F-HQ-C1364260, 03/22/2004

b2
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trespasser," communications of users who have a contractual relationship with the computer owner may not be monitored, even if their use is in violation of their contract terms (i.e. spammers). See 18 U.S.C. § 1030(e)(2); 18 U.S.C. § 2510 (20) & (21); 18 U.S.C. § 2511(2)(i).

This provision has proven especially useful to the [redacted] Division and is considered a key aspect of all cyber investigations. "Hackers" routinely use victim computers for SPAM and other illegal communications. Therefore, this provision has proven useful in both intelligence and criminal investigations. Recently this method has been used on at least two occasions in intelligence cases where the [redacted]

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Expanded Predicates for Title III - Sections 201 & 202 of the Act expanded the predicate offenses for Title III to include crimes relating to chemical weapons (18 U.S.C. § 229), terrorism (18 U.S.C. §§ 2332, 2332a, 2332b, 2332d, 2339A, and 2339B), and felony violations of computer fraud and abuse (18 U.S.C. § 1030). See 18 U.S.C. § 2516.

This provision [redacted] utilized by FBI [redacted] but it is anticipated that the expanded predicate offenses for computer fraud and abuse will become essential to several [redacted] investigations.

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Roving FISA Surveillance - Section 206 amended FISA to allow the Court to issue a "generic" secondary order where the Court finds that the "actions of the target of the application may have the effect of thwarting the identification of a specified person." This means that, when a FISA target engages in trade craft designed to defeat electronic surveillance, such as by rapidly switching cell phones, Internet accounts, or meeting venues, the Court can issue an order directing "other persons," i.e., the as yet unknown cell phone carrier, Internet service provider, etc., to effect the authorized electronic surveillance. Even if the target is not engaged in obvious trade craft, we can obtain such an order as long as the target's actions may have the effect of thwarting surveillance. This allows the FBI to go directly to the new carrier and establish surveillance on the authorized target without having to return to the Court for a new secondary order. For additional information see EC 66F-HQ-A1247863-71 dated 10/26/01. Any examples where roving authority has been obtained and utilized to gain valuable foreign intelligence should be provided.

The roving wiretap provision has been extremely helpful in [redacted] One specific example is that [redacted] has

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To: General Counsel From: [REDACTED]
Re: 66F-HQ-C1364260, 03/22/2004

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seen officials of a target country change service for hard-lines, email accounts, and cell phones numerous times. The roving FISA authority has allowed for investigators to continuously monitor these officials without interruption. Changing of telephone carriers is a documented technique used by foreign intelligence officers to avoid detection. [REDACTED] has documented these occurrences and been able to continue coverage because of this provision.

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New Standard for FISA Pen/Trap - Section 214 of the Act eliminated the requirement that the FISA pen/trap order include specific and articulable facts giving reason to believe that the targeted line was being used by an agent of a foreign power, or was in communications with such an agent, under specified circumstances. FISA pen/trap and trace orders are now available whenever the FBI certifies that "the information likely to be obtained is foreign intelligence information not concerning a United States person, or is relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution." For additional information see EC 66F-HQ-A1247863-71 dated 10/26/01.

This provision has not proven useful to [REDACTED]. Although the standard has been lowered the reality of the work load situation at OIPR makes this technique not viable. With the creation of the 315 classification, an agent has much better luck with getting a pen register under criminal standards than waiting for a FISA pen register to be approved. Moreover, if agents are going to take the time to fill out the paperwork for the FISA pen register, they might as well complete an actual FISA application. In one example, an agent was told she had enough for a FISA and not to waste time with the pen register. In another situation, the agent made the pen register request first and then several months later requested the FISA and never again heard anything on the pen register. If this was something that could be approved at HQ or locally, then it might be a valuable technique, but with the backlog on FISAs it is impractical to request a pen register FISA and then wait months to hear nothing.

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Changes to "Primary Purpose" Standard for FISA - Section 218 changed FISA to require a certification that foreign intelligence be "a significant purpose" of the authority sought. Section 504 amended FISA to allow personnel involved in a FISA to consult with law enforcement officials in order to coordinate efforts to investigate or protect against attacks, terrorism, sabotage, or clandestine intelligence activities, and that such

To: General Counsel From: [redacted]
Re: 66F-HQ-C1364260, 03/22/2004

b2
b7E

consultation does not, in itself, undermine the required certification of "significant purpose." These changes allow FBI agents greater latitude to consult criminal investigators or prosecutors without putting their FISAs at risk. For additional information see EC 66F-HQ-A1247863 Serial 71 dated 10/26/01. While no statistics are required for this provision, case examples and brief narratives on the benefits of this provision are sought.

This is the single most important provision of the USA Patriot Act. [redacted] investigations have revealed that more often than not the suspected terrorists or intelligence officers are committing criminal violations in support of their terrorist activities. The ability to obtain a FISA order where there is substantial evidence of criminal activity and significant evidence that the proceeds are then being used to fund terrorist activities is imperative to these types of investigations. This provision also goes hand-in-hand with the information sharing provision. The shift in focus allows investigators to coordinate more with AUSAs and other law enforcement information regarding the criminal activities of terrorists.

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New Standard for Business Records under FISA - Section 215 changed the business records authority found in Title V of FISA. The old language allowed the FISA Court to issue an order compelling the production of certain defined categories of business records upon a showing of relevance and "specific and articulable facts" giving reason to believe that the person to whom the records related was an agent of a foreign power. Section 215 changed this standard to simple relevance (just as in the FISA pen register standard described above) and gave the Court the authority to compel production of "any tangible things (including books, records, papers, documents, and other items) for an investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution." This is the same standard described above for Section 214. For additional information see EC 66F-HQ-A1247863-71 dated 10/26/01.

Although [redacted] views this as an extremely valuable technique, [redacted]

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To: General Counsel From: [redacted]
Re: 66F-HQ-C1364260, 03/22/2004

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considers this lead covered.

To: General Counsel From:
Re: 66F-HQ-C1364260, 03/22/2004

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LEAD(s) :

Set Lead 1: (Info)

GENERAL COUNSEL

AT WASHINGTON, DC

Investigative Law Unit: Read and clear.

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