

USA PATRIOT Act Renewal



FBI Office of General Counsel
National Security Law Branch
202-324-3951

Last updated 31 March 2006.

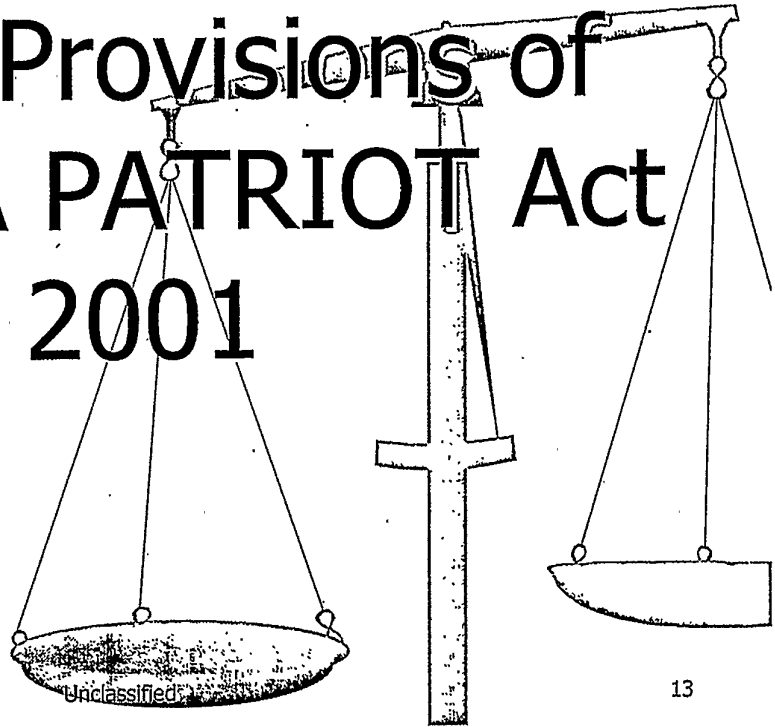
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Part 1

Sunset Provisions of the USA PATRIOT Act 2001



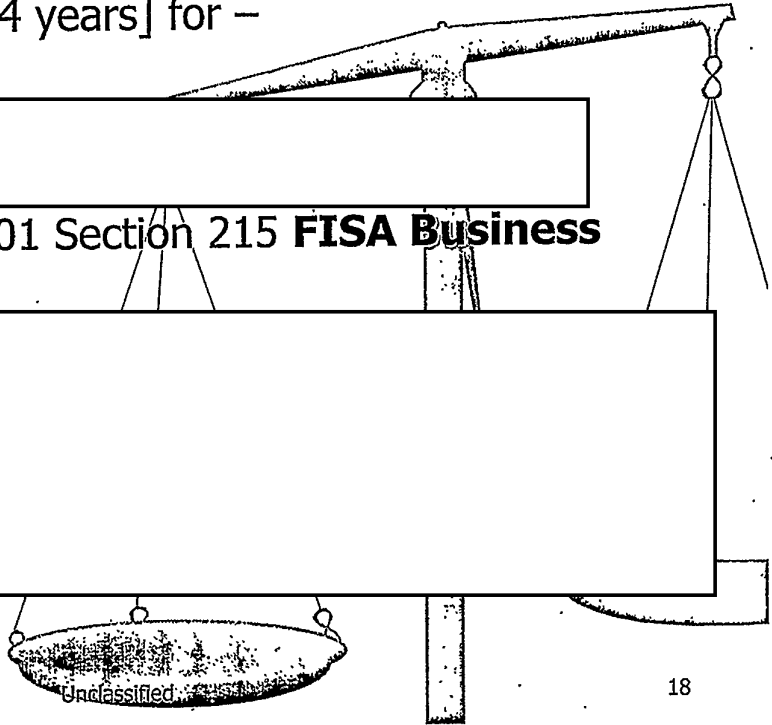
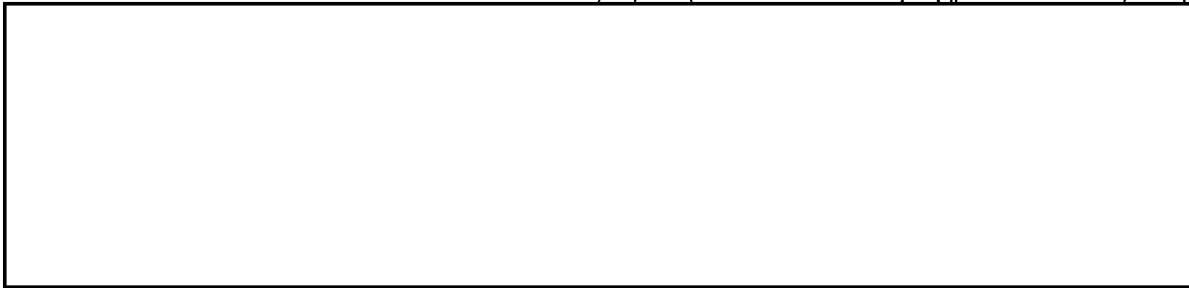
New Sunset Provisions

Outside the Scope

- December 31, 2009 [4 years] for –

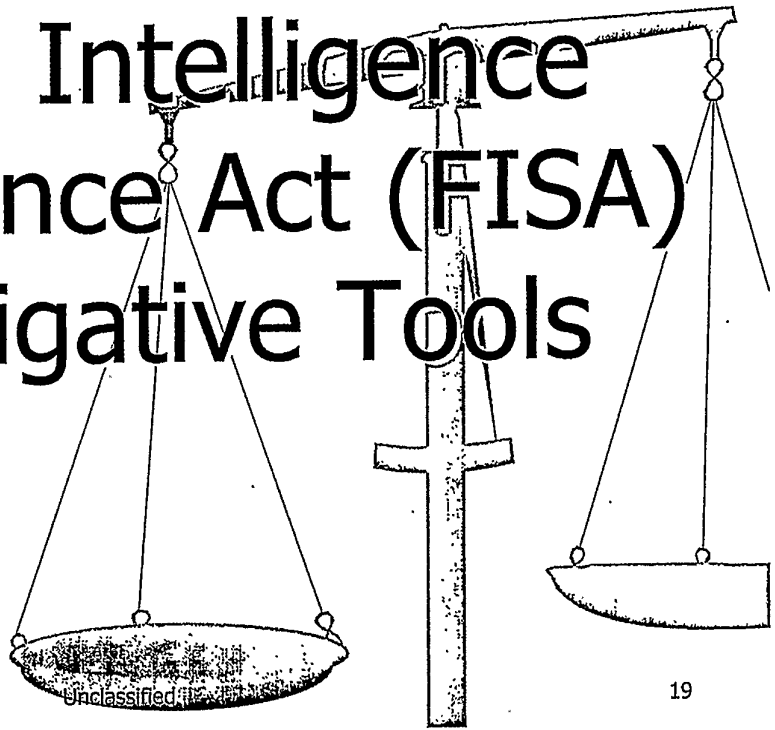


- USA PATRIOT Act 2001 Section 215 **FISA Business Records.**



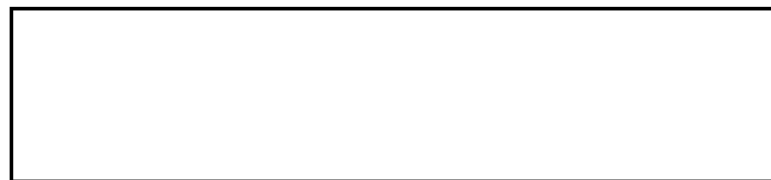
Part 2

Foreign Intelligence Surveillance Act (FISA) Investigative Tools

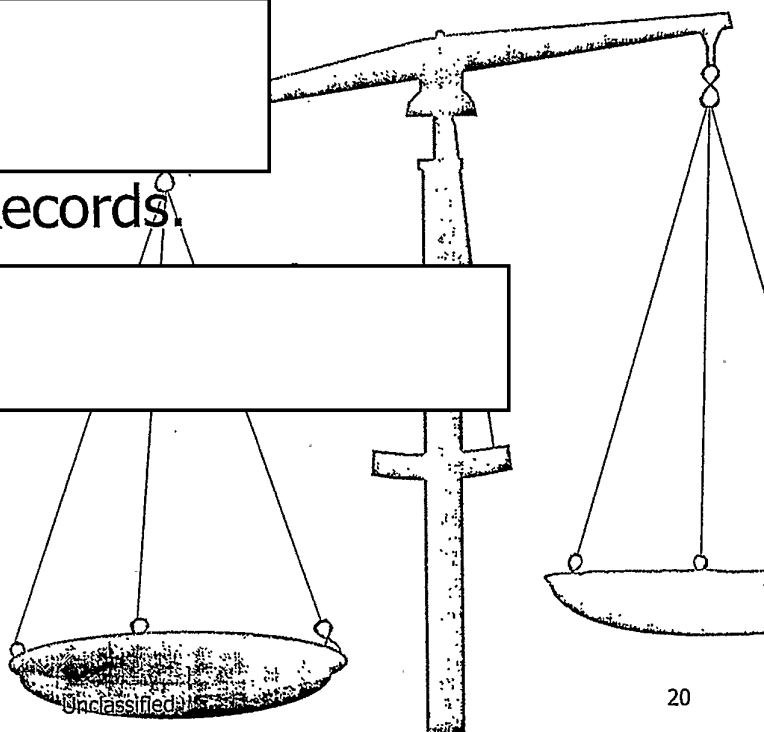
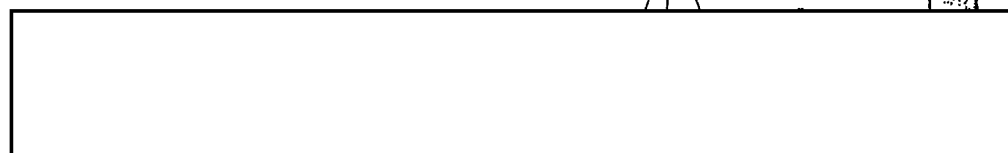


Changes to FISA Tools

Outside the Scope

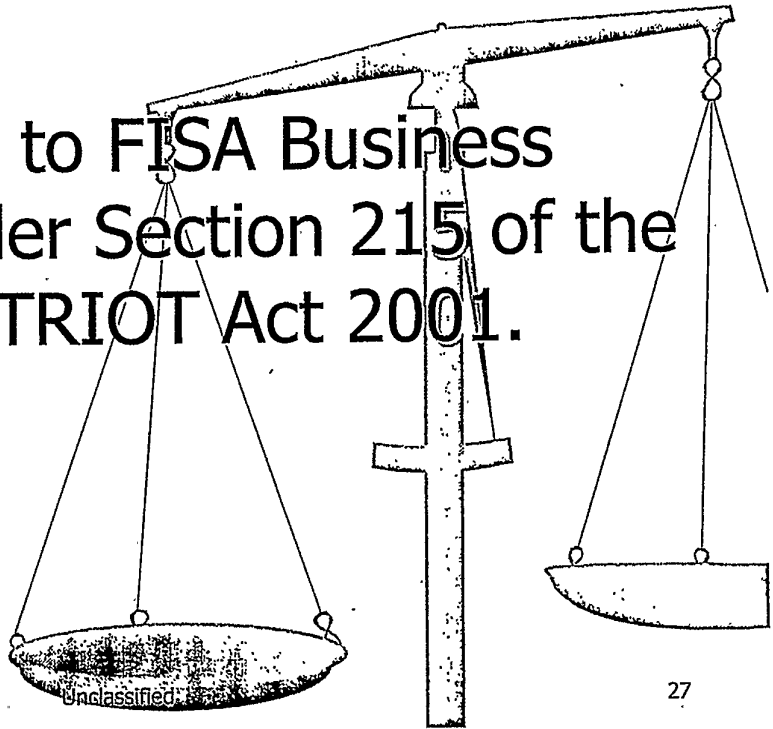


■ FISA Business Records



FISA Business Records

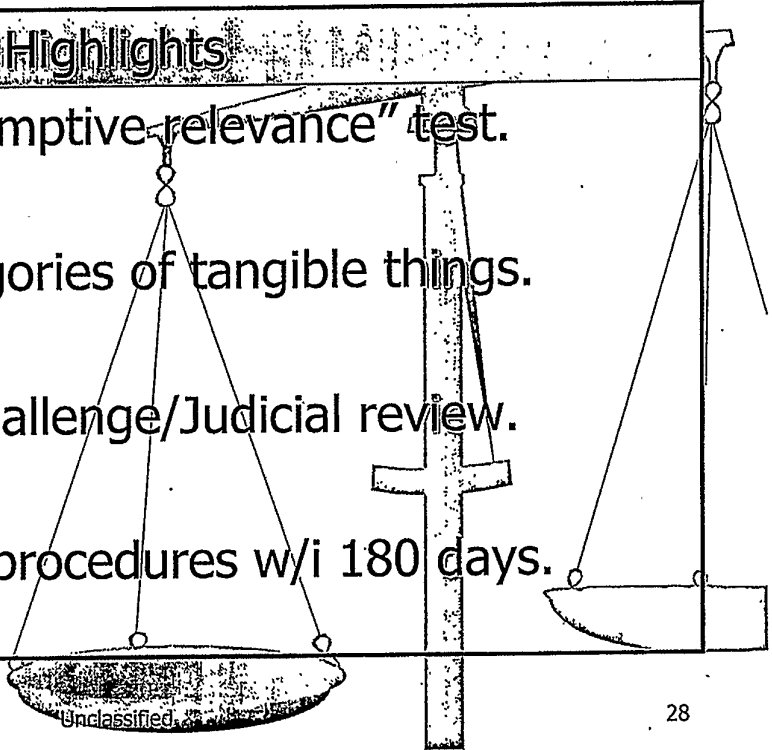
- Changes to FISA Business Records Under Section 215 of the USA PATRIOT Act 2001.



FISA Business Records

Highlights

- New "presumptive relevance" test.
- Special categories of tangible things.
- Recipient challenge/Judicial review.
- Minimization procedures w/i 180 days.

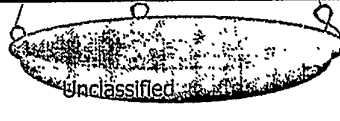


FISA Business Records

Scope of FISA Business Records authority

This authority may be used to obtain **"any tangible things (including books, records, papers, documents, and other items."**

- Broad – similar in scope to a Federal grand jury subpoena.
- The scope of this authority has not been changed.



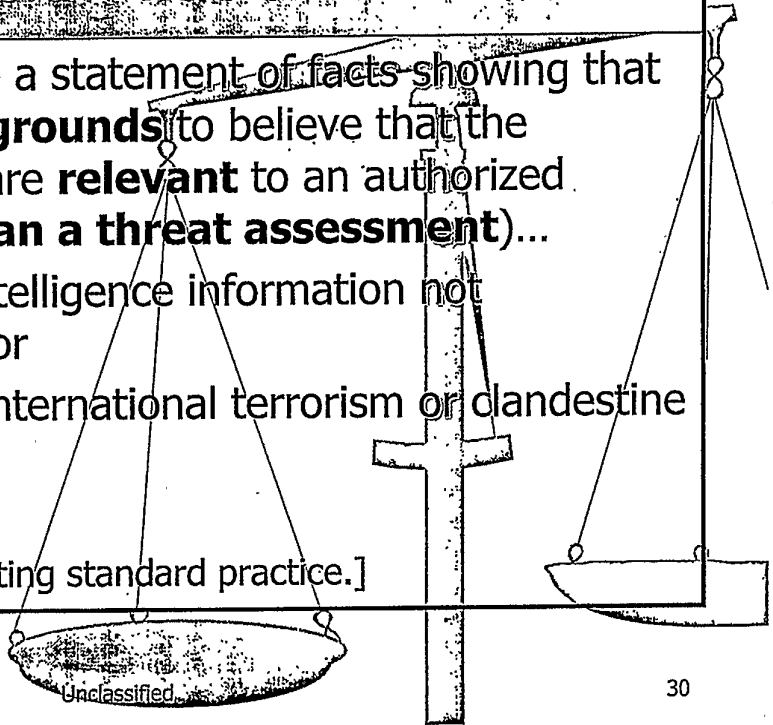
FISA Business Records

Standard = Relevance

Application shall include a statement of facts showing that there are **reasonable grounds** to believe that the tangible things sought are **relevant** to an authorized investigation (**other than a threat assessment**)...

- to obtain foreign intelligence information not concerning US person, or
- to protect against international terrorism or clandestine intelligence activities...

[This makes explicit the existing standard practice.]



FISA Business Records

New Presumptive Relevance Test

The tangible things are **presumptively relevant** if the facts show they pertain to –

- (i) a foreign power or an agent of a foreign power;
- (ii) the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; or
- (iii) an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of such authorized investigation.

[These cases probably cover most situations.]

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FISA Business Records

**FISA
Business
Records
Order must
comply with
the following:**

- Describe the tangible things with **sufficient particularity** to permit them to be fairly identified.
- Contain a **date of return**.
- Date must give recipient **reasonable period of time** to produce.
- May only require the production of tangible things that would be available with a GJ subpoena or a District Court order [this maintains privileges (ex.: attorney/client)].

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FISA Business Records

Special Categories of Tangible Things require Special Approval and Procedures	
Special Categories:	<ul style="list-style-type: none">▪Library circulation records and Library patron lists.▪Book sales records and Book customer lists.▪Firearm sales records.▪Tax return information.▪Educational records.▪Medical records.
Special Approval Level:	The Director, the Deputy Director, or the Executive Assistant Director for National Security must make the application for special categories of tangible things that contain information that would identify a person.

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FISA Business Records

Special Categories of Tangible Things require Special Approval and Procedures	
Congressional Reporting:	AG must report annually on Special Categories to HPSCI, HJC, SSCI, and SJC.
Note:	Approval authority for all FISA Business Record requests (except special categories): <ol style="list-style-type: none">1. Deputy Director;2. EAD and associate EAD for the NSD;3. the Assistant Director and all Deputy Assistant Directors of Counterterrorism, Counterintelligence, and Cyber Divisions;4. the General Counsel, and the DGC for the National Security Law Branch.

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FISA Business Records

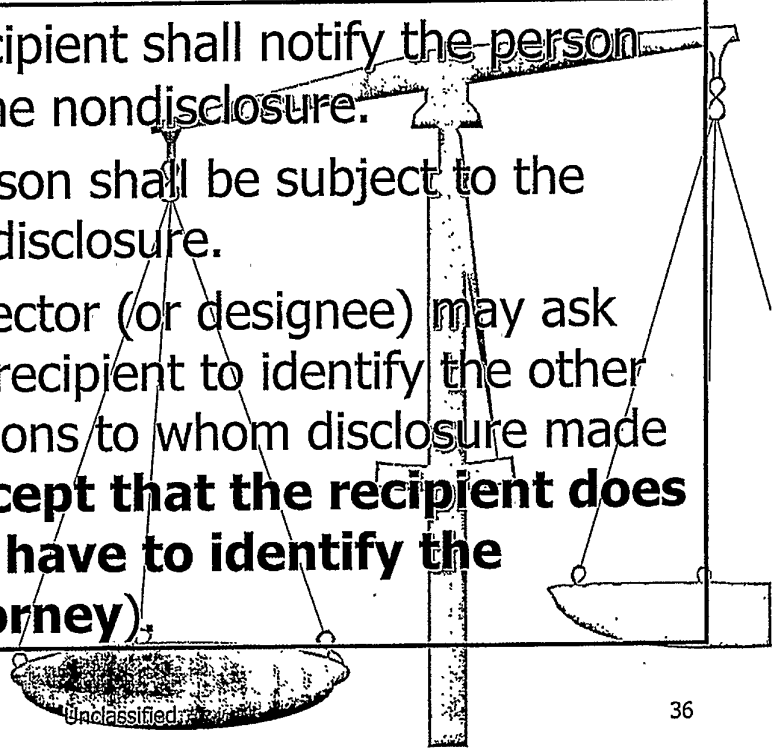
Nondisclosure	No person shall disclose the fact that the FBI has sought tangible things [same as before].
Exceptions	Recipient may disclose order to – (1) Persons to whom disclosure is necessary to comply [same as before]; (2) An attorney to obtain legal advice or assistance with respect to the production [new provision made explicit what had been implicit]; (3) A person a permitted by the Director (or designee).

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FISA Business Records

Extension of nondisclosure to others:

- Recipient shall notify the person of the nondisclosure.
- Person shall be subject to the nondisclosure.
- Director (or designee) may ask the recipient to identify the other persons to whom disclosure made (**except that the recipient does not have to identify the attorney**).

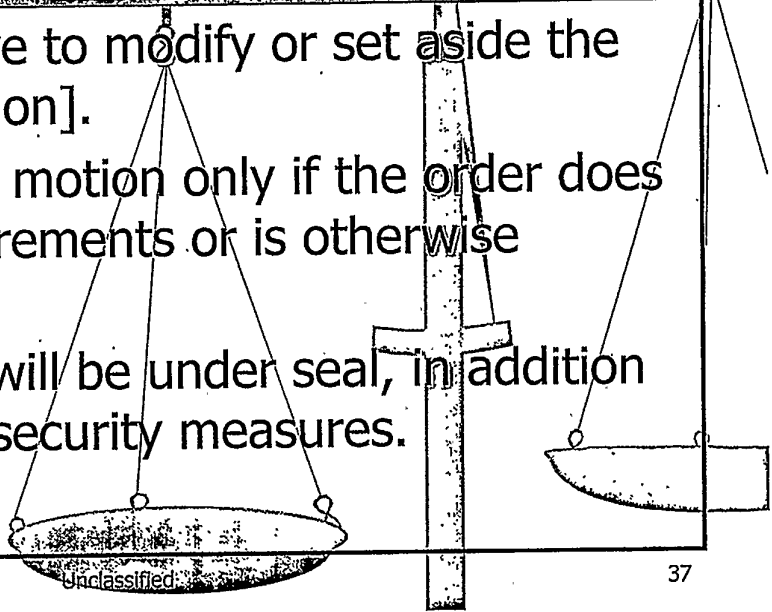


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FISA Business Records

Recipient's Challenge of FISA Business Records Order

- Recipient may move to modify or set aside the order [FISC jurisdiction].
- FISC may grant the motion only if the order does not meet FISA requirements or is otherwise unlawful.
- Security: All filings will be under seal, in addition to FISC established security measures.



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FISA Business Records

<u>Recipient's Challenge of Nondisclosure provision</u>	
Timing:	Not less than 1 year after order – recipient may move to modify or set aside the nondisclosure order.
FISA Court (FISC)	FISC may grant only if, based on the government's application and recipient's petition, no reason to believe that disclosure – may endanger the national security of the U.S., interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person.

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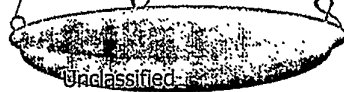
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FISA Business Records

Recipient's Challenge of Nondisclosure provision

Conclusive Certification

- After recipient's petition challenging nondisclosure, the government may choose to submit a certification by the AG, the DAG, an AAG, or the Director that a disclosure may endanger the national security or interfere with diplomatic relations.
- The FISC must treat the certification as conclusive.



FISA Business Records

Minimization Procedures

- W/in 180 days of enactment (approx 9/9/2006).
- AG shall adopt minimization procedures to govern the retention and dissemination of information.
- Minimize the retention/Prohibit the dissemination:
 - Nonpublicly available info re unconsenting USPs
 - Consistent with the US IC need to obtain, produce and disseminate foreign intelligence information.
- Evidence of a Crime: Procedures should allow for the retention and dissemination of this information.

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FISA Business Records

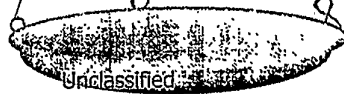
Oversight – Congressional/Public Reporting

•AG to report annually (April) to HPSCI, HJC, SSCI & SJC.

•Report on

- (1) total # of FISA BR applications,
- (2) total # of orders granted, modified, or denied, and
- (3) total # orders granted, modified, or denied for special categories.

•AG to make an **unclassified annual report** (April) on the total # of FISA BR applications and total # of orders granted, modified, or denied (gives the public a view of activities).



FISA Business Records

DOJ IG Comprehensive Audit of FISA BRs

Effectiveness of
FISA BRs
(including):

- Categories of info obtained and the importance of the info to the FBI and the IC.
- How info is collected, retained, analyzed, and disseminated by the FBI (including access of "raw data" to other agencies of the Federal, state, local, or tribal governments, or private sector entities).
- Minimization procedures adopted by AG.
- Whether/how often FBI used info to produce analytical intelligence products for the FBI, the IC, or other agencies of the federal, state, local or tribal governments.
- Whether/how often FBI provided info to law enforcement for criminal proceedings.

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FISA Business Records

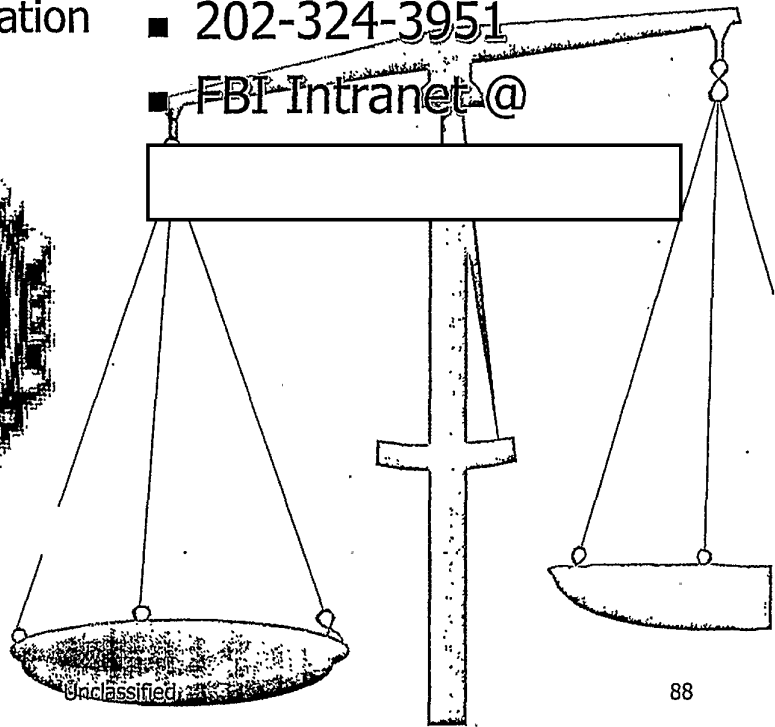
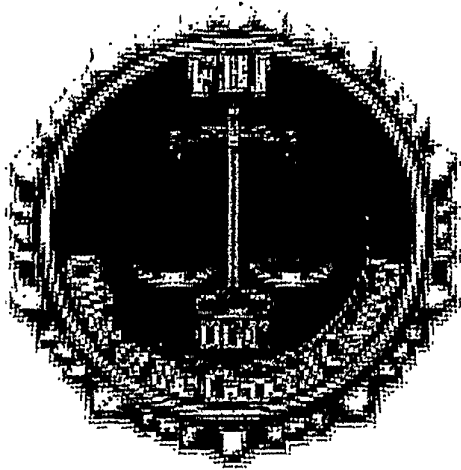
DOJ IG Comprehensive Audit of FISA BRs	
Scope & Timing	Comprehensive audit of effectiveness (including any improper or illegal use) covering 2002 to 2006. ▪ Report to HSPCI, HJC, SSCI and SJC.
Effectiveness of FISA BRs Process (including):	▪ How often FBI requested DOJ OIPR to submit an application and the request was not submitted (and why?). ▪ Justification for the failure of AG to issue implementing procedures in a timely fashion, and whether the delay harmed national security. ▪ Whether bureaucratic or procedural impediments prevent the FBI from fully using the tool.

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National Security Law Branch

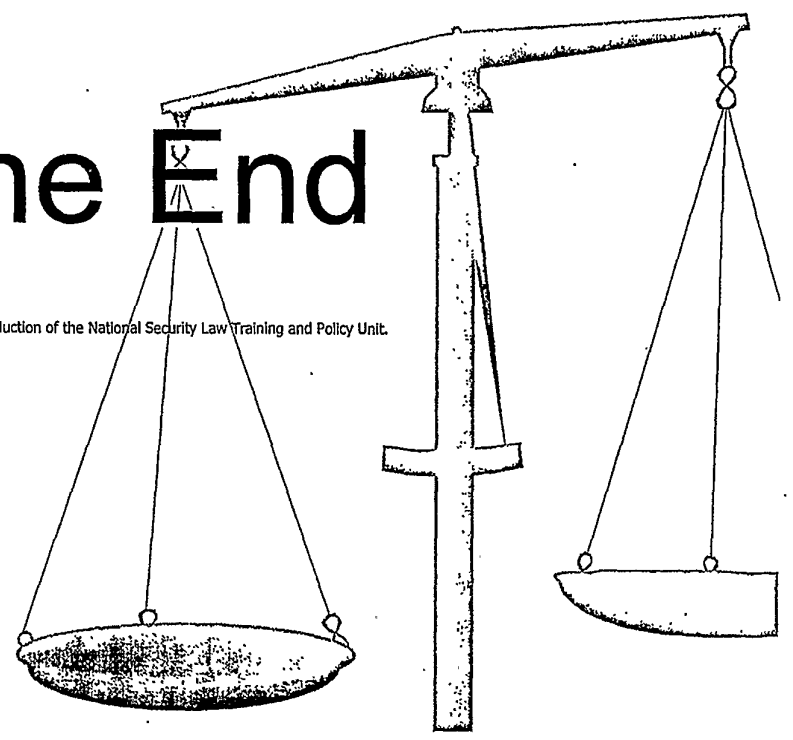
- For additional information
- 202-324-3951
- [FBI Intranet @](#)



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