

Weich, Ron (SMO)

From: Weich, Ron (SMO)
Sent: Friday, January 28, 2011 6:37 PM
To: Monaco, Lisa (ODAG); Richardson, Margaret (SMO); Miller, Matthew A (SMO); Boyd, Dean (NSD); Cheung, Denise (OAG); Baker, James A. (ODAG); Kris, David (NSD); Wiegmann, Brad (NSD); Agrast, Mark D. (SMO); Ruppert, Mary (SMO); (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI); Silas, Adrien (SMO); Krass, Caroline D. (SMO)
Subject: FW: 1/28/11 letter from DNI Clapper and AG Holder to congressional leaders re: reauthorization of surveillance authorities, attached.
Attachments: AG letter 1.28.2011.pdf

FYI.

From: Weich, Ron (SMO)
Sent: Friday, January 28, 2011 6:35 PM
To: (b)(3), (b)(6) per ODNI (b)(6) Christopher Kang; (b)(6) Jonathan Samuels; Stoneman, Shelly O.
Cc: Agrast, Mark D. (SMO); Ruppert, Mary (SMO)
Subject: 1/28/11 letter from DNI Clapper and AG Holder to congressional leaders re: reauthorization of surveillance authorities, attached.

The attached letter has been sent to staff for the following:

Speaker Boehner
Leader Pelosi
Leader Reid
Leader McConnell
SJC Majority and Minority
SSCI Majority and Minority
HJC Majority and Minority
HPSCI Majority and Minority



JAN 28 2011

The Honorable John Boehner
Speaker
United States House of Representatives
Washington, D.C. 20515

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Nancy Pelosi
Democratic Leader
United States House of Representatives
Washington, D.C. 20515

The Honorable Mitch McConnell
Republican Leader
United States Senate
Washington, D.C. 20510

Dear Speaker Boehner and Leaders Reid, Pelosi, and McConnell:

In the current threat environment, it is imperative that our intelligence and law enforcement agencies have the tools they need to protect our national security. The Foreign Intelligence Surveillance Act ("FISA") is a critical tool that has been used in numerous highly sensitive intelligence collection operations. Three vital provisions of FISA are scheduled to expire on February 28, 2011: section 206 of the USA PATRIOT Act, which provides authority for roving surveillance of targets who take steps that may thwart FISA surveillance; section 215 of the USA PATRIOT Act, which provides expanded authority to compel production of business records and other tangible things with the approval of the FISA court; and section 6001 of the Intelligence Reform and Terrorism Prevention Act, which provides the authority under FISA to target non-United States persons who engage in international terrorism or activities in preparation therefor, but are not necessarily associated with an identified terrorist group (the so-called "lone wolf" amendment).

It is essential that these intelligence tools be reauthorized before they expire, and we are committed to working with Congress to ensure the speedy enactment of legislation to achieve this result.

We also urge Congress to grant a reauthorization of sufficient duration to provide those charged with protecting our nation with reasonable certainty and predictability. When Congress enacted the PATRIOT Act, it included a three-year sunset on these authorities. While we welcome Congressional oversight into the use of these tools, Congress did not contemplate that this sunset would devolve into a series of short-term extensions that increase the uncertainties borne by our intelligence and law enforcement agencies in carrying out their missions.


S. 149, the FISA Sunsets Extension Act of 2011, would avoid these difficulties by reauthorizing the three expiring provisions until December 2013, together with the provisions of Title VII of FISA that are currently scheduled to sunset next year. We look forward to working with you to ensure the prompt enactment of this or similar legislation.

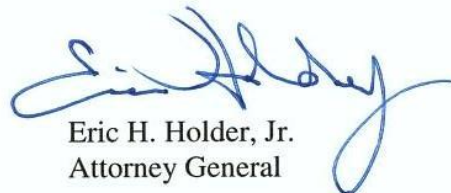
The Administration also remains open to proposals that enhance protections for civil liberties and privacy while maintaining the effectiveness of these and other intelligence collection tools.

Finally, we are prepared to provide additional information to Members concerning these critical authorities in a classified setting, as we did in connection with the previous reauthorization of the expiring provisions.

The Office of Management and Budget has advised us that there is no objection to this letter from the perspective of the Administration's program.

Sincerely,


James R. Clapper
Director of National Intelligence


Eric H. Holder, Jr.
Attorney General

[illegible]

PLEASE PROVIDE COMMENTS TO ADRIEN SILAS,
OLA, NO LATER THAN 10:30AM 02/07/11.

From: Justice Lrm (SMO)
Sent: Friday, February 04, 2011 7:36 PM
To: Clifton, Deborah J (SMO); Freeman, Andria D (SMO); Silas, Adrien (SMO); Taylor, Velma (SMO); Levine, Doug (SMO); Siegel, Nicole (OLA); Thaw, Kara
Subject: FW: Quick Review -- LRM [EHF-112-12] OMB Statement of Administration Policy on HR514 Extending Expiring Provisions of the USA PATRIOT Act and Intel Reform and Terrorism Prevention Act

From: Fitter, E. Holl (b) (6)
Sent: Friday, February 04, 2011 7:36:20 PM
To: DEFENSE; DHS; Justice Lrm (SMO); DL-NSS-LRM; ODNI; STATE; TREASURY;
(b)(3), (b)(6) per ODNI; Agrast, Mark D. (SMO);

(b)(6) per DOD [REDACTED], Ms, DoD OGC

Cc: Kosiak, Steve; McCartan, Emily M.; Peroff, Kathleen; Siclari, Mary Jo; Daniel, J. Michael; Bregman, Shannon C.; Stuart, Shannon; Brody-Waite, Brooke A.; Hire, Andrew D.; Briggs, Xavier; Haun, David J.; Boden, James; Page, Benjamin J.; Costello, Daniel J.; Sunstein, Cass R.; Hunt, Alex; Nelson, Kimberly P.; Seehra, Jasmeet; Neyland, Kevin F.; Howell, Michael; DL-WHO-WHGC-LRM; DL-OVP-LRM; Bansal, Preeta D.; Aitken, Steven D.; Walsh, Heather V.; Kimball, Astri B.; Oleske, James M.; (b)(6), (7)(C) per FBJ; Kang, Christopher; Samuels, Jonathan D.; Eltrich, Kate; Fisher, Alyssa D.; Jukes, James J.; Burnim, John D.; Ventura, Alexandra; Bhowmik, Rachana; Sale, Dominic K.; Kadakia, Pooja; Leon, Bryan P.; Stoneman, Shelly O'Neill; Espinel, Zulima; Newman, Charles L.; Menter, Jessica; Neill, Allie

Subject: Quick Review – LRM [EHF-112-12] OMB Statement of Administration Policy on HR514 Extending Expiring Provisions of the USA PATRIOT Act and Intel Reform and Terrorism Prevention Act

Auto forwarded by a Rule

DEADLINE: 10 AM Monday, February 07, 2011

H.R. 514 is scheduled to be on the House floor (under suspension) on Tuesday February 8th. Hence, LRD needs your review and comments/clearance of the draft SAP by the deadline. Thanks. Bill text is on Thomas. Draft SAP language is copied immediately below in the email and also is attached in a word document.

PRE-DECISIONAL -- DRAFT -- NOT FOR RELEASE

February 8, 2011

(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 514 – Extending Expiring Provisions of the USA PATRIOT Improvement and Reauthorization Act of 2005 and Intelligence Reform and Terrorism Prevention Act of 2004

(Rep. Sensenbrenner (D – WI) and 2 cosponsors)

(b) (5)

[REDACTED]

[REDACTED]

(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

* * * * *

LRM ID: EHF-112-12

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

LEGISLATIVE REFERRAL MEMORANDUM

Friday, February 04, 2011

TO: Legislative Liaison Officer - See Distribution

FROM: Burnim, John (for) Assistant Director for Legislative Reference

SUBJECT: LRM [EHF-112-12] OMB Statement of Administration Policy on HR514 Extensions Relating to
Access to Business Records, Individual Terrorists as Agents of Foreign Powers and Roving Wiretaps

OMB CONTACT: **Fitter, E**

E-Mail (b) (6)

PHONE (b) (6)

FAX (b)(6) per OMB

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. By the deadline above, please reply by e-mail or telephone, using the OMB Contact information above.

Please advise us if this item will affect direct spending or receipts for the purposes of the Statutory Pay-as-You-Go Act of 2010.

Thank you.

DRAFT -- NOT FOR RELEASE

February 8, 2011
(House)

STATEMENT OF ADMINISTRATION POLICY

**H.R. 514 – Extending Expiring Provisions of the USA PATRIOT Improvement and
Reauthorization Act of 2005 and Intelligence Reform and Terrorism Prevention Act of 2004**
(Rep. Sensenbrenner (D – WI) and 2 cosponsors)

(b) (5)

* * * * *

Cheung, Denise (OAG)

From: Cheung, Denise (OAG)
Sent: Monday, February 7, 2011 11:01 AM
To: Grindler, Gary (OAG)
Subject: FW: URGENT: RESPONSE NEEDED BY 11 a.m.: LRM [EHF-112-12] OMB Statement of Administration Policy on HR514 Extending Expiring Provisions of the USA PATRIOT Act and Intel Reform and Terrorism Prevention Act

FYI. I'm okay with this as well.

From: Monaco, Lisa (ODAG)
Sent: Monday, February 07, 2011 10:55 AM
To: Agrast, Mark D. (SMO)
Cc: Silas, Adrien (SMO); Weich, Ron (SMO); Baker, James A. (ODAG); Cheung, Denise (OAG); Hinnen, Todd (NSD)
Subject: Re: URGENT: RESPONSE NEEDED BY 11 a.m.: LRM [EHF-112-12] OMB Statement of Administration Policy on HR514 Extending Expiring Provisions of the USA PATRIOT Act and Intel Reform and Terrorism Prevention Act

I'm ok with this - particularly in light of the 2nd para
Cc:ing jim baker, todd and denise

From: Agrast, Mark D. (SMO)
Sent: Monday, February 07, 2011 10:48 AM
To: Monaco, Lisa (ODAG)
Cc: Silas, Adrien (SMO); Weich, Ron (SMO)
Subject: URGENT: RESPONSE NEEDED BY 11 a.m.: LRM [EHF-112-12] OMB Statement of Administration Policy on HR514 Extending Expiring Provisions of the USA PATRIOT Act and Intel Reform and Terrorism Prevention Act

Lisa,

This draft SAP is consistent with our position on PATRIOT reauthorization, but for some reason it did not reach me until a short while ago. May I have your okay before 11 a.m. please?

Mark

From: Fitter, E. Holly
Sent: Monday, February 07, 2011 9:46 AM
To: 'DEFENSE'; 'DHS'; 'JUSTICE'; 'NSS'; 'ODNI'; 'STATE'; 'TREASURY' (b)(3), (b)(6) per ODNI
(b)(6) Mark Agrast (b)(6) per DOD, Ms, DoD OGC
Subject: Reminder on Quick Review -- LRM [EHF-112-12] OMB Statement of Administration Policy on HR514 Extending Expiring Provisions of the USA PATRIOT Act and Intel Reform and Terrorism Prevention Act

We have no wiggle room on this request – need your signoff/comments by 10:00 AM Thanks.

From: Fitter, E. Holly
Sent: Friday, February 04, 2011 7:36 PM
To: DEFENSE; DHS; JUSTICE; NSS; ODNI; STATE; TREASURY (b)(3), (b)(6) per ODNI
(b)(6) Mark Agrast (b)(6) per DOD, Ms, DoD OGC
Cc: Kosiak, Steve; McCartan, Emily M.; Peroff, Kathleen; Siclari, Mary Jo; Daniel, J. Michael; Bregman, Shannon C.;

Stuart, Shannon; Brody-Waite, Brooke A.; Hire, Andrew D.; Briggs, Xavier; Haun, David J.; Boden, James; Page, Benjamin J.; Costello, Daniel J.; Sunstein, Cass R.; Hunt, Alex; Nelson, Kimberly P.; Seehra, Jasmeet; Neyland, Kevin F.; Howell, Michael J.; DL-WHO-WHGC-LRM; DL-OVP-LRM; Bansal, Preeta D.; Aitken, Steven D.; Walsh, Heather V.; Kimball, Astri B.; Oleske, James M. (b)(6), (7)(C) per FBI; Kang, Christopher; Samuels, Jonathan D.; Eltrich, Kate; Fisher, Alyssa D.; Jukes, James J.; Burnim, John D.; Ventura, Alexandra; Bhowmik, Rachana; Sale, Dominic K.; Kadakia, Pooja; Leon, Bryan P.; Stoneman, Shelly O'Neill; Espinel, Zulima; Newman, Charles L.; Menter, Jessica; Neill, Allie

Subject: Quick Review -- LRM [EHF-112-12] OMB Statement of Administration Policy on HR514 Extending Expiring Provisions of the USA PATRIOT Act and Intel Reform and Terrorism Prevention Act

DEADLINE: 10 AM Monday, February 07, 2011

H.R. 514 is scheduled to be on the House floor (under suspension) on Tuesday February 8th. Hence, LRD needs your review and comments/clearance of the draft SAP by the deadline. Thanks. Bill text is on Thomas. Draft SAP language is copied immediately below in the email and also is attached in a word document.

PRE-DECISIONAL – DRAFT – NOT FOR RELEASE

February 8, 2011

(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 514 – Extending Expiring Provisions of the USA PATRIOT Improvement and Reauthorization Act of 2005 and Intelligence Reform and Terrorism Prevention Act of 2004

(Rep. Sensenbrenner (D – WI) and 2 cosponsors)

(b) (5)

[REDACTED]

[REDACTED]

* * * * *

LRM ID: EHF-112-12

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

LEGISLATIVE REFERRAL MEMORANDUM

Friday, February 04, 2011

TO: Legislative Liaison Officer - See Distribution

FROM: Burnim, John (for) Assistant Director for Legislative Reference

SUBJECT: LRM [EHF-112-12] OMB Statement of Administration Policy on HR514 Extensions Relating to
Access to Business Records, Individual Terrorists as Agents of Foreign Powers and Roving Wiretaps

OMB CONTACT: **Fitter, E**

E-Mail (b) (6)

PHONE (b) (6)

FAX (b)(6) per OMB

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. By the deadline above, please reply by e-mail or telephone, using the OMB Contact information above.

Please advise us if this item will affect direct spending or receipts for the purposes of the Statutory Pay-as-You-Go Act of 2010.

Thank you.

OMB Communications

From: OMB Communications
Sent: Tuesday, February 8, 2011 11:34 AM
To: Richardson, Margaret (SMO)
Subject: OFFICIAL RELEASE: Statement of Administration Policy on H.R. 514 - Extending Expiring Provisions of the USA PATRIOT Improvement and Reauthorization Act of 2005 and Intelligence Reform and Terrorism Prevention Act of 2004
Attachments: SAP_on_H.R._514.pdf

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

February 8, 2011
(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 514 – Extending Expiring Provisions of the USA PATRIOT Improvement and Reauthorization Act of 2005 and Intelligence Reform and Terrorism Prevention Act of 2004
(Rep. Sensenbrenner, R-Wisconsin, and 2 cosponsors)

The Administration strongly supports extension of three critical authorities that our Nation's intelligence and law enforcement agencies need to protect our national security. These authorities, which expire as of February 28, 2011 absent extension, are: (1) section 206 of the USA PATRIOT Act, which provides authority for roving surveillance of targets who take steps that may thwart Foreign Intelligence Surveillance Act ("FISA") surveillance; (2) section 215 of the USA PATRIOT Act, which provides authority to compel production of business records and other tangible things with the approval of the FISA court; and (3) section 6001 of the Intelligence Reform and Terrorism Prevention Act, which provides authority under FISA to target non-U.S. persons who engage in international terrorism or activities in preparation therefor, but are not necessarily associated with an identified terrorist group (the so-called "lone wolf" amendment).

The Administration would strongly prefer enactment of reauthorizing legislation that would extend these authorities until December 2013. This approach would ensure appropriate congressional oversight by maintaining a sunset, but the longer duration provides the necessary certainty and predictability that our Nation's intelligence and law enforcement agencies require as they continue to protect our national security. However, the Administration does not object to H.R. 514, which, if enacted, would extend these authorities through December 8, 2011.

- [SAP_on_H.R._514.pdf](#)

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The White House · 1600 Pennsylvania Avenue, NW · Washington DC 20500 · 202-456-1111



**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503**

February 8, 2011
(House)

STATEMENT OF ADMINISTRATION POLICY

**H.R. 514 – Extending Expiring Provisions of the USA PATRIOT Improvement and
Reauthorization Act of 2005 and Intelligence Reform and Terrorism Prevention Act of
2004**

(Rep. Sensenbrenner, R-Wisconsin, and 2 cosponsors)

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The Administration would strongly prefer enactment of reauthorizing legislation that would extend these authorities until December 2013. This approach would ensure appropriate congressional oversight by maintaining a sunset, but the longer duration provides the necessary certainty and predictability that our Nation's intelligence and law enforcement agencies require as they continue to protect our national security. However, the Administration does not object to H.R. 514, which, if enacted, would extend these authorities through December 8, 2011.

* * * * *

Please provide me your comment or “no comment” on the OMB draft statement of Administration policy below by no later than **4:45 p.m. today**. Thank you and I apologize for the unreasonable time available to review this item.

D: 0.7.10659.12278

From: Fitter, E. Holly (b) (6)
Sent: Monday, February 14, 2011 3:13 PM
To: DEFENSE; DHS; Justice Lrm (SMO); DL-NSS-LRM; ODNI; STATE; TREASURY
Cc: Kosiak, Steve; McCartan, Emily M.; Peroff, Kathleen; Siclari, Mary Jo; Daniel, J. Michael; Bregman, Shannon C.; Stuart, Shannon; Brody-Waite, Brooke A.; Hire, Andrew D.; Briggs, Xavier; Haun, David J.; Boden, James; Page, Benjamin J.; Costello, Daniel J.; Sunstein, Cass R.; Hunt, Alex; Nelson, Kimberly P.; Seehra, Jasmeet; Neyland, Kevin F.; Howell, Michael; DL-WHO-WHGC-LRM; Bansal, Preeta D.; Aitken, Steven D.; Walsh, Heather V.; Kimball, Astri B. (b) (6), (7)(C); Kang, Christopher; Samuels, Jonathan D.; Eltrich, Kate; Fisher, Alyssa D.; Jukes, James J.; Burnim, John D.; Ventura, Alexandra; Bhowmik, Rachana; Sale, Dominic K.; Kadakia, Pooja; Leon, Bryan P.; Stoneman, Shelly O'Neill; Espinel, Zulima; Newman, Charles L.; Menter, Jessica; DL-OVP-LRM; Cobbina1, Kwesi A.; Neill, Allie; (b) (3), (b) (6) per ODNI; Silas, Adrien (SMO); DeWine, LeighAnne (b) (3), (b) (6) per ODNI; Agrast, Mark D. (SMO); Sandler, Kaiya (DHS)
Subject: QUICK ATTENITON NEEDED on LRM [EHF-112-15] OMB Statement of Administration Policy on S289 FISA Sunsets Extension Act of 2011 #564691832#

DEADLINE: 5:30 PM Monday, February 14, 2011

Please review and provide comments/clearance by 5:30 pm TODAY on the following draft SAP on HR 289. Thanks.

Please note that this SAP tracks the joint DOJ/ODNI letter sent on January 28th. (Attached FYL)

DRAFT -- NOT FOR RELEASE

STATEMENT OF ADMINISTRATION POLICY

S. 289 – FISA Sunsets Extension Act of 2011

(Sen. Feinstein, D-California)

(b) (5)
[Redacted text block]

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LRM ID: EHF-112-15
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

LEGISLATIVE REFERRAL MEMORANDUM

Monday, February 14, 2011

TO: Legislative Liaison Officer - See Distribution

FROM: Burnim, John (for) Assistant Director for Legislative Reference

SUBJECT: LRM [EHF-112-15] OMB Statement of Administration Policy on S289 FISA Sunsets Extension Act of 2011

OMB CONTACT: **Leon, Bryan**

E-Mail (b) (6)

PHONE (b) (6)

FAX (b)(6) per OMB

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. By the deadline above, please reply by e-mail or telephone, using the OMB Contact information above.

Please advise us if this item will affect direct spending or receipts for the purposes of the Statutory Pay-as-You-Go Act of 2010.

Thank you.

[illegible]

Any ODAG objection to submitting the draft Justice Department comment below to OMB?

1) The materials circulated to

OLP
NSD
OLC
CRM
CIV
EOUSA
FBI
DEA
NDIC
ATF
OPCL

2) OPCL (Valerie Calogero) submitted comments;

3) EOUSA, ATF, and the DEA did not respond;

4) OMB requested our comments by 5:30 p.m.;

5) The associated document is attached. There was no OLA cover sheet.

The Department of Justice has the following comment on the draft statement of Administration policy on S. 289, the "FISA Sunsets Extension Act":

We recommend editing the following sentence:

(b) (5)

along the following lines to clarify that th (b) (5):

(b) (5)

From: Fitter, E. Holly (b) (6)]

Sent: Monday, February 14, 2011 3:13 PM

To: DEFENSE; DHS; Justice Lrm (SMO); DL-NSS-LRM; ODNI; STATE; TREASURY

Cc: Kosiak, Steve; McCartan, Emily M.; Peroff, Kathleen; Siclari, Mary Jo; Daniel, J. Michael; Bregman, Shannon C.; Stuart, Shannon; Brody-Waite, Brooke A.; Hire, Andrew D.; Briggs, Xavier; Haun, David J.; Boden, James; Page, Benjamin J.; Costello, Daniel J.; Sunstein, Cass R.; Hunt, Alex; Nelson, Kimberly P.; Seehra, Jasmeet; Neyland, Kevin F.; Howell, Michael; DL-WHO-WHGC-LRM; Bansal, Preeta D.; Aitken, Steven D.; Walsh, Heather V.; Kimball, Astri B. (b) (6), (7)(C); Kang, Christopher; Samuels, Jonathan D.; Eltrich, Kate; Fisher, Alyssa D.; Jukes, James J.; Burnim, John D.; Ventura, Alexandra; Bhowmik, Rachana; Sale, Dominic K.; Kadakia, Pooja; Leon, Bryan P.; Stoneman, Shelly O'Neill; Espinel, Zulima; Newman, Charles L.; Menter, Jessica; DL-OVP-LRM; Cobbina1, Kwesi A.; Neill, Allie; (b) (3), (b) (6) per ODNI; Silas, Adrien (SMO); DeWine, LeighAnne (b) (3), (b) (6) per ODNI; Agrast, Mark D. (SMO); Sandler, Kaiya (DHS)

Subject: QUICK ATTENTION NEEDED on LRM [EHF-112-15] OMB Statement of Administration Policy on S289 FISA Sunsets Extension Act of 2011 #564691832#

DEADLINE: 5:30 PM Monday, February 14, 2011

Please review and provide comments/clearance by 5:30 pm TODAY on the following draft SAP on HR 289. Thanks.

Please note that this SAP tracks the joint DOJ/ODNI letter sent on January 28th. (Attached FYI.)

DRAFT -- NOT FOR RELEASE

STATEMENT OF ADMINISTRATION POLICY

S. 289 – FISA Sunsets Extension Act of 2011

(Sen. Feinstein, D-California)

(b) (5)

(b) (5)

[REDACTED]

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LRM ID: EHF-112-15
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

LEGISLATIVE REFERRAL MEMORANDUM
Monday, February 14, 2011

TO: Legislative Liaison Officer - See Distribution

FROM: Burnim, John (for) Assistant Director for Legislative Reference
SUBJECT: LRM [EHF-112-15] OMB Statement of Administration Policy on S289 FISA Sunsets Extension Act of 2011

OMB CONTACT: **Leon, Bryan**

E-Mail (b) (6)

PHONE (b) (6)

FAX (b)(6) per OMB

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Please advise us if this item will affect direct spending or receipts for the purposes of the Statutory Pay-as-You-Go Act of 2010.

Thank you.

Grindler, Gary (OAG)

From: Grindler, Gary (OAG)
Sent: Tuesday, February 15, 2011 6:36 PM
To: Yearwood, Henry (SMO)
Subject: FW: Breaking news on extension of FISA authorities
Attachments: Patriot Act Dear Colleague.pdf

FYI.

From: Cheung, Denise (OAG)
Sent: Tuesday, February 15, 2011 6:08 PM
To: Grindler, Gary (OAG)
Subject: FW: Breaking news on extension of FISA authorities

From: Agrast, Mark D. (SMO)
Sent: Tuesday, February 15, 2011 5:54 PM
To: Monaco, Lisa (ODAG); Baker, James A. (ODAG); Cheung, Denise (OAG); Kris, David (NSD); Wiegmann, Brad (NSD); Hinnen, Todd (NSD); Vieira, Donald (NSD) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI)
Cc: Weich, Ron (SMO); Ruppert, Mary (SMO)
Subject: Breaking news on extension of FISA authorities

The latest news on PATRIOT is not encouraging. A single senator, Sen. Rand Paul (R-KY), has blocked unanimous consent for the three-year extension we have been seeking, and Senate leaders have been unable to obtain UC even for the 10-month extension passed yesterday by the House of Representatives. As a result, the Senate is now debating and will shortly vote on a three-month extension sponsored by the majority and minority leaders.

Attached is a Dear Colleague letter which Sen. Paul circulated earlier today.

It is unclear how the House will respond, but this obviously is not the result we had been seeking. We appreciate all of your support in this effort and will continue to keep you updated.

From: Agrast, Mark D. (SMO)
Sent: Tuesday, February 08, 2011 7:18 PM
To: Monaco, Lisa (ODAG); Baker, James A. (ODAG); Cheung, Denise (OAG); Kris, David (NSD); Wiegmann, Brad (NSD); Hinnen, Todd (NSD); Vieira, Donald (NSD)
Cc: Weich, Ron (SMO); Ruppert, Mary (SMO)
Subject: House PATRIOT extension bill defeated

A few minutes ago the House narrowly failed to muster the 2/3 vote needed to pass the Sensenbrenner bill extending the expiring FISA authorities until December. The vote was 277-148, with 10 not voting. 122 Democrats and 26 Republicans voted no.

The likely next move will be for leadership to bring the bill up again under a rule, requiring only a simple majority for passage.

Mark David Agrast
Deputy Assistant Attorney General
Office of Legislative Affairs
U.S. DEPARTMENT OF JUSTICE
Robert F. Kennedy Main Justice Building
950 Pennsylvania Avenue, N.W., Room 1607
Washington, D.C. 20530-0001
202.514.2141 main (b) (6) direct | 202.514.4482 fax

Email (b) (6)

Classified (b) (6)

United States Senate

WASHINGTON, DC 20510

Dear Colleague:

James Otis argued against general warrants and writs of assistance that were issued by British soldiers without judicial review and that did not name the subject or items to be searched.

He condemned these general warrants as “the worst instrument[s] of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever w[ere] found in an English law book.” Otis objected to these writs of assistance because they “placed the liberty of every man in the hands of every petty officer.” The Fourth Amendment was intended to guarantee that only judges—not soldiers or policemen—would issue warrants. Otis’ battle against warrantless searches led to our Fourth Amendment guarantee against unreasonable government intrusion.

My main objection to the PATRIOT Act is that searches that should require a judge’s warrant are performed with a letter from an FBI agent—a National Security Letter (“NSL”).

I object to these warrantless searches being performed on United States citizens. I object to the 200,000 NSL searches that have been performed without a judge’s warrant.

I object to over 2 million searches of bank records, called Suspicious Activity Reports, performed on U.S. citizens without a judge’s warrant.

As February 28th approaches, with three provisions of the USA PATRIOT Act set to expire, it is time to re-consider this question: Do the many provisions of this bill, which were enacted in such haste after 9/11, have an actual basis in our Constitution, and are they even necessary to achieve valid law-enforcement goals?

The USA PATRIOT Act, passed in the wake of the worst act of terrorism in U.S. history, is no doubt well-intentioned. However, rather than examine what went wrong, and fix the problems, Congress instead hastily passed a long-standing wish list of power grabs like warrantless searches and roving wiretaps. The government greatly expanded its own power, ignoring obvious answers in favor of the permanent expansion of a police state.

It is not acceptable to willfully ignore the most basic provisions of our Constitution—in this case—the Fourth¹ and First² Amendments—in the name of “security.”

For example, one of the three provisions set to expire on February 28th—the “library provision,” section 215 of the PATRIOT Act—allows the government to obtain records from a person or entity by making only the minimal showing of “relevance” to an international terrorism or espionage investigation. This provision also imposes a year-long nondisclosure, or “gag” order.³ “Relevance” is a far cry from the Fourth Amendment’s requirement of probable cause. Likewise, the “roving wiretap” provision, section 206 of the PATRIOT Act, which is also scheduled to expire on the 28th, does not comply with the Fourth Amendment. This provision makes possible “John Doe roving wiretaps,” which do not require the government to name the target of the wiretap, nor to identify the specific place or facility to be monitored. This bears an uncanny resemblance to the Writs of Assistance fought against by Otis and the American colonists.

Other provisions of the PATRIOT Act previously made permanent and not scheduled to expire present even greater concerns. These include the use and abuse by the FBI of so-called National Security Letters. These secret demand letters, which allow the government to obtain financial records and other sensitive information held by Internet Service Providers, banks, credit companies, and telephone carriers—all without appropriate judicial oversight—also impose a gag order on recipients.⁴

NSL abuse has been and likely continues to be rampant. The widely-circulated 2007 report issued by the Inspector General from the Department of Justice documents “widespread and serious misuse of the FBI’s national security letter authorities. In many instances, the FBI’s misuse of national security letters violated NSL statutes, Attorney

¹ “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV.

² “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. Const. amend. I.

³ 50 U.S.C. § 1861.

⁴ Aspects of this gag order were found unconstitutional in *Doe v. Mukasey*, 549 F.3d 861 (2d Cir. 2008).

General Guidelines, or the FBI's own internal policies.”⁵ Another audit released in 2008 revealed similar abuses, including the fact that the FBI had issued inappropriate “blanket NSLs” that did not comply with FBI policy, and which allowed the FBI to obtain data on 3,860 telephone numbers by issuing only eleven “blanket NSLs.”⁶ The 2008 audit also confirmed that the FBI increasingly used NSLs to seek information on U.S. citizens. From 2003 to 2006, almost 200,000 NSL requests were issued. In 2006 alone, almost 60% of the 49,425 requests were issued specifically for investigations of U.S. citizens or legal aliens.⁷

In addition, First Amendment advocates should be concerned about an especially troubling aspect of the 2008 audit, which documented a situation in which the FBI applied to the United States Foreign Intelligence Surveillance Court (FISC) to obtain a section 215 order. The Court denied the order on First Amendment grounds. Not to be deterred, the FBI simply used an NSL to obtain the same information.⁸

A recent report released by the Electronic Frontier Foundation (“EFF”) entitled, “Patterns of Misconduct: FBI Intelligence Violations from 2001-2008,” documents further NSL abuse. EFF estimates that, based on the proportion of violations reported to the Intelligence Oversight Board and the FBI's own statements regarding NSL violations, the actual number of violations that may have occurred since 2001 could approach 40,000 violations of law, Executive Order, and other regulations.⁹

Yet another troublesome (and now permanent) provision of the PATRIOT Act is the expansion of Suspicious Activity Reports. Sections 356 and 359 expanded the types of financial institutions required to file reports under the Bank Secrecy Act. The personal and account information required by the reports is turned over to the Treasury Department and the FBI. In 2000, there were only 163,184 reports filed. By 2007, this

⁵ Glenn A. Fine, Inspector General, Dep't of Justice, Statement before the U.S. Senate, Committee on the Judiciary (March 21, 2007).

⁶ Dep't of Justice, Office of Inspector General, A Review of the FBI's Use of National Security Letters: Assessment of Corrective Actions and Examination of NSL Usage in 2006 at 127, 129-30 (Mar. 2008), available at <http://www.justice.gov/oig/special/s0803b/final.pdf> [hereinafter 2008 NSL Report].

⁷ 2008 NSL Report at 109-11.

⁸ Dep't of Justice, Office of Inspector General, A Review of the FBI's Use of Section 215 Orders for Business Records in 2006 at 68-73 (Mar. 2008), available at <http://www.usdoj.gov/oig/special/s0803a/final.pdf>.

⁹ Electronic Frontier Foundation, *Patterns of Misconduct: FBI Intelligence Violations from 2001-2008*, January 2011, available at https://www.eff.org/files/EFF%20IOB%20Report_0.pdf.

had increased to 1,250,439.¹⁰ Again, as with NSLs, there is a complete lack of judicial oversight for SARs.

Finally, I wish to remind my colleagues that one of the many ironies of the rush to advance the PATRIOT Act following 9/11 is the well-documented fact that FBI incompetence caused the failure to search the computer of the alleged 20th hijacker, Zacarias Moussaoui. As FBI agent Coleen Rowley stated, “the FBI headquarters supervisory special agent handling the Moussaoui case ‘seemed to have been consistently almost deliberately thwarting the Minneapolis FBI agents’ efforts’” to meet the FISA standard for a search warrant,¹¹ and therefore no request was ever made for a warrant. Why, then, was the FBI rewarded with such expansive new powers in the aftermath of this institutional failure?

In the words of former Senator Russ Feingold, the only “no” vote against the original version of the PATRIOT Act,

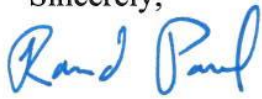
“[T]here is no doubt that if we lived in a police state, it would be easier to catch terrorists. If we lived in a country that allowed the police to search your home at any time for any reason; if we lived in a country that allowed the government to open your mail, eavesdrop on your phone conversations, or intercept your email communications; if we lived in a country that allowed the government to hold people in jail indefinitely based on what they write or think, or based on mere suspicion that they are up to no good, then the government would no doubt discover and arrest more terrorists. But that probably would not be a country in which we would want to live. And that would not be a country for which we could, in good conscience, ask our young people to fight and die. In short, that would not be America.”

¹⁰ See Dep’t of the Treasury, Financial Crimes Enforcement Network, The SAR Activity Review – By the Numbers, Issue 10 (May 2008), *available at* http://www.fincen.gov/news_room/rp/files/sar_by_numb_10.pdf.

¹¹ James Bovard, *Moussaoui Myths*, Washington Times, September 6, 2003.

I call upon each of my Senate colleagues to seriously consider whether the time has come to re-evaluate many—if not all—provisions of the PATRIOT Act. Our oath to uphold the Constitution demands it.

Sincerely,

A handwritten signature in blue ink that reads "Rand Paul". The signature is written in a cursive, flowing style.

Rand Paul, M.D.
United States Senator

From: Silas, Adrian (SMO)
Sent: Friday, February 18, 2011 1:29 PM
To: Burrows, Charlotte (SMO); Columbus, Eric (ODAG); Baker, James A. (ODAG); Chipman, Jason (SMO); O'Neil, David (ODAG); Smith, Brad (ODAG)
Cc: Ruppert, Mary (SMO); Simpson, Tammi (OLA); Agrast, Mark D. (SMO); Monaco, Lisa (ODAG); Richardson, Margaret (SMO); Cheung, Denise (OAG); Davis, Valorie A (SMO); Hemmick, Theresa (SMO); Jackson, Wykema C (SMO); Matthews, Matrina (OLP (b)(6) per NSD (NSD); NSD LRM Mailbox (NSD (b)(6) per NSD (NSD)); Bies, John; Cedarbaum, Jonathan (SMO); Dunbar, Kelly P. (SMO); Forrester, Nate (SMO); Price, Zachary (SMO); Rodriguez, Cristina M. (SMO); Thompson, Karl (SMO); Hendley, Scott (CRM); Jones, Gregory M. (CRM); Lofton, Betty (CRM); Morales, Michelle (CRM); Opl, Legislation (CRM); Wroblewski, Jonathan (CRM); Bollerman, Kerry A. (CIV); Mayer, Michael (CIV); USAEO-Legislative (USA (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (b)(6), (7)(C) per FBI (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US); Strait, Matthew J. (DEA-US); (NDIC (b)(6), (b)(7)(C), (b)(7)(F) per DEA (NDIC (b)(6) per ATF (ATF); (b)(6) per ATF (ATF (b)(6) per ATF . (ATF (b)(6) per ATF (ATF); (b)(6) per ATF (ATF); Calogero, Valerie P. (SMO); Chung, Joo (SMO); Libin, Nancy C. (ODAG); Moncada, Kirsten J (SMO)

Subject: HR514, FISA Sunsets Extension - Enrolled Bill (Control -25799)
Attachments: HR514control.pdf; BILLS-112hr514eas.pdf; FISA37.let.doc

Any ODAG objection to submitting the attached draft enrolled bill views letter to OMB?

1) The materials circulated to

OLP
NSD
OLC
CRM
CIV
EOUSA
FBI
DEA
NDIC
ATF
OPCL

2) NSD (b)(6) per NSD) submitted comments;

3) EOUSA did not respond;

4) OMB requested our response by 3:30 p.m.;

5) I have attached the associated documents.

In the Senate of the United States,

February 15, 2011.

Resolved, That the bill from the House of Representatives (H.R. 514) entitled “An Act to extend expiring provisions of the USA PATRIOT Improvement and Reauthorization Act of 2005 and Intelligence Reform and Terrorism Prevention Act of 2004 relating to access to business records, individual terrorists as agents of foreign powers, and roving wiretaps until December 8, 2011.”, do pass with the following

AMENDMENT:

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “FISA Sunsets Exten-
3 sion Act of 2011”.

1 **SEC. 2. EXTENSION OF SUNSETS OF PROVISIONS RELATING**
2 **TO ACCESS TO BUSINESS RECORDS, INDI-**
3 **VIDUAL TERRORISTS AS AGENTS OF FOR-**
4 **EIGN POWERS, AND ROVING WIRETAPS.**

5 (a) USA PATRIOT IMPROVEMENT AND REAUTHOR-
6 IZATION ACT OF 2005.—Section 102(b)(1) of the USA
7 PATRIOT Improvement and Reauthorization Act of 2005
8 (Public Law 109–177; 50 U.S.C. 1805 note, 50 U.S.C.
9 1861 note, and 50 U.S.C. 1862 note) is amended by strik-
10 ing “February 28, 2011” and inserting “May 27, 2011”.

11 (b) INTELLIGENCE REFORM AND TERRORISM PRE-
12 VENTION ACT OF 2004.—Section 6001(b)(1) of the Intel-
13 ligence Reform and Terrorism Prevention Act of 2004
14 (Public Law 108–458; 118 Stat. 3742; 50 U.S.C. 1801
15 note) is amended by striking “February 28, 2011” and
16 inserting “May 27, 2011”.

Attest:

Secretary.

112TH CONGRESS
1ST SESSION

H.R. 514

AMENDMENT

Chipman, Jason (SMO)

From: Chipman, Jason (SMO)
Sent: Friday, February 18, 2011 4:25 PM
To: Silas, Adrien (SMO); Burrows, Charlotte (SMO); Baker, James A. (ODAG); Goldberg, Stuart (ODAG); Columbus, Eric (ODAG); O'Neil, David (ODAG); Monaco, Lisa (ODAG)
Subject: Re: HR514, FISA Sunsets Extension - Enrolled Bill (Control -25799)

Yes

From: Silas, Adrien (SMO)
Sent: Friday, February 18, 2011 03:53 PM
To: Chipman, Jason (SMO); Burrows, Charlotte (SMO); Baker, James A. (ODAG); Goldberg, Stuart (ODAG); Columbus, Eric (ODAG); O'Neil, David (ODAG); Monaco, Lisa (ODAG)
Subject: FW: HR514, FISA Sunsets Extension - Enrolled Bill (Control -25799)

Do we have ODAG clearance?

From: Chipman, Jason (SMO)
Sent: Friday, February 18, 2011 3:47 PM
To: Silas, Adrien (SMO); Burrows, Charlotte (SMO); Baker, James A. (ODAG)
Cc: Goldberg, Stuart (ODAG); Columbus, Eric (ODAG); O'Neil, David (ODAG); Monaco, Lisa (ODAG)
Subject: RE: HR514, FISA Sunsets Extension - Enrolled Bill (Control -25799)

Thanks. I think this looks fine.

Lisa, Dave and Jim: This is just the DOJ views for OMB Director stating that we support the FISA Sunset Extension.

From: Silas, Adrien (SMO)
Sent: Friday, February 18, 2011 3:33 PM
To: Burrows, Charlotte (SMO); Baker, James A. (ODAG)
Cc: Goldberg, Stuart (ODAG); Columbus, Eric (ODAG); Chipman, Jason (SMO)
Subject: FW: HR514, FISA Sunsets Extension - Enrolled Bill (Control -25799)
Importance: High

This one is becoming urgent. Any progress on ODAG clearance?

From: Silas, Adrien (SMO)
Sent: Friday, February 18, 2011 1:38 PM
To: Burrows, Charlotte (SMO)
Cc: Baker, James A. (ODAG); Goldberg, Stuart (ODAG); Columbus, Eric (ODAG); Chipman, Jason (SMO); Simpson, Tammi (OLA); Ruppert, Mary (SMO); Agrast, Mark D. (SMO)
Subject: FW: HR514, FISA Sunsets Extension - Enrolled Bill (Control -25799)

F.Y.I., I have updated the name of the OMB director (to Jacob Lew) in the letter.

From: Burrows, Charlotte (SMO)

Sent: Friday, February 18, 2011 1:33 PM

To: Baker, James A. (ODAG)

Cc: Goldberg, Stuart (ODAG); Columbus, Eric (ODAG); Chipman, Jason (SMO); Silas, Adrien (SMO)

Subject: FW: HR514, FISA Sunsets Extension - Enrolled Bill (Control -25799)

Jim-- Attached and pasted below is DOJ's draft views letter on the enrolled bill, the FISA Sunset extension Act. OMB would like clearance by 3:30. Please let us know your thoughts. Cc'g Jason also. Many thanks,
C

(b) (5)

From: Silas, Adrien (SMO)

Sent: Friday, February 18, 2011 1:29 PM

To: Burrows, Charlotte (SMO); Columbus, Eric (ODAG); Baker, James A. (ODAG); Chipman, Jason (SMO); O'Neil, David (ODAG); Smith, Brad (ODAG)

Cc: Ruppert, Mary (SMO); Simpson, Tammi (OLA); Agrast, Mark D. (SMO); Monaco, Lisa (ODAG); Richardson, Margaret (SMO); Cheung, Denise (OAG); Davis, Valorie A (SMO); Hemmick, Theresa (SMO); Jackson, Wykema C (SMO); Matthews, Matrina (OLP) (b)(6) per NSD (NSD); NSD LRM Mailbox (NSD) (b)(6) per NSD (NSD); Bies, John; Cedarbaum,

(S) Jonathan (SMO); Dunbar, Kelly P. (SMO); Forrester, Nate (SMO); Price, Zachary (SMO); Rodriguez, Cristina M. (SMO); Thompson, Karl (SMO); Hendley, Scott (CRM); Jones, Gregory M. (CRM); Lofton, Betty (CRM); Morales, Michelle (CRM); Opl, Legislation (CRM); Wroblewski, Jonathan (CRM); Bollerman, Kerry A. (CIV); Mayer, Michael (CIV); USAEO-Legislative (USA) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (DEA-US) (b)(6), (7)(C), (b)(7)(F) per DEA (DEA-US) (b)(6), (7)(C), (b)(7)(F) per DEA (DEA-US) (b)(6), (7)(C), (b)(7)(F) per DEA (DEA-US) (b)(6), (7)(C), (b)(7)(F) per DEA (DEA-US) (b)(6), (7)(C), (b)(7)(F) per DEA (DEA-US) (b)(6), (7)(C), (b)(7)(F) per DEA (DEA-US) (b)(6), (7)(C), (b)(7)(F) per DE (NDIC) (b)(6), (7)(C), (b)(7)(F) per DEA (NDIC) (b)(6) per ATF (ATF); (b)(6) per ATF (ATF) (b)(6) per ATF (ATF) (b)(6) per ATF (ATF) (b)(6) per ATF (ATF) (b)(6) per ATF (ATF); Calogero, Valerie P. (SMO); Chung, Joo (SMO); Libin, Nancy C. (ODAG); Moncada, Kirsten J (SMO)

Any ODAG objection to submitting the attached draft enrolled bill views letter to OMB?

1) The materials circulated to

OLP

NSD

OLC

CRM

CIV

EOUSA

FBI

DEA

NDIC

ATF

OPCL

2) NSD (b)(6) per NSD) submitted comments;

3) EOUSA did not respond;

4) OMB requested our response by 3:30 p.m.;

5) I have attached the associated documents.

<< File: HR514control.pdf >> << File: BILLS-112hr514eas.pdf >> << File: FISA37.let.doc >>

Monaco, Lisa (ODAG)

From: Monaco, Lisa (ODAG)
Sent: Wednesday, February 23, 2011 10:00 PM
To: Cheung, Denise (OAG); Delery, Stuart F. (OAG); O'Neil, David (ODAG); Baker, James A. (ODAG); Chipman, Jason (SMO)
Subject: FW: IMMEDIATE ATTENTION: PATRIOT Letter - Comments due by 3PM Wednesday
Attachments: DOJ letter to Leahy re S. 193 (112th Cong.) 02222011 (3).docx

This is what I'm referring to – FBI has told OL (b)(5) per FBI

From: Agrast, Mark D. (SMO)
Sent: Wednesday, February 23, 2011 9:39 PM
To: Wiegmann, Brad (NSD); Hinnen, Todd (NSD); Vieira, Donald (NSD); Nelson, Brian (NSD) (b)(6), (7)(C) per FBI (FBI); (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI)
Cc: Monaco, Lisa (ODAG); Baker, James A. (ODAG); Weich, Ron (SMO); Ruppert, Mary (SMO); Silas, Adrien (SMO); Kris, David (NSD)
Subject: RE: IMMEDIATE ATTENTION: PATRIOT Letter - Comments due by 3PM Wednesday

Thanks for these edits. If there are no other changes, does ODAG clear?

Mark

From: Wiegmann, Brad (NSD)
Sent: Wednesday, February 23, 2011 2:20 PM
To: Agrast, Mark D. (SMO); Hinnen, Todd (NSD); Vieira, Donald (NSD); Nelson, Brian (NSD) (b)(6), (7)(C) per FBI (FBI); (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI)
Cc: Monaco, Lisa (ODAG); Baker, James A. (ODAG); Weich, Ron (SMO); Ruppert, Mary (SMO); Silas, Adrien (SMO); Kris, David (NSD)
Subject: RE: IMMEDIATE ATTENTION: PATRIOT Letter - Comments due by 3PM Wednesday

<< File: DOJ letter to Leahy re S. 193 (112th Cong.) 02222011 (3).docx >>

See a few suggested edits.

From: Agrast, Mark D. (SMO)
Sent: Tuesday, February 22, 2011 9:52 PM
To: Wiegmann, Brad (NSD); Hinnen, Todd (NSD); Vieira, Donald (NSD); Nelson, Brian (NSD) (b)(6), (7)(C) per FBI (FBI); (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI)
Cc: Monaco, Lisa (ODAG); Baker, James A. (ODAG); Weich, Ron (SMO); Ruppert, Mary (SMO); Silas, Adrien (SMO)
Subject: IMMEDIATE ATTENTION: PATRIOT Letter - Comments due by 3PM Wednesday
Importance: High

NSD, FBI,

Attached for your review is a draft letter expressing the Department's support for S. 193 (Leahy). Please provide comments/edits by 3PM tomorrow. The White House would like this letter to go out on Friday, in advance of David's Feb. 28 briefings before the Judiciary Committees, so we will need ODAG approval to circulate it to them and to ODNI not later than COB tomorrow.

With thanks,

Mark

<< File: DOJ letter to Leahy re S. 193 (112th Cong.) 02222011 (3).docx >>

Mark David Agrast
Deputy Assistant Attorney General
Office of Legislative Affairs
U.S. DEPARTMENT OF JUSTICE
Robert F. Kennedy Main Justice Building
950 Pennsylvania Avenue, N.W., Room 1607
Washington, D.C. 20530-0001
202.514.2141 main (b) (6) direct | 202.514.4482 fax

Email (b) (6)

Classified (b) (6)

From: Clifton, Deborah J (SMO)
Sent: Thursday, March 3, 2011 10:44 AM
To: Davis, Valorie A (SMO); Hemmick, Theresa (SMO); Jackson, Wykema C (SMO); Matthews, Matrina (OLP (b)(6) per NSD (NSD); NSD LRM Mailbox (NSD); (b)(6) per NSD (NSD); Bies, John; Cedarbaum, Jonathan (SMO); Dunbar, Kelly P. (SMO); Forrester, Nate (SMO); Price, Zachary (SMO); Rodriguez, Cristina M. (SMO); Thompson, Karl (SMO); Bollerman, Kerry A. (CIV); Mayer, Michael (CIV); Hendley, Scott (CRM); Jones, Gregory M. (CRM); Lofton, Betty (CRM); Morales, Michelle (CRM); Opl, Legislation (CRM); Wroblewski, Jonathan (CRM); USAEO-Legislative (USA (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (b)(6), (7)(C) per FBI (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US); (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA; (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US); Strait, Matthew J. (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA (NDIC); (b)(6), (b)(7)(C), (b)(7)(F) per DEA (NDIC (b)(6) per ATF . (ATF (b)(6) per ATF (ATF); (b)(6) per ATF (ATF (b)(6) per ATF (ATF (b)(6) per ATF . (ATF); Calogero, Valerie P. (SMO); Chung, Joo (SMO); Libin, Nancy C. (ODAG); Moncada, Kirsten J (SMO)

Cc: Richardson, Margaret (SMO); Cheung, Denise (OAG); Monaco, Lisa (ODAG); Baker, James A. (ODAG); Chipman, Jason (SMO); O'Neil, David (ODAG); Smith, Brad (ODAG); Burrows, Charlotte (SMO); Columbus, Eric (ODAG); Adiga, Mala (SMO); Greenfeld, Helaine (SMO); Gunn, Currie (SMO); Hauck, Brian (SMO); Hirsch, Sam (SMO); Leff, Deborah (SMO); Overmann, Lynn (SMO); Agrast, Mark D. (SMO); Ruppert, Mary (SMO); Silas, Adrien (SMO)

Subject: NSD Hinen draft testimony for a 03-09-11 hearing re USA PATRIOT Act Reauthorization

Attachments: fisa38A.doc; FISA38B.doc.docx; H9control.pdf

PLEASE PROVIDE COMMENTS TO ADRIEN SILAS, OLA, NO LATER THAN 3:30 pm 03/03/11.

From: Clifton, Deborah J (SMO)
Sent: Friday, March 4, 2011 9:35 AM
To: Davis, Valorie A (SMO); Hemmick, Theresa (SMO); Jackson, Wykema C (SMO); Matthews, Matrina (OLP (b)(6) per NSD (NSD); NSD LRM Mailbox (NSD (b)(6) per NSD (NSD); Calogero, Valerie P. (SMO); Chung, Joo (SMO); Libin, Nancy C. (ODAG); Moncada, Kirsten J (SMO); Bies, John; Cedarbaum, Jonathan (SMO); Dunbar, Kelly P. (SMO); Forrester, Nate (SMO); Price, Zachary (SMO); Rodriguez, Cristina M. (SMO); Thompson, Karl (SMO); Bollerman, Kerry A. (CIV); Mayer, Michael (CIV); Hendley, Scott (CRM); Jones, Gregory M. (CRM); Lofton, Betty (CRM); Morales, Michelle (CRM); Opl, Legislation (CRM); Wroblewski, Jonathan (CRM); USAEO-Legislative (USA (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI); (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (FBI (b)(6), (7)(C) per FBI (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US (b)(6), (b)(7)(C), (b)(7)(F) per DEA (NDIC (b)(6), (b)(7)(C), (b)(7)(F) per DEA (NDIC); (b)(6) per ATF (ATF (b)(6) per ATF (ATF (b)(6) per ATF (ATF (b)(6) per ATF (ATF (b)(6) per ATF (ATF))
Cc: Cheung, Denise (OAG); Baker, James A. (ODAG); Chipman, Jason (SMO); O'Neil, David (ODAG); Smith, Brad (ODAG); Richardson, Margaret (SMO); Wilkinson, Monty (OAG); Monaco, Lisa (ODAG); Burrows, Charlotte (SMO); Columbus, Eric (ODAG); Adiga, Mala (SMO); Greenfeld, Helaine (SMO); Gunn, Currie (SMO); Hauck, Brian (SMO); Hirsch, Sam (SMO); Leff, Deborah (SMO); Overmann, Lynn (SMO); Agrast, Mark D. (SMO); Ruppert, Mary (SMO); Silas, Adrien (SMO); Taylor, Velma (SMO)
Subject: (OLA WF101828)FW: DUE 3PM MAR 4 -- LRM [BL-112-29] ODNI Testimony on USA PATRIOT Act Reauthorization #566006710#
Attachments: Draft Litt Written Statement for HJC 3-9-11 hrg (for OMB Clearance).docx; BL112-29control.doc
Importance: High

**PLEASE PROVIDE COMMENTS TO VELMA TAYLOR, OLA,
NO LATER THAN 1 pm 03/04/11.**

From: Leon, Bryan (b) (6)

Sent: Thursday, March 03, 2011 6:06:11 PM

To: DEFENSE; DHS; Justice Lrm (SMO); DL-NSS-LRM; ODNI; STATE; TREASURY

Cc: Kosiak, Steve; McCartan, Emily M.; Peroff, Kathleen; Siclari, Mary Jo; Daniel, J. Michael; Bregman, Shannon C.; Stuart, Shannon; Brody-Waite, Brooke A.; Hire, Andrew D.; Briggs, Xavier; Haun, David J.; Boden, James; Page, Benjamin J.; Costello, Daniel J.; Sunstein, Cass R.; Hunt, Alex; Nelson, Kimberly P.; Seehra, Jasmeet; Neyland, Kevin F.; DL-WHO-WHGC-LRM; Bansal, Preeti D.; Aitken, Steven D.; Walsh, Heather V.; Cobbina, Awenate (b)(6), (7)(C) per FBI; Kang, Christopher; Samuels, Jonathan D.; Stoneman, Shelly O'Neill; Eltrich, Kate; Fisher, Alyssa D.; Jukes, James J.; Burnim, John D.; Ventura, Alexandra; Sale, Dominic K.; Kadakia, Pooja; Leon, Bryan P.; Espinel, Zulima; Newman, Charles L.; Menter, Jessica; DL-OVP-LRM; Kimball, Astri B.; Leon, Bryan P.; Bhowmik, Rachana

Subject: DUE 3PM MAR 4 -- LRM [BL-112-29] ODNI Testimony on USA PATRIOT Act Reauthorization #566006710#

Importance: High

Auto forwarded by a Rule

DEADLINE: 3:00 Friday, March 04, 2011

By the deadline above, please review and provide edits/clearance on the attached ODNI (Litt) statement on Reauthorizing the USA PATRIOT Act.

This statement will be used for a House Judiciary Committee subcommittee on Crime, Terrorism, and Homeland Security hearing on March 9.

Please advise this office as soon as possible, if your agency is also testifying for this hearing. Thanks.

LRM ID: BL-112-29

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

LEGISLATIVE REFERRAL MEMORANDUM
Thursday, March 03, 2011

TO: Legislative Liaison Officer - See Distribution

FROM: Burnim, John (for) Assistant Director for Legislative Reference
SUBJECT: LRM [BL-112-29] ODNI Testimony on USA PATRIOT Act Reauthorization

OMB CONTACT: **Leon, Bryan**

E-Mail (b) (6)

PHONE (b) (6)

FAX (b)(6) per OMB

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before

advising on its relationship to the program of the President. By the deadline above, please reply by e-mail or telephone, using the OMB Contact information above.

Please advise us if this item will affect direct spending or receipts for the purposes of the Statutory Pay-as-You-Go Act of 2010.

Thank you.

Burrows, Charlotte (SMO)

From: Burrows, Charlotte (SMO)
Sent: Friday, March 4, 2011 12:15 PM
To: Agrast, Mark D. (SMO); Silas, Adrien (SMO); Baker, James A. (ODAG); Chipman, Jason (SMO); Columbus, Eric (ODAG); Levine, Doug (SMO)
Cc: Ruppert, Mary (SMO); Smith, Brad (ODAG); O'Neil, David (ODAG)
Subject: RE: H9, USA PATRIOT Reauth - NSD Tstmny (Control -25808)
Attachments: FISA38B.doc.docx

Lisa is out of the building and will not be able to review in that timeframe. Jim/Jason—What's the earliest you could get to this? Alternatively, given that this largely tracks testimony NSD gave in the past, is this something that David or Brad could review? Thanks.

From: Agrast, Mark D. (SMO)
Sent: Friday, March 04, 2011 12:05 PM
To: Burrows, Charlotte (SMO); Silas, Adrien (SMO); Baker, James A. (ODAG); Chipman, Jason (SMO); Columbus, Eric (ODAG); Levine, Doug (SMO)
Cc: Ruppert, Mary (SMO)
Subject: RE: H9, USA PATRIOT Reauth - NSD Tstmny (Control -25808)

Can we aim to have this ODAG-cleared by 1:00? We should also let her know that this testimony does not break new ground; it closely mirrors cleared testimony we have given on previous occasions.

From: Burrows, Charlotte (SMO)
Sent: Friday, March 04, 2011 12:00 PM
To: Agrast, Mark D. (SMO); Silas, Adrien (SMO); Baker, James A. (ODAG); Chipman, Jason (SMO); Columbus, Eric (ODAG); Levine, Doug (SMO)
Cc: Ruppert, Mary (SMO)
Subject: Re: H9, USA PATRIOT Reauth - NSD Tstmny (Control -25808)

Will check.

From: Agrast, Mark D. (SMO)
Sent: Friday, March 04, 2011 11:54 AM
To: Silas, Adrien (SMO); Baker, James A. (ODAG); Burrows, Charlotte (SMO); Chipman, Jason (SMO); Columbus, Eric (ODAG); Levine, Doug (SMO)
Cc: Ruppert, Mary (SMO)
Subject: RE: H9, USA PATRIOT Reauth - NSD Tstmny (Control -25808)

Shall we see whether Lisa can look it over? It really has to get to OMB by early afternoon if we're to have any hope of clearing it in time.

From: Silas, Adrien (SMO)
Sent: Friday, March 04, 2011 11:40 AM
To: Baker, James A. (ODAG); Burrows, Charlotte (SMO); Chipman, Jason (SMO); Columbus, Eric (ODAG); Levine, Doug (SMO)
Cc: Ruppert, Mary (SMO); Agrast, Mark D. (SMO)
Subject: FW: H9, USA PATRIOT Reauth - NSD Tstmny (Control -25808)

Adding Doug Levine.

From: Baker, James A. (ODAG)
Sent: Friday, March 04, 2011 11:39 AM
To: Burrows, Charlotte (SMO); Chipman, Jason (SMO)
Cc: Silas, Adrien (SMO); Columbus, Eric (ODAG)
Subject: RE: H9, USA PATRIOT Reauth - NSD Tstmny (Control -25808)

I will try as soon as possible but it may not be until later. Both Jason and I are involved in multiple issues this morning. Thanks.

From: Burrows, Charlotte (SMO)
Sent: Friday, March 04, 2011 11:38 AM
To: Baker, James A. (ODAG); Chipman, Jason (SMO)
Cc: Silas, Adrien (SMO); Columbus, Eric (ODAG)
Subject: Fw: H9, USA PATRIOT Reauth - NSD Tstmny (Control -25808)
Importance: High

Jim and Jason-- can you review Todd's Patriot Act testimony? It needs to go as early as possible today.

From: Silas, Adrienne (SMO)
Sent: Friday, March 04, 2011 11:23 AM
To: Burrows, Charlotte (SMO); Columbus, Eric (ODAG); Baker, James A. (ODAG); Chipman, Jason (SMO); O'Neil, David (ODAG); Smith, Brad (ODAG)
Cc: Wiegmann, Brad (NSD); Coleman, Kathleen (CRM); Levine, Doug (SMO); Ruppert, Mary (SMO); Agrast, Mark D. (SMO); Monaco, Lisa (ODAG); Richardson, Margaret (SMO); Cheung, Denise (OAG); Davis, Valorie A (SMO); Hemmick, Theresa (SMO); Jackson, Wykema C (SMO); Matthews, Matriona (OLP) (b)(6) per NSD (NSD); NSD LRM Mailbox (NSD); (b)(6) per NSD (NSD); Bies, John; Cedarbaum, Jonathan (SMO); Dunbar, Kelly P. (SMO); Forrester, Nate (SMO); Price, Zachary (SMO); Rodriguez, Cristina M. (SMO); Thompson, Karl (SMO); Bollerman, Kerry A. (CIV); Mayer, Michael (CIV); Hendley, Scott (CRM); Jones, Gregory M. (CRM); Lofton, Betty (CRM); Morales, Michelle (CRM); Opl, Legislation (CRM); Wroblewski, Jonathan (CRM); USAEO-Legislative (USA) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (FBI) (b)(6), (7)(C) per FBI (DEA-US) (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US) (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US) (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US) (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US) (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US) (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US) (b)(6), (b)(7)(C), (b)(7)(F) per DEA (NDIC); (b)(6), (b)(7)(C), (b)(7)(F) per DEA (NDIC) (b)(6) per ATF (ATF) (b)(6) per ATF (ATF) (b)(6) per ATF (ATF) (b)(6) per ATF (ATF). (ATF) (b)(6) per ATF (ATF); Calogero, Valerie P. (SMO); Chung, Joo (SMO); Libin, Nancy C. (ODAG); Moncada, Kirsten J (SMO); Leff, Deborah (SMO); Overmann, Lynn (SMO)

Subject: H9, USA PATRIOT Reauth - NSD Tstmny (Control -25808)

Any ODAG objection to submitting the attached draft NSD testimony to OMB for clearance? As noted below, *We need to submit the statement to OMB as quickly as possible this morning because, as noted above, the hearing is scheduled for Wednesday, March 9, 2011, and the Committee's deadline for receiving the statement is Monday.* (Please **copy Doug Levine** of OLA on the e-mail traffic.)

1) The materials circulated to

OLP

NSD

OLC

CIV

CRM

EOUSA

FBI

DEA

NDIC

ATF

OPCL

ATJ (Access to Justice)

2) OLP (Baker), OLC (Zachary Price), CRM (Kathleen Coleman), and OLA (Mark Agrast and Mary Ruppert) submitted comments;

3) EOUSA and ATF did not respond;

4) We need to submit the statement to OMB as quickly as possible this morning because, as noted above, the hearing is scheduled for Wednesday, March 9, 2011, and the Committee's deadline for receiving the statement is Monday;

5) I have attached the associated files.

<<H9control.pdf>> <<fisa38A.doc>> <<FISA38B.doc.docx>>

Burrows, Charlotte (SMO)

From: Burrows, Charlotte (SMO)
Sent: Friday, March 4, 2011 2:11 PM
To: Burrows, Charlotte (SMO); Silas, Adrien (SMO); Agrast, Mark D. (SMO)
Cc: Columbus, Eric (ODAG); Chipman, Jason (SMO); Baker, James A. (ODAG); Richardson, Margaret (SMO); Delery, Stuart F. (OAG); O'Neil, David (ODAG); Cheung, Denise (OAG)
Subject: RE: H9, USA PATRIOT Reauth - NSD Tstmny (Control -25808)
Attachments: FISA38B doc (3). OAG cleared.docx

Sorry. Here's the correct attachment. Typing too fast.

From: Burrows, Charlotte (SMO)
Sent: Friday, March 04, 2011 2:09 PM
To: Silas, Adrien (SMO); Agrast, Mark D. (SMO)
Cc: Columbus, Eric (ODAG); Chipman, Jason (SMO); Baker, James A. (ODAG); Richardson, Margaret (SMO); Delery, Stuart F. (OAG); O'Neil, David (ODAG); Cheung, Denise (OAG)
Subject: RE: H9, USA PATRIOT Reauth - NSD Tstmny (Control -25808)

Adrien—Just spoke to Denise, and she has cleared, but caught a few nits. One is fixed in this red-line. The other two: below, I couldn't see on screen, but pls check the formatting when you print:

On page 2, the comma indicated in the attached seems to be underlined. That should be removed.

On the top of page 4 (or the bottom of 3 if you're reading on screen), there seem to be 2 periods after this sentence:

(b) (5)

From: Cheung, Denise (OAG)
Sent: Friday, March 04, 2011 1:39 PM
To: Burrows, Charlotte (SMO)
Cc: Columbus, Eric (ODAG); Chipman, Jason (SMO); Baker, James A. (ODAG); Agrast, Mark D. (SMO); Richardson, Margaret (SMO); Delery, Stuart F. (OAG); O'Neil, David (ODAG)
Subject: Re: H9, USA PATRIOT Reauth - NSD Tstmny (Control -25808)

Has ODAG weighed in? It seems fine to me.

From: Burrows, Charlotte (SMO)
Sent: Friday, March 04, 2011 01:21 PM
To: Cheung, Denise (OAG)
Cc: Columbus, Eric (ODAG); Chipman, Jason (SMO); Baker, James A. (ODAG); Agrast, Mark D. (SMO); Richardson, Margaret (SMO)
Subject: FW: H9, USA PATRIOT Reauth - NSD Tstmny (Control -25808)

Denise, Sorry to impose, but we're in a bit of a jam on Todds' Patriot Act testimony. We need to get it cleared asap to go to OMB in time to give to the Hill Monday—but our nat sec experts are out of pocket. Any chance you or someone else could review? It's very short and I understand from Mark Agrast that it does not break new ground.

2) OLP (Baker), OLC (Zachary Price), CRM (Kathleen Coleman), and OLA (Mark Agrast and Mary Ruppert) submitted comments;

3) EOUSA and ATF did not respond;

4) We need to submit the statement to OMB as quickly as possible this morning because, as noted above, the hearing is scheduled for Wednesday, March 9, 2011, and the Committee's deadline for receiving the statement is Monday;

5) I have attached the associated files.

<<H9control.pdf>> <<fisa38A.doc>> <<FISA38B.doc.docx>>

Silas, Adrien (SMO)

From: Silas, Adrien (SMO)
Sent: Monday, March 7, 2011 5:27 PM
To: Burrows, Charlotte (SMO); Columbus, Eric (ODAG); Baker, James A. (ODAG); Chipman, Jason (SMO); O'Neil, David (ODAG); Smith, Brad (ODAG)
Cc: Wiegmann, Brad (NSD); Ruppert, Mary (SMO); Agrast, Mark D. (SMO (b)(6) per NSD (NSD); NSD LRM Mailbox (NSD (b)(6) per NSD (NSD); Bies, John; Cedarbaum, Jonathan (SMO); Dunbar, Kelly P. (SMO); Forrester, Nate (SMO); Price, Zachary (SMO); Rodriguez, Cristina M. (SMO); Thompson, Karl (SMO)
Subject: H9, USA PATRIOT Reauth - ODNI Tstmny (OLA Wkflow 101828)
Attachments: Draft_Litt_Written_PASSBACK (7 March).docx
Importance: High

Burrows, Charlotte (SMO)

From: Burrows, Charlotte (SMO)
Sent: Thursday, March 10, 2011 10:02 AM
To: Smith, Brad (ODAG); O'Neil, David (ODAG); Bonilla, Armando (ODAG); Adkins, Robb (SMO); Johnston, Deborah A. (ODAG); Temple Claggett, Karyn (SMO); Baker, James A. (ODAG); Chipman, Jason (SMO); Hakes, Francey (ODAG); Hertz, Jessica (ODAG)
Cc: Columbus, Eric (ODAG); Levine, Doug (SMO); Monaco, Lisa (ODAG)
Subject: FW: (OLA WF101869) FBI Mueller draft testimony for a 03/16/11 hearing re Oversight of the FBI
Attachments: FBI (Mueller) testimony for March 16 2011 HJC hearin (b)(5) per FBI

All—I just took a closer look at this, and note that Mueller's testimony include (b)(5) per FBI. Could you review and send me and Eric and **edits as soon as possible, but no later than early afternoon**. Copying Doug in OLA in case he has more info on timing. Thanks very much.

C

From: Burrows, Charlotte (SMO)
Sent: Thursday, March 10, 2011 9:46 AM
To: O'Neil, David (ODAG); Smith, Brad (ODAG)
Cc: Columbus, Eric (ODAG); Levine, Doug (SMO); Monaco, Lisa (ODAG)
Subject: Fw: (OLA WF101869) FBI Mueller draft testimony for a 03/16/11 hearing re Oversight of the FBI

David and Brad, could you clear the attached Mueller testimony by early afternoon? It's due Monday.

From: Levine, Doug (SMO)
Sent: Thursday, March 10, 2011 09:43 AM
To: Columbus, Eric (ODAG); Burrows, Charlotte (SMO)
Cc: Agrast, Mark D. (SMO); Ruppert, Mary (SMO)
Subject: FW: (OLA WF101869) FBI Mueller draft testimony for a 03/16/11 hearing re Oversight of the FBI

Eric and Charli, can you review Director Mueller's statement for the record for next Wednesday's House Judiciary Committee oversight hearing? It's due to the HJC on Monday, and I'm hoping to get it to OMB by very early this afternoon. It was reviewed by ATE, CIV, CRM, DEA, EOUSA, JMD, NDIC, OCDETF, OJP, OLP, OTJ, TAX, and USMS. We received comments from CRM, DEA, EOUSA, OLP, and OTJ, which have been adjudicated.

Thanks for your help.

Doug

Doug Levine
Office of Legislative Affairs
U.S. Department of Justice
(b) (6) Office (b) (6) Cell

From: Clifton, Deborah J (SMO)

To: (b)(6) per ATF (ATF); (b)(6) per ATF (ATF); (b)(6) per ATF (ATF); (b)(6) per ATF (ATF); (b)(6) per ATF (ATF); Bollerman, Kerry A. (CIV); Mayer, Michael (CIV); Hendley, Scott (CRM); Jones, Gregory M. (CRM); Lofton, Betty (CRM); Morales, Michelle (CRM); Opl, Legislation (CRM); Wroblewski, Jonathan (CRM); (b)(6), (b)(7)(C), (b)(7)(F) (DEA-US); (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US); (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US); (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US); (b)(6), (b)(7)(C), (b)(7)(F) (DEA-US); (b)(6), (b)(7)(C), (b)(7)(F) per DEA (DEA-US); Strait, Matthew J. (DEA-US); USAEO-Legislative (USA); Allen, Michael (JMD); Atwell, Tonya M (JMD); Faulkner, Lila (JMD); Hitch, Vance (OCIO); Lauria-Sullens, Jolene (JMD); Lofthus, Lee J (JMD); Long, Mariana (JMD); Michaelson, Melanie (CIV); Miguel, Amy (JMD); Murphy, Justin (JMD); Rodgers, Janice (JMD); Schultz, Walter H (JMD); (b)(6), (b)(7)(C), (b)(7)(F) per DE (NDIC); (b)(6), (b)(7)(C), (b)(7)(F) per DEA (NDIC); Kimball, Sharon (SMO); Padden, Thomas (SMO); Bernhardt, Gena (OJP); Brien, Peter (OJP); Carradini, Rosemary Cavanagh (OJP); Dirham, Sue (OJP); Duncan, Summer (OJP); Horne Sabra (OJP); LaTour, Angella (OJP); Searby, Susan (OJP); Solomon, Amy (OJP); Spector, Adam T (OJP); Davis, Valorie A (SMO); Hemmick, Theresa (SMO); Jackson, Wykema C (SMO); Matthews, Matrina (OLP); Chaney, Christopher (USAEo); Tenoso, Gaye (USAEo); Toulou, Tracy (USAEo); Shatz, Eileen M. (TAX); (b)(6), (b)(7)(C), (b)(7)(F) (USMS); (b)(6), (b)(7)(C), (b)(7)(F) per USMS (USMS); (b)(6), (b)(7)(C), (b)(7)(F) (USMS); (b)(6), (b)(7)(C), (b)(7)(F) per U (USMS); (b)(6), (b)(7)(C), (b)(7)(F) per USM (USMS); (b)(6), (b)(7)(C), (b)(7)(F) (USMS); (b)(6), (b)(7)(C), (b)(7)(F) (USMS)

Cc: Burrows, Charlotte (SMO); Columbus, Eric (ODAG); Adiga, Mala (SMO); Greenfeld, Helaine (SMO); Gunn, Currie (SMO); Hauck, Brian (SMO); Hirsch, Sam (SMO); Leff, Deborah (SMO); Overmann, Lynn (SMO); Agrast, Mark D. (SMO); Appelbaum, Judy (SMO); Burton, Faith (SMO); Ruppert, Mary (SMO); Simpson, Tammi (OLA); Levine, Doug (SMO)

Subject: (OLA WF101869) FBI Mueller draft testimony for a 03/16/11 hearing re Oversight of the FBI

Note: The short deadline is on account of the fact that the statement is due to the House Judiciary Committee on Monday, March 14th.

[illegible]

PLEASE PROVIDE COMMENTS TO ADRIEN SILAS,
OLA, NO LATER THAN 10am 03/18/11.

From: Leon, Bryan (b) (6)
Sent: Wednesday, March 16, 2011 1:24:59 PM

To: DEFENSE; ENERGY; DHS; Justice Lrm (SMO); DL-NSS-LRM; ODNI; STATE; TREASURY

Cc: Peroff, Kathleen; Siclari, Mary Jo; Daniel, J. Michael;

Brody-Waite, Brooke A.; Boden, James; Costello, Daniel J.; Bullock, Bob;

DL-WHO-WHGC-LRM; DL-OVP-LRM; Bansal, Preeti D.; Richardson, Bill;

Aitken, Steven D.; Kadakia, Pooja; Bhowmik, Rachana; Croley, Steve;

McCarthy, Nell; Pope, David F.; Cobbina, Awenate (b)(6), (7)(C) per FBI;

Kang, Christopher; Samuels, Jonathan D.; Eltrich, Kate; Neill, Allie;

Fisher, Alyssa D.; Menter, Jessica; DL-NSS-LEGAL; DL-NSS-INTEL;

Jukes, James J.; Burnim, John D.; Leon, Bryan P.

Subject: LRM [BL-112-34] OMB Request for Views on S193 USA PATRIOT Act Sunset Extension Act of 2011
#567741542#

Auto forwarded by a Rule

DEADLINE: 5:00 PM Friday, March 18, 2011

By the deadline above, please review and provide agency views on S. 193. S. 193 was ordered reported amended by the Senate Judiciary Committee on March 10.

Please use the attached version which is the version expected to be reported out of the Senate Judiciary Committee. This amended version is not yet available on Thomas.

LRM ID: BL-112-34

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

LEGISLATIVE REFERRAL MEMORANDUM

Wednesday, March 16, 2011

TO: Legislative Liaison Officer - See Distribution

FROM: Burnim, John (for) Assistant Director for Legislative Reference

SUBJECT: LRM [BL-112-34] OMB Request for Views on S193 USA PATRIOT Act Sunset Extension Act of 2011

OMB CONTACT: **Leon, Bryan**

E-Mail (b) (6)

PHONE (b) (6)

FAX (b)(6) per OMB

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. By the deadline above, please reply by e-mail or telephone, using the OMB Contact information above.

Please advise us if this item will affect direct spending or receipts for the purposes of the Statutory Pay-as-You-Go Act of 2010.

Thank you.

Calendar No. _____

112TH CONGRESS
1ST SESSION**S. 193****[Report No. 112-_____]**

To extend the sunset of certain provisions of the USA PATRIOT Act,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 26, 2011

Mr. LEAHY introduced the following bill; which was read twice and referred
to the Committee on the Judiciary

_____ (legislative day, _____), _____

Reported by Mr. LEAHY, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To extend the sunset of certain provisions of the USA
PATRIOT Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “USA PATRIOT Act
5 Sunset Extension Act of 2011”.

1 **SEC. 2. SUNSETS.**

2 (a) SECTIONS 206 AND 215 SUNSET.—

3 (1) IN GENERAL.—Section 102(b)(1) of the
4 USA PATRIOT Improvement and Reauthorization
5 Act of 2005 (Public Law 109–177; 50 U.S.C. 1805
6 note, 50 U.S.C. 1861 note, and 50 U.S.C. 1862
7 note) is amended by striking “~~February 28, 2011~~
8 *May 27, 2011*” and inserting “December 31, 2013”.

9 (2) CONFORMING AMENDMENTS.—

10 (A) IN GENERAL.—The Foreign Intel-
11 ligence Surveillance Act of 1978 (50 U.S.C.
12 1801 et seq.), as amended by section 3 of this
13 Act, is amended—

14 (i) in the table of contents in the first
15 section, by striking the items relating to
16 title V and sections 501, 502, and 503 and
17 inserting the following:

“TITLE V—ACCESS TO CERTAIN BUSINESS RECORDS FOR
FOREIGN INTELLIGENCE PURPOSES

“Sec. 501. Definitions.

“Sec. 502. Access to certain business records for foreign intelligence and inter-
national terrorism investigations.”;

18 (ii) in title V (50 U.S.C. 1861 et
19 seq.)—

20 (I) in the title heading, by strik-
21 ing “AND OTHER TANGIBLE
22 THINGS”; and

23 (II) by striking section 503; and

(iii) in section 601(a)(1)(D) (50 U.S.C. 1871(a)(1)(D)), by striking “section 501;” and inserting “section 502 or under section 501 pursuant to section 102(b)(2) of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Public Law 109–177; 50 U.S.C. 1861 note);”.

(B) APPLICATION UNDER SECTION 404 OF THE FISA AMENDMENTS ACT OF 2008.—Section 404(b)(4)(A) of the FISA Amendments Act of 2008 (Public Law 110–261; 122 Stat. 2477) is amended by striking the period at the end and inserting “, except that paragraph (1)(D) of such section 601(a) shall be applied as if it read as follows:

“(D) access to records under section 502 or under section 501 pursuant to section 102(b)(2) of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Public Law 109–177; 50 U.S.C. 1861 note);’.

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall take effect on December 31, 2013.

1 (b) INDIVIDUAL TERRORISTS AS AGENTS OF FOR-
2 EIGN POWERS.—

3 (1) EXTENSION OF SUNSET.—Section 6001(b)
4 of the Intelligence Reform and Terrorism Prevention
5 Act of 2004 (Public Law 108–458; 50 U.S.C. 1801
6 note) is amended to read as follows:

7 “(b) SUNSET.—

8 “(1) REPEAL.—Subparagraph (C) of section
9 101(b)(1) of the Foreign Intelligence Surveillance
10 Act of 1978 (50 U.S.C. 1801(b)(1)), as added by
11 subsection (a), is repealed effective December 31,
12 2013.

13 “(2) TRANSITION PROVISION.—Notwithstanding
14 paragraph (1), subparagraph (C) of section
15 101(b)(1) of the Foreign Intelligence Surveillance
16 Act of 1978 (50 U.S.C. 1801(b)(1)) shall continue
17 to apply on and after December 31, 2013, with re-
18 spect to any particular foreign intelligence investiga-
19 tion or with respect to any particular offense or po-
20 tential offense that began or occurred before Decem-
21 ber 31, 2013.”.

22 (2) CONFORMING AMENDMENT.—

23 (A) IN GENERAL.—Section 601(a)(2) of
24 the Foreign Intelligence Surveillance Act of
25 1978 (50 U.S.C. 1871(a)(2)) is amended by

1 striking the semicolon at the end and inserting
2 “pursuant to subsection (b)(2) of section 6001
3 of the Intelligence Reform and Terrorism Pre-
4 vention Act of 2004 (Public Law 108–458; 50
5 U.S.C. 1801 note);”.

6 (B) EFFECTIVE DATE.—The amendment
7 made by subparagraph (A) shall take effect on
8 December 31, 2013.

9 (c) NATIONAL SECURITY LETTERS.—

10 (1) REPEAL.—Effective on December 31,
11 2013—

12 (A) section 2709 of title 18, United States
13 Code, is amended to read as such provision
14 read on October 25, 2001;

15 (B) section 1114(a)(5) of the Right to Fi-
16 nancial Privacy Act of 1978 (12 U.S.C.
17 3414(a)(5)) is amended to read as such provi-
18 sion read on October 25, 2001;

19 (C) subsections (a) and (b) of section 626
20 of the Fair Credit Reporting Act (15 U.S.C.
21 1681u) are amended to read as subsections (a)
22 and (b), respectively, of the second of the 2 sec-
23 tions designated as section 624 of such Act (15
24 U.S.C. 1681u) (relating to disclosure to the
25 Federal Bureau of Investigation for counter-

1 intelligence purposes), as added by section 601
2 of the Intelligence Authorization Act for Fiscal
3 Year 1996 (Public Law 104–93; 109 Stat.
4 974), read on October 25, 2001;

5 (D) section 627 of the Fair Credit Report-
6 ing Act (15 U.S.C. 1681v) is repealed; and

7 (E) section 802 of the National Security
8 Act of 1947 (50 U.S.C. 436) is amended to
9 read as such provision read on October 25,
10 2001.

11 (2) TRANSITION PROVISION.—Notwithstanding
12 paragraph (1), the provisions of law referred to in
13 paragraph (1), as in effect on December 30, 2013,
14 shall continue to apply on and after December 31,
15 2013, with respect to any particular foreign intel-
16 ligence investigation or with respect to any par-
17 ticular offense or potential offense that began or oc-
18 curred before December 31, 2013.

19 (3) TECHNICAL AND CONFORMING AMEND-
20 MENTS.—Effective December 31, 2013—

21 (A) section 3511 of title 18, United States
22 Code, is amended—

23 (i) in subsections (a), (c), and (d), by
24 striking “or 627(a)” each place it appears;
25 and

(ii) in subsection (b)(1)(A), as amended by section 6(b) of this Act, by striking “section 626 or 627 of the Fair Credit Reporting Act (15 U.S.C. 1681u and 1681v)” and inserting “section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681u)”; (B) section 118(c) of the USA PATRIOT Improvement and Reauthorization Act of 2005 (18 U.S.C. 3511 note) is amended—

(i) in subparagraph (C), by adding “and” at the end;

(ii) in subparagraph (D), by striking “; and” and inserting a period; and

(iii) by striking subparagraph (E); and

(C) the table of sections for the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by striking the item relating to section 627.

(d) FISMA AMENDMENTS ACT OF 2008.—

(1) EXTENSION.—Section 403(b)(1) of the FISMA Amendments Act of 2008 (Public Law 110–261; 50 U.S.C. 1881 note) is amended by striking “December 31, 2012” and inserting “December 31, 2013”.

1 (2) *TECHNICAL AND CONFORMING AMEND-*
2 *MENTS.—Section 403(b)(2) of such Act (Public Law*
3 *110–261; 122 Stat. 2474) is amended by striking*
4 *“December 31, 2012” and inserting “December 31,*
5 *2013”.*

6 (3) *ORDERS IN EFFECT.—Section 404(b)(1) of*
7 *such Act (Public Law 110–261; 50 U.S.C. 1801 note)*
8 *is amended in the heading by striking “DECEMBER*
9 *31, 2012” and inserting “DECEMBER 31, 2013”.*

10 **SEC. 3. ORDERS FOR ACCESS TO CERTAIN BUSINESS**
11 **RECORDS AND TANGIBLE THINGS.**

12 (a) **IN GENERAL.**—Section 501 of the Foreign Intel-
13 ligence Surveillance Act of 1978 (50 U.S.C. 1861) is
14 amended—

15 (1) in the section heading, by inserting “**AND**
16 **OTHER TANGIBLE THINGS**” after “**CERTAIN**
17 **BUSINESS RECORDS**”;

18 (2) in subsection (b)(2)—

19 (A) in subparagraph (A)—

20 (i) by striking “a statement of facts
21 showing” and inserting “a statement of
22 the facts and circumstances relied upon by
23 the applicant to justify the belief of the ap-
24 plicant”; and

1 (ii) by striking “clandestine intel-
2 ligence activities,” and all that follows and
3 inserting “clandestine intelligence activi-
4 ties;”; and

5 (B) by striking subparagraph (B) and in-
6 serting the following:

7 ~~“(B) if the records sought are the circula-~~
8 ~~tion records or patron lists of a library (as de-~~
9 ~~defined in section 213(1) of the Library Services~~
10 ~~and Technology Act (20 U.S.C. 9122(1)), a~~
11 ~~statement of facts showing that there are rea-~~
12 ~~sonable grounds to believe that the records~~
13 ~~sought—~~

14 *“(B) if the records sought contain bookseller*
15 *records, or are from a library and contain per-*
16 *sonally identifiable information about a patron*
17 *of the library, a statement of facts showing that*
18 *there are reasonable grounds to believe that the*
19 *records sought—*

20 “(i) are relevant to an authorized in-
21 vestigation (other than a threat assess-
22 ment) conducted in accordance with sub-
23 section (a)(2) to obtain foreign intelligence
24 information not concerning a United
25 States person or to protect against inter-

1 national terrorism or clandestine intel-
2 ligence activities; and

3 “(ii)(I) pertain to a foreign power or an
4 agent of a foreign power;

5 “(II) are relevant to the activities of
6 a suspected agent of a foreign power who
7 is the subject of such authorized investiga-
8 tion; or

9 “(III) pertain to an individual in con-
10 tact with, or known to, a suspected agent
11 of a foreign power; and

12 “(C) a statement of proposed minimization
13 procedures.”; ~~and~~

14 (3) in subsection (c)(1)—

15 (A) by inserting “and that the proposed
16 minimization procedures meet the definition of
17 minimization procedures under subsection (g)”
18 after “subsections (a) and (b)”;

19 (B) by inserting “, and directing that the
20 minimization procedures be followed” after “re-
21 lease of tangible things”; and

22 (C) by striking the second sentence; *and*

23 *(4) by adding at the end the following:*

24 “(i) *DEFINITIONS.—In this section—*

1 “(1) the term ‘bookseller records’ means trans-
2 actional records reflecting the purchase (including
3 subscription purchase) or rental of books, journals, or
4 magazines, whether in digital form or in print, of an
5 individual or entity engaged in the sale or rental of
6 books, journals, or magazines;

7 “(2) the term ‘library’ has the meaning given
8 that term in section 213(1) of the Library Services
9 and Technology Act (20 U.S.C. 9122(1));

10 “(3) the term ‘patron’ means a purchaser, renter,
11 borrower, user, or subscriber of goods or services from
12 a library; and

13 “(4) the term ‘personally identifiable informa-
14 tion’ includes information that identifies a person as
15 having used, requested, or obtained specific reading
16 materials or services from a library.”.

17 (b) TRANSITION PROCEDURES.—Notwithstanding
18 the amendments made by this Act, an order entered under
19 section 501(c)(1) of the Foreign Intelligence Surveillance
20 Act of 1978 (50 U.S.C. 1861(c)(1)) that is in effect on
21 the effective date of the amendments made by this section
22 shall remain in effect until the expiration of the order.

23 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

24 (1) DEFINITIONS.—Title V of the Foreign In-
25 telligence Surveillance Act of 1978 (50 U.S.C. 1861

1 et seq.) is amended by adding at the end the fol-
2 lowing:

3 **“SEC. 503. DEFINITIONS.**

4 “In this title, the terms ‘Attorney General’, ‘foreign
5 intelligence information’, ‘international terrorism’, ‘per-
6 son’, ‘United States’, and ‘United States person’ have the
7 meanings given such terms in section 101.”.

8 (2) TITLE HEADING.—Title V of the Foreign
9 Intelligence Surveillance Act of 1978 (50 U.S.C.
10 1861 et seq.) is amended in the title heading by in-
11 serting “AND OTHER TANGIBLE THINGS”
12 after “CERTAIN BUSINESS RECORDS”.

13 (3) TABLE OF CONTENTS.—The table of con-
14 tents in the first section of the Foreign Intelligence
15 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
16 is amended—

17 (A) by striking the items relating to title
18 V and section 501 and inserting the following:

“TITLE V—ACCESS TO CERTAIN BUSINESS RECORDS AND OTHER
TANGIBLE THINGS FOR FOREIGN INTELLIGENCE PURPOSES

“Sec. 501. Access to certain business records and other tangible things for for-
eign intelligence purposes and international terrorism investiga-
tions.”;

19 and

20 (B) by inserting after the item relating to
21 section 502 the following:

“Sec. 503. Definitions.”.

1 **SEC. 4. ORDERS FOR PEN REGISTERS AND TRAP AND**
2 **TRACE DEVICES FOR FOREIGN INTEL-**
3 **LIGENCE PURPOSES.**

4 (a) APPLICATION.—Section 402(c) of the Foreign In-
5 telligence Surveillance Act of 1978 (50 U.S.C. 1842(c))
6 is amended—

7 (1) in paragraph (1), by striking “and” at the
8 end;

9 (2) in paragraph (2)—

10 (A) by striking “a certification by the ap-
11 plicant” and inserting “a statement of the facts
12 and circumstances relied upon by the applicant
13 to justify the belief of the applicant”; and

14 (B) by striking the period at the end and
15 inserting “; and”; and

16 (3) by adding at the end the following:

17 “(3) a statement of whether minimization pro-
18 cedures are being proposed and, if so, a statement
19 of the proposed minimization procedures.”.

20 (b) MINIMIZATION.—

21 (1) DEFINITION.—Section 401 of the Foreign
22 Intelligence Surveillance Act of 1978 (50 U.S.C.
23 1841) is amended by adding at the end the fol-
24 lowing:

25 “(4) The term ‘minimization procedures’
26 means—

1 “(A) specific procedures, that are reason-
2 ably designed in light of the purpose and tech-
3 nique of an order for the installation and use
4 of a pen register or trap and trace device, to
5 minimize the retention, and prohibit the dis-
6 semination, of nonpublicly available information
7 known to concern unconsenting United States
8 persons consistent with the need of the United
9 States to obtain, produce, and disseminate for-
10 eign intelligence information;

11 “(B) procedures that require that nonpub-
12 licly available information, which is not foreign
13 intelligence information shall not be dissemi-
14 nated in a manner that identifies any United
15 States person, without such person’s consent,
16 unless such person’s identity is necessary to un-
17 derstand foreign intelligence information or as-
18 sess its importance; and

19 “(C) notwithstanding subparagraphs (A)
20 and (B), procedures that allow for the retention
21 and dissemination of information that is evi-
22 dence of a crime which has been, is being, or
23 is about to be committed and that is to be re-
24 tained or disseminated for law enforcement pur-
25 poses.”.

1 (2) PEN REGISTERS AND TRAP AND TRACE DE-
2 VICES.—Section 402 of the Foreign Intelligence Sur-
3 veillance Act of 1978 (50 U.S.C. 1842) is amend-
4 ed—

5 (A) in subsection (d)(1), by striking “the
6 judge finds” and all that follows and inserting
7 the following: “the judge finds—

8 “(A) that the application satisfies the require-
9 ments of this section; and

10 “(B) that, if there are exceptional cir-
11 cumstances justifying the use of minimization proce-
12 dures in a particular case, the proposed minimiza-
13 tion procedures meet the definition of minimization
14 procedures under this title.”; and

15 (B) by adding at the end the following:

16 “(h) At or before the end of the period of time for
17 which the installation and use of a pen register or trap
18 and trace device is approved under an order or an exten-
19 sion under this section, the judge may assess compliance
20 with any applicable minimization procedures by reviewing
21 the circumstances under which information concerning
22 United States persons was retained or disseminated.”.

23 (3) EMERGENCIES.—Section 403 of the For-
24 eign Intelligence Surveillance Act of 1978 (50
25 U.S.C. 1843) is amended—

1 (A) by redesignating subsection (c) as sub-
2 section (d); and

3 (B) by inserting after subsection (b) the
4 following:

5 “(c) If the Attorney General authorizes the emer-
6 gency installation and use of a pen register or trap and
7 trace device under this section, the Attorney General shall
8 require that minimization procedures be followed, if appro-
9 priate.”.

10 (4) USE OF INFORMATION.—Section 405(a)(1)
11 of the Foreign Intelligence Surveillance Act of 1978
12 (50 U.S.C. 1845(a)(1)) is amended by striking “pro-
13 visions of this section” and inserting “minimization
14 procedures required under this title”.

15 (c) TRANSITION PROCEDURES.—

16 (1) ORDERS IN EFFECT.—Notwithstanding the
17 amendments made by this Act, an order entered
18 under section 402(d)(1) of the Foreign Intelligence
19 Surveillance Act of 1978 (50 U.S.C. 1842(d)(1))
20 that is in effect on the effective date of the amend-
21 ments made by this section shall remain in effect
22 until the expiration of the order.

23 (2) EXTENSIONS.—A request for an extension
24 of an order referred to in paragraph (1) shall be
25 subject to the requirements of the Foreign Intel-

1 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et
2 seq.), as amended by this Act.

3 **SEC. 5. LIMITATIONS ON DISCLOSURE OF NATIONAL SECU-**
4 **RITY LETTERS.**

5 (a) IN GENERAL.—Section 2709 of title 18, United
6 States Code, is amended by striking subsection (c) and
7 inserting the following:

8 “(c) PROHIBITION OF CERTAIN DISCLOSURE.—

9 “(1) PROHIBITION.—

10 “(A) IN GENERAL.—If a certification is
11 issued under subparagraph (B) and notice of
12 the right to judicial review under paragraph (3)
13 is provided, no wire or electronic communica-
14 tion service provider, or officer, employee, or
15 agent thereof, that receives a request under
16 subsection (a), shall disclose to any person that
17 the Director of the Federal Bureau of Inves-
18 tigation has sought or obtained access to infor-
19 mation or records under this section.

20 “(B) CERTIFICATION.—The requirements
21 of subparagraph (A) shall apply if the Director
22 of the Federal Bureau of Investigation, or a
23 designee of the Director whose rank shall be no
24 lower than Deputy Assistant Director at Bu-
25 reau headquarters or a Special Agent in Charge

1 of a Bureau field office, certifies that, absent a
2 prohibition of disclosure under this subsection,
3 there may result—

4 “(i) a danger to the national security
5 of the United States;

6 “(ii) interference with a criminal,
7 counterterrorism, or counterintelligence in-
8 vestigation;

9 “(iii) interference with diplomatic re-
10 lations; or

11 “(iv) danger to the life or physical
12 safety of any person.

13 “(2) EXCEPTION.—

14 “(A) IN GENERAL.—A wire or electronic
15 communication service provider, or officer, em-
16 ployee, or agent thereof, that receives a request
17 under subsection (a) may disclose information
18 otherwise subject to any applicable nondisclo-
19 sure requirement to—

20 “(i) those persons to whom disclosure
21 is necessary in order to comply with the re-
22 quest;

23 “(ii) an attorney in order to obtain
24 legal advice or assistance regarding the re-
25 quest; or

1 “(iii) other persons as permitted by
2 the Director of the Federal Bureau of In-
3 vestigation or the designee of the Director.

4 “(B) PERSONS NECESSARY FOR COMPLI-
5 ANCE.—Upon a request by the Director of the
6 Federal Bureau of Investigation or the designee
7 of the Director, those persons to whom disclo-
8 sure will be made under subparagraph (A)(i) or
9 to whom such disclosure was made before the
10 request shall be identified to the Director or the
11 designee.

12 “(C) NONDISCLOSURE REQUIREMENT.—A
13 person to whom disclosure is made under sub-
14 paragraph (A) shall be subject to the nondisclo-
15 sure requirements applicable to a person to
16 whom a request is issued under subsection (a)
17 in the same manner as the person to whom the
18 request is issued.

19 “(D) NOTICE.—Any recipient that dis-
20 closes to a person described in subparagraph
21 (A) information otherwise subject to a non-
22 disclosure requirement shall inform the person
23 of the applicable nondisclosure requirement.

24 “(3) RIGHT TO JUDICIAL REVIEW.—

1 “(A) IN GENERAL.—A wire or electronic
2 communications service provider that receives a
3 request under subsection (a) shall have the
4 right to judicial review of any applicable non-
5 disclosure requirement.

6 “(B) NOTIFICATION.—A request under
7 subsection (a) shall state that if the recipient
8 wishes to have a court review a nondisclosure
9 requirement, the recipient shall notify the Gov-
10 ernment.

11 “(C) INITIATION OF PROCEEDINGS.—If a
12 recipient of a request under subsection (a)
13 makes a notification under subparagraph (B),
14 the Government shall initiate judicial review
15 under the procedures established in section
16 3511 of this title, unless an appropriate official
17 of the Federal Bureau of the Investigation
18 makes a notification under paragraph (4).

19 “(4) TERMINATION.—In the case of any request
20 for which a recipient has submitted a notification
21 under paragraph (3)(B), if the facts supporting a
22 nondisclosure requirement cease to exist, an appro-
23 priate official of the Federal Bureau of Investigation
24 shall promptly notify the wire or electronic service
25 provider, or officer, employee, or agent thereof, sub-

1 ject to the nondisclosure requirement that the non-
2 disclosure requirement is no longer in effect.”.

3 (b) IDENTITY OF FINANCIAL INSTITUTIONS AND
4 CREDIT REPORTS.—Section 626 of the Fair Credit Re-
5 porting Act (15 U.S.C. 1681u) is amended by striking
6 subsection (d) and inserting the following:

7 “(d) PROHIBITION OF CERTAIN DISCLOSURE.—

8 “(1) PROHIBITION.—

9 “(A) IN GENERAL.—If a certification is
10 issued under subparagraph (B) and notice of
11 the right to judicial review under paragraph (3)
12 is provided, no consumer reporting agency, or
13 officer, employee, or agent thereof, that receives
14 a request or order under subsection (a), (b), or
15 (c), shall disclose or specify in any consumer re-
16 port, that the Federal Bureau of Investigation
17 has sought or obtained access to information or
18 records under subsection (a), (b), or (c).

19 “(B) CERTIFICATION.—The requirements
20 of subparagraph (A) shall apply if the Director
21 of the Federal Bureau of Investigation, or a
22 designee of the Director whose rank shall be no
23 lower than Deputy Assistant Director at Bu-
24 reau headquarters or a Special Agent in Charge
25 of a Bureau field office, certifies that, absent a

1 prohibition of disclosure under this subsection,
2 there may result—

3 “(i) a danger to the national security
4 of the United States;

5 “(ii) interference with a criminal,
6 counterterrorism, or counterintelligence in-
7 vestigation;

8 “(iii) interference with diplomatic re-
9 lations; or

10 “(iv) danger to the life or physical
11 safety of any person.

12 “(2) EXCEPTION.—

13 “(A) IN GENERAL.—A consumer reporting
14 agency, or officer, employee, or agent thereof,
15 that receives a request or order under sub-
16 section (a), (b), or (c) may disclose information
17 otherwise subject to any applicable nondisclo-
18 sure requirement to—

19 “(i) those persons to whom disclosure
20 is necessary in order to comply with the re-
21 quest or order;

22 “(ii) an attorney in order to obtain
23 legal advice or assistance regarding the re-
24 quest or order; or

1 “(iii) other persons as permitted by
2 the Director of the Federal Bureau of In-
3 vestigation or the designee of the Director.

4 “(B) PERSONS NECESSARY FOR COMPLI-
5 ANCE.—Upon a request by the Director of the
6 Federal Bureau of Investigation or the designee
7 of the Director, those persons to whom disclo-
8 sure will be made under subparagraph (A)(i) or
9 to whom such disclosure was made before the
10 request shall be identified to the Director or the
11 designee.

12 “(C) NONDISCLOSURE REQUIREMENT.—A
13 person to whom disclosure is made under sub-
14 paragraph (A) shall be subject to the nondisclo-
15 sure requirements applicable to a person to
16 whom a request or order is issued under sub-
17 section (a), (b), or (c) in the same manner as
18 the person to whom the request or order is
19 issued.

20 “(D) NOTICE.—Any recipient that dis-
21 closes to a person described in subparagraph
22 (A) information otherwise subject to a non-
23 disclosure requirement shall inform the person
24 of the applicable nondisclosure requirement.

25 “(3) RIGHT TO JUDICIAL REVIEW.—

1 “(A) IN GENERAL.—A consumer reporting
2 agency that receives a request or order under
3 subsection (a), (b), or (c) shall have the right
4 to judicial review of any applicable nondisclo-
5 sure requirement.

6 “(B) NOTIFICATION.—A request or order
7 under subsection (a), (b), or (c) shall state that
8 if the recipient wishes to have a court review a
9 nondisclosure requirement, the recipient shall
10 notify the Government.

11 “(C) INITIATION OF PROCEEDINGS.—If a
12 recipient of a request or order under subsection
13 (a), (b), or (c) makes a notification under sub-
14 paragraph (B), the Government shall initiate
15 judicial review under the procedures established
16 in section 3511 of title 18, United States Code,
17 unless an appropriate official of the Federal
18 Bureau of Investigation makes a notification
19 under paragraph (4).

20 “(4) TERMINATION.—In the case of any request
21 or order for which a consumer reporting agency has
22 submitted a notification under paragraph (3)(B), if
23 the facts supporting a nondisclosure requirement
24 cease to exist, an appropriate official of the Federal
25 Bureau of Investigation shall promptly notify the

1 consumer reporting agency, or officer, employee, or
2 agent thereof, subject to the nondisclosure require-
3 ment that the nondisclosure requirement is no longer
4 in effect.”.

5 (c) DISCLOSURES TO GOVERNMENTAL AGENCIES
6 FOR COUNTERTERRORISM PURPOSES.—Section 627 of the
7 Fair Credit Reporting Act (15 U.S.C. 1681v) is amended
8 by striking subsection (c) and inserting the following:

9 “(c) PROHIBITION OF CERTAIN DISCLOSURE.—

10 “(1) PROHIBITION.—

11 “(A) IN GENERAL.—If a certification is
12 issued under subparagraph (B) and notice of
13 the right to judicial review under paragraph (3)
14 is provided, no consumer reporting agency, or
15 officer, employee, or agent thereof, that receives
16 a request under subsection (a), shall disclose to
17 any person or specify in any consumer report,
18 that a government agency has sought or ob-
19 tained access to information under subsection
20 (a).

21 “(B) CERTIFICATION.—The requirements
22 of subparagraph (A) shall apply if the head of
23 a government agency authorized to conduct in-
24 vestigations of, or intelligence or counterintel-
25 ligence activities or analysis related to, inter-

1 national terrorism, or a designee, certifies that,
2 absent a prohibition of disclosure under this
3 subsection, there may result—

4 “(i) a danger to the national security
5 of the United States;

6 “(ii) interference with a criminal,
7 counterterrorism, or counterintelligence in-
8 vestigation;

9 “(iii) interference with diplomatic re-
10 lations; or

11 “(iv) danger to the life or physical
12 safety of any person.

13 “(2) EXCEPTION.—

14 “(A) IN GENERAL.—A consumer reporting
15 agency, or officer, employee, or agent thereof,
16 that receives a request under subsection (a)
17 may disclose information otherwise subject to
18 any applicable nondisclosure requirement to—

19 “(i) those persons to whom disclosure
20 is necessary in order to comply with the re-
21 quest;

22 “(ii) an attorney in order to obtain
23 legal advice or assistance regarding the re-
24 quest; or

1 “(iii) other persons as permitted by
2 the head of the government agency author-
3 ized to conduct investigations of, or intel-
4 ligence or counterintelligence activities or
5 analysis related to, international terrorism,
6 or a designee.

7 “(B) PERSONS NECESSARY FOR COMPLI-
8 ANCE.—Upon a request by the head of a gov-
9 ernment agency authorized to conduct inves-
10 tigations of, or intelligence or counterintel-
11 ligence activities or analysis related to, inter-
12 national terrorism, or a designee, those persons
13 to whom disclosure will be made under subpara-
14 graph (A)(i) or to whom such disclosure was
15 made before the request shall be identified to
16 the head of the government agency or the des-
17 ignee.

18 “(C) NONDISCLOSURE REQUIREMENT.—A
19 person to whom disclosure is made under sub-
20 paragraph (A) shall be subject to the nondis-
21 closure requirements applicable to a person to
22 whom a request is issued under subsection (a)
23 in the same manner as the person to whom the
24 request is issued.

1 “(D) NOTICE.—Any recipient that dis-
2 closes to a person described in subparagraph
3 (A) information otherwise subject to a non-
4 disclosure requirement shall inform the person
5 of the applicable nondisclosure requirement.

6 “(3) RIGHT TO JUDICIAL REVIEW.—

7 “(A) IN GENERAL.—A consumer reporting
8 agency that receives a request under subsection
9 (a) shall have the right to judicial review of any
10 applicable nondisclosure requirement.

11 “(B) NOTIFICATION.—A request under
12 subsection (a) shall state that if the recipient
13 wishes to have a court review a nondisclosure
14 requirement, the recipient shall notify the gov-
15 ernment.

16 “(C) INITIATION OF PROCEEDINGS.—If a
17 recipient of a request under subsection (a)
18 makes a notification under subparagraph (B),
19 the government shall initiate judicial review
20 under the procedures established in section
21 3511 of title 18, United States Code, unless an
22 appropriate official of the government agency
23 authorized to conduct investigations of, or intel-
24 ligence or counterintelligence activities or anal-

1 ysis related to, international terrorism makes a
2 notification under paragraph (4).

3 “(4) TERMINATION.—In the case of any request
4 for which a consumer reporting agency has sub-
5 mitted a notification under paragraph (3)(B), if the
6 facts supporting a nondisclosure requirement cease
7 to exist, an appropriate official of the government
8 agency authorized to conduct investigations of, or in-
9 telligence or counterintelligence activities or analysis
10 related to, international terrorism shall promptly no-
11 tify the consumer reporting agency, or officer, em-
12 ployee, or agent thereof, subject to the nondisclosure
13 requirement that the nondisclosure requirement is
14 no longer in effect.”.

15 (d) FINANCIAL RECORDS.—Section 1114(a)(5) of the
16 Right to Financial Privacy Act of 1978 (12 U.S.C.
17 3414(a)(5)) is amended by striking subparagraph (D) and
18 inserting the following:

19 “(D) PROHIBITION OF CERTAIN DISCLOSURE.—

20 “(i) PROHIBITION.—

21 “(I) IN GENERAL.—If a certification is
22 issued under subclause (II) and notice of the
23 right to judicial review under clause (iii) is pro-
24 vided, no financial institution, or officer, em-
25 ployee, or agent thereof, that receives a request

1 under subparagraph (A), shall disclose to any
2 person that the Federal Bureau of Investigation
3 has sought or obtained access to information or
4 records under subparagraph (A).

5 “(II) CERTIFICATION.—The requirements
6 of subclause (I) shall apply if the Director of
7 the Federal Bureau of Investigation, or a des-
8 ignee of the Director whose rank shall be no
9 lower than Deputy Assistant Director at Bu-
10 reau headquarters or a Special Agent in Charge
11 of a Bureau field office, certifies that, absent a
12 prohibition of disclosure under this subpara-
13 graph, there may result—

14 “(aa) a danger to the national secu-
15 rity of the United States;

16 “(bb) interference with a criminal,
17 counterterrorism, or counterintelligence in-
18 vestigation;

19 “(cc) interference with diplomatic re-
20 lations; or

21 “(dd) danger to the life or physical
22 safety of any person.

23 “(ii) EXCEPTION.—

24 “(I) IN GENERAL.—A financial institution,
25 or officer, employee, or agent thereof, that re-

1 ceives a request under subparagraph (A) may
2 disclose information otherwise subject to any
3 applicable nondisclosure requirement to—

4 “(aa) those persons to whom disclo-
5 sure is necessary in order to comply with
6 the request;

7 “(bb) an attorney in order to obtain
8 legal advice or assistance regarding the re-
9 quest; or

10 “(cc) other persons as permitted by
11 the Director of the Federal Bureau of In-
12 vestigation or the designee of the Director.

13 “(II) PERSONS NECESSARY FOR COMPLI-
14 ANCE.—Upon a request by the Director of the
15 Federal Bureau of Investigation or the designee
16 of the Director, those persons to whom disclo-
17 sure will be made under subclause (I)(aa) or to
18 whom such disclosure was made before the re-
19 quest shall be identified to the Director or the
20 designee.

21 “(III) NONDISCLOSURE REQUIREMENT.—
22 A person to whom disclosure is made under
23 subclause (I) shall be subject to the nondisclo-
24 sure requirements applicable to a person to
25 whom a request is issued under subparagraph

1 (A) in the same manner as the person to whom
2 the request is issued.

3 “(IV) NOTICE.—Any recipient that dis-
4 closes to a person described in subclause (I) in-
5 formation otherwise subject to a nondisclosure
6 requirement shall inform the person of the ap-
7 plicable nondisclosure requirement.

8 “(iii) RIGHT TO JUDICIAL REVIEW.—

9 “(I) IN GENERAL.—A financial institution
10 that receives a request under subparagraph (A)
11 shall have the right to judicial review of any ap-
12 plicable nondisclosure requirement.

13 “(II) NOTIFICATION.—A request under
14 subparagraph (A) shall state that if the recipi-
15 ent wishes to have a court review a nondisclo-
16 sure requirement, the recipient shall notify the
17 Government.

18 “(III) INITIATION OF PROCEEDINGS.—If a
19 recipient of a request under subparagraph (A)
20 makes a notification under subclause (II), the
21 Government shall initiate judicial review under
22 the procedures established in section 3511 of
23 title 18, United States Code, unless an appro-
24 priate official of the Federal Bureau of Inves-
25 tigation makes a notification under clause (iv).

1 “(iv) TERMINATION.—In the case of any re-
2 quest for which a financial institution has submitted
3 a notification under clause (iii)(II), if the facts sup-
4 porting a nondisclosure requirement cease to exist,
5 an appropriate official of the Federal Bureau of In-
6 vestigation shall promptly notify the financial insti-
7 tution, or officer, employee, or agent thereof, subject
8 to the nondisclosure requirement that the nondisclo-
9 sure requirement is no longer in effect.”.

10 (e) REQUESTS BY AUTHORIZED INVESTIGATIVE
11 AGENCIES.—Section 802 of the National Security Act of
12 1947 (50 U.S.C. 436), is amended by striking subsection
13 (b) and inserting the following:

14 “(b) PROHIBITION OF CERTAIN DISCLOSURE.—

15 “(1) PROHIBITION.—

16 “(A) IN GENERAL.—If a certification is
17 issued under subparagraph (B) and notice of
18 the right to judicial review under paragraph (3)
19 is provided, no governmental or private entity,
20 or officer, employee, or agent thereof, that re-
21 ceives a request under subsection (a), shall dis-
22 close to any person that an authorized inves-
23 tigative agency described in subsection (a) has
24 sought or obtained access to information under
25 subsection (a).

1 “(B) CERTIFICATION.—The requirements
2 of subparagraph (A) shall apply if the head of
3 an authorized investigative agency described in
4 subsection (a), or a designee, certifies that, ab-
5 sent a prohibition of disclosure under this sub-
6 section, there may result—

7 “(i) a danger to the national security
8 of the United States;

9 “(ii) interference with a criminal,
10 counterterrorism, or counterintelligence in-
11 vestigation;

12 “(iii) interference with diplomatic re-
13 lations; or

14 “(iv) danger to the life or physical
15 safety of any person.

16 “(2) EXCEPTION.—

17 “(A) IN GENERAL.—A governmental or
18 private entity, or officer, employee, or agent
19 thereof, that receives a request under sub-
20 section (a) may disclose information otherwise
21 subject to any applicable nondisclosure require-
22 ment to—

23 “(i) those persons to whom disclosure
24 is necessary in order to comply with the re-
25 quest;

1 “(ii) an attorney in order to obtain
2 legal advice or assistance regarding the re-
3 quest; or

4 “(iii) other persons as permitted by
5 the head of the authorized investigative
6 agency described in subsection (a).

7 “(B) PERSONS NECESSARY FOR COMPLI-
8 ANCE.—Upon a request by the head of an au-
9 thorized investigative agency described in sub-
10 section (a), or a designee, those persons to
11 whom disclosure will be made under subpara-
12 graph (A)(i) or to whom such disclosure was
13 made before the request shall be identified to
14 the head of the authorized investigative agency
15 or the designee.

16 “(C) NONDISCLOSURE REQUIREMENT.—A
17 person to whom disclosure is made under sub-
18 paragraph (A) shall be subject to the nondisclo-
19 sure requirements applicable to a person to
20 whom a request is issued under subsection (a)
21 in the same manner as the person to whom the
22 request is issued.

23 “(D) NOTICE.—Any recipient that dis-
24 closes to a person described in subparagraph
25 (A) information otherwise subject to a non-

1 disclosure requirement shall inform the person
2 of the applicable nondisclosure requirement.

3 “(3) RIGHT TO JUDICIAL REVIEW.—

4 “(A) IN GENERAL.—A governmental or
5 private entity that receives a request under sub-
6 section (a) shall have the right to judicial re-
7 view of any applicable nondisclosure require-
8 ment.

9 “(B) NOTIFICATION.—A request under
10 subsection (a) shall state that if the recipient
11 wishes to have a court review a nondisclosure
12 requirement, the recipient shall notify the Gov-
13 ernment.

14 “(C) INITIATION OF PROCEEDINGS.—If a
15 recipient of a request under subsection (a)
16 makes a notification under subparagraph (B),
17 the Government shall initiate judicial review
18 under the procedures established in section
19 3511 of title 18, United States Code, unless an
20 appropriate official of the authorized investiga-
21 tive agency described in subsection (a) makes a
22 notification under paragraph (4).

23 “(4) TERMINATION.—In the case of any request
24 for which a governmental or private entity has sub-
25 mitted a notification under paragraph (3)(B), if the

1 facts supporting a nondisclosure requirement cease
2 to exist, an appropriate official of the authorized in-
3 vestigative agency described in subsection (a) shall
4 promptly notify the governmental or private entity,
5 or officer, employee, or agent thereof, subject to the
6 nondisclosure requirement that the nondisclosure re-
7 quirement is no longer in effect.”.

8 **SEC. 6. JUDICIAL REVIEW OF FISA ORDERS AND NATIONAL**
9 **SECURITY LETTERS.**

10 (a) FISA.—Section 501(f)(2) of the Foreign Intel-
11 ligence Surveillance Act of 1978 (50 U.S.C. 1861(f)(2))
12 is amended—

13 (1) in subparagraph (A)—

14 (A) in clause (i)—

15 (i) by striking “a production order”
16 and inserting “a production order or non-
17 disclosure order”; and

18 (ii) by striking “Not less than 1 year”
19 and all that follows; and

20 (B) in clause (ii), by striking “production
21 order or nondisclosure”; and

22 (2) in subparagraph (C)—

23 (A) by striking clause (ii); and

24 (B) by redesignating clause (iii) as clause
25 (ii).

1 (b) JUDICIAL REVIEW OF NATIONAL SECURITY LET-
2 TERS.—Section 3511(b) of title 18, United States Code,
3 is amended to read as follows:

4 “(b) NONDISCLOSURE.—

5 “(1) IN GENERAL.—

6 “(A) NOTICE.—If a recipient of a request
7 or order for a report, records, or other informa-
8 tion under section 2709 of this title, section
9 626 or 627 of the Fair Credit Reporting Act
10 (15 U.S.C. 1681u and 1681v), section 1114 of
11 the Right to Financial Privacy Act of 1978 (12
12 U.S.C. 3414), or section 802 of the National
13 Security Act of 1947 (50 U.S.C. 436), wishes
14 to have a court review a nondisclosure require-
15 ment imposed in connection with the request or
16 order, the recipient shall notify the Govern-
17 ment.

18 “(B) APPLICATION.—Not later than 30
19 days after the date of receipt of a notification
20 under subparagraph (A), the Government shall
21 apply for an order prohibiting the disclosure of
22 the existence or contents of the relevant request
23 or order. An application under this subpara-
24 graph may be filed in the district court of the
25 United States for the judicial district in which

1 the recipient of the order is doing business or
2 in the district court of the United States for
3 any judicial district within which the authorized
4 investigation that is the basis for the request or
5 order is being conducted. The applicable non-
6 disclosure requirement shall remain in effect
7 during the pendency of proceedings relating to
8 the requirement.

9 “(C) CONSIDERATION.—A district court of
10 the United States that receives an application
11 under subparagraph (B) should rule expedi-
12 tiously, and shall, subject to paragraph (3),
13 issue a nondisclosure order that includes condi-
14 tions appropriate to the circumstances.

15 “(2) APPLICATION CONTENTS.—An application
16 for a nondisclosure order or extension thereof under
17 this subsection shall include a certification from the
18 Attorney General, Deputy Attorney General, an As-
19 sistant Attorney General, or the Director of the Fed-
20 eral Bureau of Investigation, or in the case of a re-
21 quest by a department, agency, or instrumentality of
22 the Federal Government other than the Department
23 of Justice, the head or deputy head of the depart-
24 ment, agency, or instrumentality, containing a state-
25 ment of specific and articulable facts indicating that,

1 absent a prohibition of disclosure under this sub-
2 section, there may result—

3 “(A) a danger to the national security of
4 the United States;

5 “(B) interference with a criminal, counter-
6 terrorism, or counterintelligence investigation;

7 “(C) interference with diplomatic relations;
8 or

9 “(D) danger to the life or physical safety
10 of any person.

11 “(3) STANDARD.—A district court of the
12 United States shall issue a nondisclosure require-
13 ment order or extension thereof under this sub-
14 section if the court determines, giving substantial
15 weight to the certification under paragraph (2) that
16 there is reason to believe that disclosure of the infor-
17 mation subject to the nondisclosure requirement dur-
18 ing the applicable time period will result in—

19 “(A) a danger to the national security of
20 the United States;

21 “(B) interference with a criminal, counter-
22 terrorism, or counterintelligence investigation;

23 “(C) interference with diplomatic relations;
24 or

1 “(D) danger to the life or physical safety
2 of any person.”.

3 (c) MINIMIZATION.—Section 501(g)(1) of the For-
4 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
5 1861(g)(1)) is amended by striking “Not later than” and
6 all that follows and inserting “At or before the end of the
7 period of time for the production of tangible things under
8 an order approved under this section or at any time after
9 the production of tangible things under an order approved
10 under this section, a judge may assess compliance with
11 the minimization procedures by reviewing the cir-
12 cumstances under which information concerning United
13 States persons was retained or disseminated.”.

14 **SEC. 7. CERTIFICATION FOR ACCESS TO TELEPHONE TOLL**
15 **AND TRANSACTIONAL RECORDS.**

16 (a) IN GENERAL.—Section 2709 of title 18, United
17 States Code, as amended by this Act, is amended—

- 18 (1) by striking subsection (e);
19 (2) by redesignating subsections (c) and (d) as
20 subsections (d) and (e), respectively; and
21 (3) by inserting after subsection (b) the fol-
22 lowing:

23 “(c) WRITTEN STATEMENT.—The Director of the
24 Federal Bureau of Investigation, or a designee in a posi-
25 tion not lower than Deputy Assistant Director at Bureau

1 headquarters or a Special Agent in Charge in a Bureau
2 field office designated by the Director, may make a certifi-
3 cation under subsection (b) only upon a written statement,
4 which shall be retained by the Federal Bureau of Inves-
5 tigation, of specific facts showing that there are reason-
6 able grounds to believe that the information sought is rel-
7 evant to the authorized investigation described in sub-
8 section (b).”.

9 (b) IDENTITY OF FINANCIAL INSTITUTIONS AND
10 CREDIT REPORTS.—Section 626 of the Fair Credit Re-
11 porting Act (15 U.S.C. 1681u), as amended by this Act,
12 is amended—

13 (1) by striking subsection (h);

14 (2) by redesignating subsections (d), (e), (f),
15 and (g) as subsections (e), (f), (g), and (h), respec-
16 tively; and

17 (3) by inserting after subsection (c) the fol-
18 lowing:

19 “(d) WRITTEN STATEMENT.—The Director of the
20 Federal Bureau of Investigation, or a designee in a posi-
21 tion not lower than Deputy Assistant Director at Bureau
22 headquarters or a Special Agent in Charge in a Bureau
23 field office designated by the Director, may make a certifi-
24 cation under subsection (a) or (b) only upon a written
25 statement, which shall be retained by the Federal Bureau

1 of Investigation, of specific facts showing that there are
2 reasonable grounds to believe that the information sought
3 is relevant to the authorized investigation described in
4 subsection (a) or (b), as the case may be.”.

5 (c) DISCLOSURES TO GOVERNMENTAL AGENCIES
6 FOR COUNTERTERRORISM PURPOSES.—Section 627(b) of
7 the Fair Credit Reporting Act (15 U.S.C. 1681v(b)) is
8 amended—

9 (1) in the subsection heading, by striking
10 “FORM OF CERTIFICATION” and inserting “CER-
11 TIFICATION”;

12 (2) by striking “The certification” and inserting
13 the following:

14 “(1) FORM OF CERTIFICATION.—The certifi-
15 cation”; and

16 (3) by adding at the end the following:

17 “(2) WRITTEN STATEMENT.—A supervisory of-
18 ficial or officer described in paragraph (1) may
19 make a certification under subsection (a) only upon
20 a written statement, which shall be retained by the
21 government agency, of specific facts showing that
22 there are reasonable grounds to believe that the in-
23 formation sought is relevant to the authorized inves-
24 tigation described in subsection (a).”.

1 (d) FINANCIAL RECORDS.—Section 1114(a)(5) of the
2 Right to Financial Privacy Act of 1978 (12 U.S.C.
3 3414(a)(5)), as amended by this Act, is amended—

4 (1) by striking subparagraph (C);

5 (2) by redesignating subparagraph (B) as sub-
6 paragraph (C); and

7 (3) by inserting after subparagraph (A) the fol-
8 lowing:

9 “(B) The Director of the Federal Bureau of Inves-
10 tigation, or a designee in a position not lower than Deputy
11 Assistant Director at Bureau headquarters or a Special
12 Agent in Charge in a Bureau field office designated by
13 the Director, may make a certification under subpara-
14 graph (A) only upon a written statement, which shall be
15 retained by the Federal Bureau of Investigation, of spe-
16 cific facts showing that there are reasonable grounds to
17 believe that the information sought is relevant to the au-
18 thorized investigation described in subparagraph (A).”.

19 (e) REQUESTS BY AUTHORIZED INVESTIGATIVE
20 AGENCIES.—Section 802(a) of the National Security Act
21 of 1947 (50 U.S.C. 436(a)) is amended by adding at the
22 end the following:

23 “(4) A department or agency head, deputy depart-
24 ment or agency head, or senior official described in para-
25 graph (3)(A) may make a certification under paragraph

1 (3)(A) only upon a written statement, which shall be re-
2 tained by the authorized investigative agency, of specific
3 facts showing that there are reasonable grounds to believe
4 that the information sought is relevant to the authorized
5 inquiry or investigation described in paragraph
6 (3)(A)(ii).”.

7 (f) TECHNICAL AND CONFORMING AMENDMENTS.—

8 (1) OBSTRUCTION OF CRIMINAL INVESTIGA-
9 TIONS.—Section 1510(e) of title 18, United States
10 Code, is amended by striking “section 2709(c)(1) of
11 this title, section 626(d)(1) or 627(c)(1) of the Fair
12 Credit Reporting Act (15 U.S.C. 1681u(d)(1) or
13 1681v(c)(1)), section 1114(a)(3)(A) or
14 1114(a)(5)(D)(i) of the Right to Financial Privacy
15 Act (12 U.S.C. 3414(a)(3)(A) or
16 3414(a)(5)(D)(i)),” and inserting “section
17 2709(d)(1) of this title, section 626(e)(1) or
18 627(c)(1) of the Fair Credit Reporting Act (15
19 U.S.C. 1681u(e)(1) and 1681v(c)(1)), section
20 1114(a)(3)(A) or 1114(a)(5)(D)(i) of the Right to
21 Financial Privacy Act of 1978 (12 U.S.C.
22 3414(a)(3)(A) and 3414(a)(5)(D)(i)),”.

23 (2) SEMIANNUAL REPORTS.—Section 507(b) of
24 the National Security Act of 1947 (50 U.S.C.
25 415b(b)) is amended—

1 (A) by striking paragraphs (4) and (5);
2 and
3 (B) by redesignating paragraph (6) as
4 paragraph (4).

5 **SEC. 8. PUBLIC REPORTING ON NATIONAL SECURITY LET-**
6 **TERS.**

7 (a) IN GENERAL.—Section 118(c) of the USA PA-
8 TRIOT Improvement and Reauthorization Act of 2005
9 (18 U.S.C. 3511 note) is amended to read as follows:

10 “(c) REPORTS ON REQUESTS FOR NATIONAL SECU-
11 RITY LETTERS.—

12 “(1) DEFINITIONS.—In this subsection—

13 “(A) the term ‘applicable period’ means—

14 “(i) with respect to the first report
15 submitted under paragraph (2) or (3), the
16 period beginning 180 days after the date
17 of enactment of the USA PATRIOT Act
18 Sunset Extension Act of 2011 and ending
19 on December 31, 2011; and

20 “(ii) with respect to the second report
21 submitted under paragraph (2) or (3), and
22 each report thereafter, the 6-month period
23 ending on the last day of the second month
24 before the date for submission of the re-
25 port; and

1 “(B) the term ‘United States person’ has
2 the meaning given that term in section 101 of
3 the Foreign Intelligence Surveillance Act of
4 1978 (50 U.S.C. 1801).

5 “(2) CLASSIFIED FORM.—

6 “(A) IN GENERAL.—Not later than Feb-
7 ruary 1, 2012, and every 6 months thereafter,
8 the Attorney General shall submit to the Select
9 Committee on Intelligence, the Committee on
10 the Judiciary, and the Committee on Banking,
11 Housing, and Urban Affairs of the Senate and
12 the Permanent Select Committee on Intel-
13 ligence, the Committee on the Judiciary, and
14 the Committee on Financial Services of the
15 House of Representatives a report fully inform-
16 ing the committees concerning the requests
17 made under section 2709(a) of title 18, United
18 States Code, section 1114(a)(5)(A) of the Right
19 to Financial Privacy Act of 1978 (12 U.S.C.
20 3414(a)(5)(A)), section 626 of the Fair Credit
21 Reporting Act (15 U.S.C. 1681u), section 627
22 of the Fair Credit Reporting Act (15 U.S.C.
23 1681v), or section 802 of the National Security
24 Act of 1947 (50 U.S.C. 436) during the appli-
25 cable period.

1 “(B) CONTENTS.—Each report under sub-
2 paragraph (A) shall include, for each provision
3 of law described in subparagraph (A)—

4 “(i) the number of authorized re-
5 quests under the provision, including re-
6 quests for subscriber information; and

7 “(ii) the number of authorized re-
8 quests under the provision—

9 “(I) that relate to a United
10 States person;

11 “(II) that relate to a person that
12 is not a United States person;

13 “(III) that relate to a person
14 that is—

15 “(aa) the subject of an au-
16 thorized national security inves-
17 tigation; or

18 “(bb) an individual who has
19 been in contact with or otherwise
20 directly linked to the subject of
21 an authorized national security
22 investigation; and

23 “(IV) that relate to a person that
24 is not known to be the subject of an
25 authorized national security investiga-

1 tion or to have been in contact with or
2 otherwise directly linked to the subject
3 of an authorized national security in-
4 vestigation.

5 “(3) UNCLASSIFIED FORM.—

6 “(A) IN GENERAL.—Not later than Feb-
7 ruary 1, 2012, and every 6 months thereafter,
8 the Attorney General shall submit to the Select
9 Committee on Intelligence, the Committee on
10 the Judiciary, and the Committee on Banking,
11 Housing, and Urban Affairs of the Senate and
12 the Permanent Select Committee on Intel-
13 ligence, the Committee on the Judiciary, and
14 the Committee on Financial Services of the
15 House of Representatives a report fully inform-
16 ing the committees concerning the aggregate
17 total of all requests identified under paragraph
18 (2) during the applicable period ending on the
19 last day of the second month before the date for
20 submission of the report. Each report under
21 this subparagraph shall be in unclassified form.

22 “(B) CONTENTS.—Each report under sub-
23 paragraph (A) shall include the aggregate total
24 of requests—

1 “(i) that relate to a United States
2 person;

3 “(ii) that relate to a person that is
4 not a United States person;

5 “(iii) that relate to a person that is—

6 “(I) the subject of an authorized
7 national security investigation; or

8 “(II) an individual who has been
9 in contact with or otherwise directly
10 linked to the subject of an authorized
11 national security investigation; and

12 “(iv) that relate to a person that is
13 not known to be the subject of an author-
14 ized national security investigation or to
15 have been in contact with or otherwise di-
16 rectly linked to the subject of an author-
17 ized national security investigation.”.

18 (b) TECHNICAL AND CONFORMING AMENDMENT.—
19 Section 627 of the Fair Credit Reporting Act (15 U.S.C.
20 1681v) is amended by striking subsection (f).

21 **SEC. 9. PUBLIC REPORTING ON THE FOREIGN INTEL-**
22 **LIGENCE SURVEILLANCE ACT OF 1978.**

23 (a) IN GENERAL.—Title VI of the Foreign Intel-
24 ligence Surveillance Act of 1978 (50 U.S.C. 1871) is
25 amended by adding at the end the following:

1 **“SEC. 602. ANNUAL UNCLASSIFIED REPORT.**

2 “Not later than June 30, 2012, and every year there-
3 after, the Attorney General, in consultation with the Di-
4 rector of National Intelligence, and with due regard for
5 the protection of classified information from unauthorized
6 disclosure, shall submit to the Committee on the Judiciary
7 and the Select Committee on Intelligence of the Senate
8 and the Committee on the Judiciary and the Permanent
9 Select Committee on Intelligence of the House of Rep-
10 resentatives an unclassified report summarizing how the
11 authorities under this Act are used, including the impact
12 of the use of the authorities under this Act on the privacy
13 of United States persons (as defined in section 101).”.

14 (b) TECHNICAL AND CONFORMING AMENDMENT.—
15 The table of contents in the first section of the Foreign
16 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et
17 seq.) is amended by inserting after the item relating to
18 section 601 the following:

“Sec. 602. Annual unclassified report.”.

19 **SEC. 10. AUDITS.**

20 (a) TANGIBLE THINGS.—Section 106A of the USA
21 PATRIOT Improvement and Reauthorization Act of 2005
22 (Public Law 109–177; 120 Stat. 200) is amended—

23 (1) in subsection (b)—

24 (A) in paragraph (1), by striking “2006”
25 and inserting “2011”;

1 (B) by striking paragraphs (2) and (3);
2 (C) by redesignating paragraphs (4) and
3 (5) as paragraphs (2) and (3), respectively; and
4 (D) in paragraph (3), as so redesignated—
5 (i) by striking subparagraph (C) and
6 inserting the following:
7 “(C) with respect to calendar years 2007
8 through 2011, an examination of the minimiza-
9 tion procedures used in relation to orders under
10 section 501 of the Foreign Intelligence Surveil-
11 lance Act of 1978 (50 U.S.C. 1861) and wheth-
12 er the minimization procedures protect the con-
13 stitutional rights of United States persons.”;
14 and
15 (ii) in subparagraph (D), by striking
16 “(as such term is defined in section 3(4) of
17 the National Security Act of 1947 (50
18 U.S.C. 401a(4)))”;
19 (2) in subsection (c), by adding at the end the
20 following:
21 “(3) CALENDAR YEARS 2007, 2008, AND 2009.—
22 Not later than ~~September 30, 2011~~ *March 31, 2012*,
23 the Inspector General of the Department of Justice
24 shall submit to the Committee on the Judiciary and
25 the Permanent Select Committee on Intelligence of

1 the House of Representatives and the Committee on
2 the Judiciary and the Select Committee on Intel-
3 ligence of the Senate a report containing the results
4 of the audit conducted under subsection (a) for cal-
5 endar years 2007, 2008, and 2009.

6 “(4) CALENDAR YEARS 2010 AND 2011.—Not
7 later than ~~December 31, 2012~~ *March 31, 2013*, the
8 Inspector General of the Department of Justice shall
9 submit to the Committee on the Judiciary and the
10 Permanent Select Committee on Intelligence of the
11 House of Representatives and the Committee on the
12 Judiciary and the Select Committee on Intelligence
13 of the Senate a report containing the results of the
14 audit conducted under subsection (a) for calendar
15 years 2010 and 2011.”;

16 (3) by redesignating subsections (d) and (e) as
17 subsections (e) and (f), respectively;

18 (4) by inserting after subsection (c) the fol-
19 lowing:

20 “(d) INTELLIGENCE ASSESSMENT.—

21 “(1) IN GENERAL.—For the period beginning
22 on January 1, 2007 and ending on December 31,
23 2011, the Inspector General of each element of the
24 intelligence community outside of the Department of
25 Justice that used information acquired under title V

1 of the Foreign Intelligence Surveillance Act of 1978
2 (50 U.S.C. 1861 et seq.) in the intelligence activities
3 of the element of the intelligence community shall—

4 “(A) assess the importance of the informa-
5 tion to the intelligence activities of the element
6 of the intelligence community;

7 “(B) examine the manner in which that in-
8 formation was collected, retained, analyzed, and
9 disseminated by the element of the intelligence
10 community;

11 “(C) describe any noteworthy facts or cir-
12 cumstances relating to orders under title V of
13 the Foreign Intelligence Surveillance Act of
14 1978 as the orders relate to the element of the
15 intelligence community; and

16 “(D) examine any minimization procedures
17 used by the element of the intelligence commu-
18 nity under title V of the Foreign Intelligence
19 Surveillance Act of 1978 and whether the mini-
20 mization procedures protect the constitutional
21 rights of United States persons.

22 “(2) SUBMISSION DATES FOR ASSESSMENT.—

23 “(A) CALENDAR YEARS 2007 THROUGH
24 2009.—Not later than ~~September 30, 2011~~
25 *March 31, 2012*, the Inspector General of each

1 element of the intelligence community that con-
2 ducts an assessment under this subsection shall
3 submit to the Committee on the Judiciary and
4 the Select Committee on Intelligence of the
5 Senate and the Committee on the Judiciary and
6 the Permanent Select Committee on Intelligence
7 of the House of Representative a report con-
8 taining the results of the assessment for cal-
9 endar years 2007 through 2009.

10 “(B) CALENDAR YEARS 2010 AND 2011.—
11 Not later than ~~December 31, 2012~~ *March 31,*
12 *2013*, the Inspector General of each element of
13 the intelligence community that conducts an as-
14 sessment under this subsection shall submit to
15 the Committee on the Judiciary and the Select
16 Committee on Intelligence of the Senate and
17 the Committee on the Judiciary and the Perma-
18 nent Select Committee on Intelligence of the
19 House of Representatives a report containing
20 the results of the assessment for calendar years
21 2010 and 2011.”;

22 (5) in subsection (e), as redesignated by para-
23 graph (3)—

24 (A) in paragraph (1)—

1 (i) by striking “a report under sub-
2 section (c)(1) or (c)(2)” and inserting “any
3 report under subsection (c) or (d)”; and

4 (ii) by inserting “and any Inspector
5 General of an element of the intelligence
6 community that submits a report under
7 this section” after “Justice”; and

8 (B) in paragraph (2), by striking “the re-
9 ports submitted under subsection (c)(1) and
10 (c)(2)” and inserting “any report submitted
11 under subsection (c) or (d)”; and

12 (6) in subsection (f) as redesignated by para-
13 graph (3)—

14 (A) by striking “The reports submitted
15 under subsections (c)(1) and (c)(2)” and insert-
16 ing “Each report submitted under subsection
17 (c)”; and

18 (B) by striking “subsection (d)(2)” and in-
19 serting “subsection (e)(2)”; and

20 (7) by adding at the end the following:

21 “(g) DEFINITIONS.—In this section—

22 “(1) the term ‘intelligence community’ has the
23 meaning given that term in section 3 of the National
24 Security Act of 1947 (50 U.S.C. 401a); and

1 “(2) the term ‘United States person’ has the
2 meaning given that term in section 101 of the For-
3 eign Intelligence Surveillance Act of 1978 (50
4 U.S.C. 1801).”.

5 (b) NATIONAL SECURITY LETTERS.—Section 119 of
6 the USA PATRIOT Improvement and Reauthorization
7 Act of 2005 (Public Law 109–177; 120 Stat. 219) is
8 amended—

9 (1) in subsection (b)—

10 (A) in paragraph (1), by striking “2006”
11 and inserting “2011”; and

12 (B) in paragraph (3)(C), by striking “(as
13 such term is defined in section 3(4) of the Na-
14 tional Security Act of 1947 (50 U.S.C.
15 401a(4)))”;

16 (2) in subsection (c), by adding at the end the
17 following:

18 “(3) CALENDAR YEARS 2007, 2008, AND 2009.—
19 Not later than ~~September 30, 2011~~ *March 31, 2012*,
20 the Inspector General of the Department of Justice
21 shall submit to the Committee on the Judiciary and
22 the Permanent Select Committee on Intelligence of
23 the House of Representatives and the Committee on
24 the Judiciary and the Select Committee on Intel-
25 ligence of the Senate a report containing the results

1 of the audit conducted under subsection (a) for cal-
2 endar years 2007, 2008, and 2009.

3 “(4) CALENDAR YEARS 2010 AND 2011.—Not
4 later than ~~December 31, 2012~~ *March 31, 2013*, the
5 Inspector General of the Department of Justice shall
6 submit to the Committee on the Judiciary and the
7 Permanent Select Committee on Intelligence of the
8 House of Representatives and the Committee on the
9 Judiciary and the Select Committee on Intelligence
10 of the Senate a report containing the results of the
11 audit conducted under subsection (a) for calendar
12 years 2010 and 2011.”;

13 (3) by striking subsection (g) and inserting the
14 following:

15 “(h) DEFINITIONS.—In this section—

16 “(1) the term ‘intelligence community’ has the
17 meaning given that term in section 3 of the National
18 Security Act of 1947 (50 U.S.C. 401a);

19 “(2) the term ‘national security letter’ means a
20 request for information under—

21 “(A) section 2709(a) of title 18, United
22 States Code (to access certain communication
23 service provider records);

24 “(B) section 1114(a)(5)(A) of the Right to
25 Financial Privacy Act of 1978 (12 U.S.C.

1 3414(a)(5)(A)) (to obtain financial institution
2 customer records);

3 “(C) section 802 of the National Security
4 Act of 1947 (50 U.S.C. 436) (to obtain finan-
5 cial information, records, and consumer re-
6 ports);

7 “(D) section 626 of the Fair Credit Re-
8 porting Act (15 U.S.C. 1681u) (to obtain cer-
9 tain financial information and consumer re-
10 ports); or

11 “(E) section 627 of the Fair Credit Re-
12 porting Act (15 U.S.C. 1681v) (to obtain credit
13 agency consumer records for counterterrorism
14 investigations); and

15 “(3) the term ‘United States person’ has the
16 meaning given that term in section 101 of the For-
17 eign Intelligence Surveillance Act of 1978 (50
18 U.S.C. 1801).”;

19 (4) by redesignating subsections (d), (e), and
20 (f) as subsections (e), (f), and (g), respectively;

21 (5) by inserting after subsection (c) the fol-
22 lowing:

23 “(d) INTELLIGENCE ASSESSMENT.—

24 “(1) IN GENERAL.—For the period beginning
25 on January 1, 2007 and ending on December 31,

1 2011, the Inspector General of each element of the
2 intelligence community outside of the Department of
3 Justice that issued national security letters in the
4 intelligence activities of the element of the intel-
5 ligence community shall—

6 “(A) examine the use of national security
7 letters by the element of the intelligence com-
8 munity during the period;

9 “(B) describe any noteworthy facts or cir-
10 cumstances relating to the use of national secu-
11 rity letters by the element of the intelligence
12 community, including any improper or illegal
13 use of such authority;

14 “(C) assess the importance of information
15 received under the national security letters to
16 the intelligence activities of the element of the
17 intelligence community; and

18 “(D) examine the manner in which infor-
19 mation received under the national security let-
20 ters was collected, retained, analyzed, and dis-
21 seminated.

22 “(2) SUBMISSION DATES FOR ASSESSMENT.—

23 “(A) CALENDAR YEARS 2007 THROUGH
24 2009.—Not later than ~~September 30, 2011~~
25 *March 31, 2012*, the Inspector General of each

1 element of the intelligence community that con-
2 ducts an assessment under this subsection shall
3 submit to the Committee on the Judiciary and
4 the Select Committee on Intelligence of the
5 Senate and the Committee on the Judiciary and
6 the Permanent Select Committee on Intelligence
7 of the House of Representatives a report con-
8 taining the results of the assessment for cal-
9 endar years 2007 through 2009.

10 “(B) CALENDAR YEARS 2010 AND 2011.—
11 Not later than ~~December 31, 2012~~ *March 31,*
12 *2013*, the Inspector General of any element of
13 the intelligence community that conducts an as-
14 sessment under this subsection shall submit to
15 the Committee on the Judiciary and the Select
16 Committee on Intelligence of the Senate and
17 the Committee on the Judiciary and the Perma-
18 nent Select Committee on Intelligence of the
19 House of Representatives a report containing
20 the results of the assessment for calendar years
21 2010 and 2011.”;

22 (6) in subsection (e), as redesignated by para-
23 graph (4)—

24 (A) in paragraph (1)—

1 (i) by striking “a report under sub-
2 section (c)(1) or (c)(2)” and inserting “any
3 report under subsection (c) or (d)”; and

4 (ii) by inserting “and any Inspector
5 General of an element of the intelligence
6 community that submits a report under
7 this section” after “Justice”; and

8 (B) in paragraph (2), by striking “the re-
9 ports submitted under subsection (c)(1) or
10 (c)(2)” and inserting “any report submitted
11 under subsection (c) or (d)”; and

12 (7) in subsection (f), as redesignated by para-
13 graph (4)—

14 (A) by striking “The reports submitted
15 under subsections (c)(1) or (c)(2)” and insert-
16 ing “Each report submitted under subsection
17 (c)”; and

18 (B) by striking “subsection (d)(2)” and in-
19 serting “subsection (e)(2)”.

20 (c) PEN REGISTERS AND TRAP AND TRACE DE-
21 VICES.—

22 (1) AUDITS.—The Inspector General of the De-
23 partment of Justice shall perform comprehensive au-
24 dits of the effectiveness and use, including any im-
25 proper or illegal use, of pen registers and trap and

1 trace devices under title IV of the Foreign Intel-
2 ligence Surveillance Act of 1978 (50 U.S.C. 1841 et
3 seq.) during the period beginning on January 1,
4 2007 and ending on December 31, 2011.

5 (2) REQUIREMENTS.—The audits required
6 under paragraph (1) shall include—

7 (A) an examination of the use of pen reg-
8 isters and trap and trace devices under title IV
9 of the Foreign Intelligence Surveillance Act of
10 1978 for calendar years 2007 through 2011;

11 (B) an examination of the installation and
12 use of a pen register or trap and trace device
13 on emergency bases under section 403 of the
14 Foreign Intelligence Surveillance Act of 1978
15 (50 U.S.C. 1843);

16 (C) any noteworthy facts or circumstances
17 relating to the use of a pen register or trap and
18 trace device under title IV of the Foreign Intel-
19 ligence Surveillance Act of 1978, including any
20 improper or illegal use of the authority provided
21 under that title; and

22 (D) an examination of the effectiveness of
23 the authority under title IV of the Foreign In-
24 telligence Surveillance Act of 1978 as an inves-
25 tigative tool, including—

1 (i) the importance of the information
2 acquired to the intelligence activities of the
3 Federal Bureau of Investigation;

4 (ii) the manner in which the informa-
5 tion is collected, retained, analyzed, and
6 disseminated by the Federal Bureau of In-
7 vestigation, including any direct access to
8 the information provided to any other de-
9 partment, agency, or instrumentality of
10 Federal, State, local, or tribal governments
11 or any private sector entity;

12 (iii) with respect to calendar years
13 2010 and 2011, an examination of the
14 minimization procedures of the Federal
15 Bureau of Investigation used in relation to
16 pen registers and trap and trace devices
17 under title IV of the Foreign Intelligence
18 Surveillance Act of 1978 and whether the
19 minimization procedures protect the con-
20 stitutional rights of United States persons;

21 (iv) whether, and how often, the Fed-
22 eral Bureau of Investigation used informa-
23 tion acquired under a pen register or trap
24 and trace device under title IV of the For-
25 eign Intelligence Surveillance Act of 1978

1 to produce an analytical intelligence prod-
2 uct for distribution within the Federal Bu-
3 reau of Investigation, to the intelligence
4 community, or to another department,
5 agency, or instrumentality of Federal,
6 State, local, or tribal governments; and

7 (v) whether, and how often, the Fed-
8 eral Bureau of Investigation provided in-
9 formation acquired under a pen register or
10 trap and trace device under title IV of the
11 Foreign Intelligence Surveillance Act of
12 1978 to law enforcement authorities for
13 use in criminal proceedings.

14 (3) SUBMISSION DATES.—

15 (A) CALENDAR YEARS 2007 THROUGH
16 2009.—Not later than ~~September 30, 2011~~
17 *March 31, 2012*, the Inspector General of the
18 Department of Justice shall submit to the Com-
19 mittee on the Judiciary and the Select Com-
20 mittee on Intelligence of the Senate and the
21 Committee on the Judiciary and the Permanent
22 Select Committee on Intelligence of the House
23 of Representatives a report containing the re-
24 sults of the audits conducted under paragraph
25 (1) for calendar years 2007 through 2009.

1 (B) CALENDAR YEARS 2010 AND 2011.—

2 Not later than ~~December 31, 2012~~ *March 31,*
3 *2013*, the Inspector General of the Department
4 of Justice shall submit to the Committee on the
5 Judiciary and the Select Committee on Intel-
6 ligence of the Senate and the Committee on the
7 Judiciary and the Permanent Select Committee
8 on Intelligence of the House of Representatives
9 a report containing the results of the audits
10 conducted under paragraph (1) for calendar
11 years 2010 and 2011.

12 (4) INTELLIGENCE ASSESSMENT.—

13 (A) IN GENERAL.—For the period begin-
14 ning January 1, 2007 and ending on December
15 31, 2011, the Inspector General of any element
16 of the intelligence community outside of the De-
17 partment of Justice that used information ac-
18 quired under a pen register or trap and trace
19 device under title IV of the Foreign Intelligence
20 Surveillance Act of 1978 in the intelligence ac-
21 tivities of the element of the intelligence com-
22 munity shall—

23 (i) assess the importance of the infor-
24 mation to the intelligence activities of the
25 element of the intelligence community;

1 (ii) examine the manner in which the
2 information was collected, retained, ana-
3 lyzed, and disseminated;

4 (iii) describe any noteworthy facts or
5 circumstances relating to orders under title
6 IV of the Foreign Intelligence Surveillance
7 Act of 1978 as the orders relate to the ele-
8 ment of the intelligence community; and

9 (iv) examine any minimization proce-
10 dures used by the element of the intel-
11 ligence community in relation to pen reg-
12 isters and trap and trace devices under
13 title IV of the Foreign Intelligence Surveil-
14 lance Act of 1978 and whether the mini-
15 mization procedures protect the constitu-
16 tional rights of United States persons.

17 (B) SUBMISSION DATES FOR ASSESS-
18 MENT.—

19 (i) CALENDAR YEARS 2007 THROUGH
20 2009.—Not later than ~~September 30, 2011~~
21 *March 31, 2012*, the Inspector General of
22 each element of the intelligence community
23 that conducts an assessment under this
24 paragraph shall submit to the Committee
25 on the Judiciary and the Select Committee

1 on Intelligence of the Senate and the Com-
2 mittee on the Judiciary and the Permanent
3 Select Committee on Intelligence of the
4 House of Representative a report con-
5 taining the results of the assessment for
6 calendar years 2007 through 2009.

7 (ii) CALENDAR YEARS 2010 AND
8 2011.—Not later than ~~December 31, 2012~~
9 *March 31, 2013*, the Inspector General of
10 each element of the intelligence community
11 that conducts an assessment under this
12 paragraph shall submit to the Committee
13 on the Judiciary and the Select Committee
14 on Intelligence of the Senate and the Com-
15 mittee on the Judiciary and the Permanent
16 Select Committee on Intelligence of the
17 House of Representative a report con-
18 taining the results of the assessment for
19 calendar years 2010 and 2011.

20 (5) PRIOR NOTICE TO ATTORNEY GENERAL AND
21 DIRECTOR OF NATIONAL INTELLIGENCE; COM-
22 MENTS.—

23 (A) NOTICE.—Not later than 30 days be-
24 fore the submission of any report paragraph (3)
25 or (4), the Inspector General of the Department

1 of Justice and any Inspector General of an ele-
2 ment of the intelligence community that sub-
3 mits a report under this subsection shall pro-
4 vide the report to the Attorney General and the
5 Director of National Intelligence.

6 (B) COMMENTS.—The Attorney General or
7 the Director of National Intelligence may pro-
8 vide such comments to be included in any re-
9 port submitted under paragraph (3) or (4) as
10 the Attorney General or the Director of Na-
11 tional Intelligence may consider necessary.

12 (6) UNCLASSIFIED FORM.—Each report sub-
13 mitted under paragraph (3) and any comments in-
14 cluded in that report under paragraph (5)(B) shall
15 be in unclassified form, but may include a classified
16 annex.

17 (d) DEFINITIONS.—In this section—

18 (1) the terms “foreign intelligence information”
19 and “United States person” have the meanings
20 given those terms in section 101 of the Foreign In-
21 telligence Surveillance Act of 1978 (50 U.S.C.
22 1801); and

23 (2) the term “intelligence community” has the
24 meaning given that term in section 3 of the National
25 Security Act of 1947 (50 U.S.C. 401a).

1 **SEC. 11. DELAYED NOTICE SEARCH WARRANTS.**

2 Section 3103a(b)(3) of title 18, United States Code,
3 is amended by striking “30 days” and inserting “7 days”.

4 **SEC. 12. PROCEDURES.**

5 (a) IN GENERAL.—The Attorney General shall peri-
6 odically review, and revise as necessary, the procedures
7 adopted by the Attorney General on October 1, 2010 for
8 the collection, use, and storage of information obtained in
9 response to a national security letter issued under section
10 2709 of title 18, United States Code, section 1114(a)(5)
11 of the Right to Financial Privacy Act of 1978 (12 U.S.C.
12 3414(5)), section 626 of the Fair Credit Reporting Act
13 (15 U.S.C. 1681u), or section 627 of the Fair Credit Re-
14 porting Act (15 U.S.C. 1681v).

15 (b) CONSIDERATIONS.—In reviewing and revising the
16 procedures described in subsection (a), the Attorney Gen-
17 eral shall give due consideration to the privacy interests
18 of individuals and the need to protect national security.

19 (c) REVISIONS TO PROCEDURES AND OVERSIGHT.—
20 If the Attorney General makes any significant changes to
21 the procedures described in subsection (a), the Attorney
22 General shall notify and submit a copy of the changes to
23 the Committee on the Judiciary and the Select Committee
24 on Intelligence of the Senate and the Committee on the
25 Judiciary and the Permanent Select Committee on Intel-
26 ligence of the House of Representatives.

1 **SEC. 13. SEVERABILITY.**

2 If any provision of this Act or an amendment made
3 by this Act, or the application of the provision to any per-
4 son or circumstance, is held to be unconstitutional, the
5 remainder of this Act and the amendments made by this
6 Act, and the application of the provisions of this Act and
7 the amendments made by this Act to any other person
8 or circumstance, shall not be affected thereby.

9 **SEC. 14. OFFSET.**

10 Of the unobligated balances available in the Depart-
11 ment of Justice Assets Forfeiture Fund established under
12 section 524(c)(1) of title 28, United States Code,
13 \$5,000,000 are permanently rescinded and shall be re-
14 turned to the general fund of the Treasury.

15 **SEC. 15. ELECTRONIC SURVEILLANCE.**

16 *Section 105(c)(1)(A) of the Foreign Intelligence Sur-*
17 *veillance Act of 1978 (50 U.S.C. 1805(c)(1)(A)) is amended*
18 *by inserting “with particularity” after “description”.*

19 **SEC. 16. DEATH PENALTY FOR CERTAIN TERROR RELATED**
20 **CRIMES.**

21 *(a) PARTICIPATION IN NUCLEAR AND WEAPONS OF*
22 *MASS DESTRUCTION THREATS TO THE UNITED STATES.—*
23 *Section 832(c) of title 18, United States Code, is amended*
24 *by inserting “punished by death if death results to any per-*
25 *son from the offense, or” after “shall be”.*

1 (b) *MISSILE SYSTEMS TO DESTROY AIRCRAFT.*—Sec-
2 tion 2332g(c)(3) of title 18, United States Code, is amended
3 by inserting “punished by death or” after “shall be”.

4 (c) *ATOMIC WEAPONS.*—The last sentence of section
5 222 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2272)
6 is amended by inserting “death or” before “imprisonment
7 for life” the last place it appears.

8 (d) *RADIOLOGICAL DISPERSAL DEVICES.*—Section
9 2332h(c)(3) of title 18, United States Code, is amended by
10 inserting “death or” before “imprisonment for life”.

11 (e) *VARIOLA VIRUS.*—Section 175c(c)(3) of title 18,
12 United States Code, is amended by inserting “death or” be-
13 fore “imprisonment for life”.

14 **SEC. 1517. EFFECTIVE DATE.**

15 The amendments made by sections 3, 4, 5, 6, 7, and
16 11 shall take effect on the date that is 120 days after
17 the date of enactment of this Act.

Hinnen, Todd (NSD)

From: Hinnen, Todd (NSD)
Sent: Wednesday, March 23, 2011 11:38 AM
To: O'Neil, David (ODAG)
Subject: FW: NSL Testimony
Attachments: nsctestimony2.docx

[Here you go.](#)

From: Wiegmann, Brad (NSD)
Sent: Wednesday, March 23, 2011 10:01 AM
To: Ruppert, Mary (SMO); Agrast, Mark D. (SMO)
Cc: Hinnen, Todd (NSD) (b)(6) per NSD (NSD)
Subject: NSL Testimony

Here is a draft of Todd's HJC testimony for next week to be put into the clearance process asap. Thanks!

FBI
DEA
NDIC
ATF
OPCL

2) OPCL (Valerie Calogero) and OLA (Mark Agrast) submitted comments on the statement;

3) EOUSA and ATF did not respond;

4) We would like to submit the statement to OMB this afternoon in order to facilitate OMB clearance in time to meet the Committee's Monday deadline for submission;

5) I have attached the associated documents.

<< File: wf101930 control.doc >>

Attached for OMB clearance is draft Justice Department testimony for a March 30, 2011, hearing before the House Judiciary Subcommittee on Crime entitled "The Permanent Provisions of the PATRIOT Act." The Committee requires the statement 48 hours in advance of the hearing. Please acknowledge receipt of this message.

<< File: FISA40A.doc.doc >> << File: FISA40B.doc.docx >>

O'Neil, David (ODAG)

From: O'Neil, David (ODAG)
Sent: Thursday, March 31, 2011 2:38 PM
To: Henderson, Charles V (SMO)
Subject: FW: Transcript
Attachments: Director Mueller - 3 30 11 - SJC Transcript.docx

HEARING OF THE SENATE JUDICIARY COMMITTEE SUBJECT: OVERSIGHT OF THE
FEDERAL BUREAU OF INVESTIGATION (FBI) CHAIRED BY: SENATOR PATRICK LEAHY
(D-VT) WITNESS: ROBERT MUELLER, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION
LOCATION: 226 DIRKSEN SENATE OFFICE BUILDING, WASHINGTON, D.C. TIME:
10:04 A.M. EDT DATE: WEDNESDAY, MARCH 30, 2011

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SEN. LEAHY: OK. Today, the Judiciary Committee will hear from
Director Robert Mueller. This fall, the director will complete his 10-
year term overseeing the FBI.

He and I were talking out back earlier. I don't know when I've
seen 10 years go by so quickly, and I'm sure the director feels the same
way. He took over just days before the attacks of September 11th. And I
told him a reference from Elizabethan England, which I will not repeat
here, in the hearing during that time.

But it did seem like everything -- it is almost as though they
were trying to give the director his full tenured term in about the first
10 days with all that went on. He's overseen a major transformation of
the bureau, where the FBI continues to perform all the functions of a
federal law enforcement agency. It's greatly increased its role ensuring
our national security.

There had been growing pains and false starts, but Director
Mueller has managed this transformation of a large and well- established
agency with great professionalism and focus and will leave at the end of
his tenure a better bureau than he had when he came in.

The director has aggressively pursued both law enforcement and
national security objectives while maintaining a strong commitment to the
values and freedoms we hold most dear as Americans.

In commemorating the 100th anniversary of the FBI several years
ago -- and I remember sitting there, listening to the director as he said
this -- he said, "It's not enough to stop the terrorist; we must stop him
while maintaining his civil liberties. It's not enough to catch a
criminal; we must catch him while protecting his civil rights. It's not
enough to prevent foreign countries from stealing our secrets; we must
prevent that from happening while still upholding the rule of law. The
rule of law, civil liberties and civil rights -- these are not our

burdens; they are what make us better. They're what made us better for the past hundred years."

I was in that audience when he said that. I think it's fair to say the audience went across the political spectrum, and his statement was greeted with long and sustained applause. I've tried to advance these same objectives with carefully calibrated criminal justice legislation like the Justice for All Act, national security legislation like the USA PATRIOT Act reauthorization proposal that recently passed with this committee.

But I'm gratified the director shares our commitment to working to keep all Americans safe while preserving the values of all Americans. I appreciate the FBI has shown signs recently of real progress on issues by the committee and the country. National security and counterterrorism are central to the FBI's mission.

It's been heartening to see this steady string of important arrests of those who do this country harm. Earlier this month, the FBI arrested Kevin Harpham for planning to bomb a march in honor of Martin Luther King Day in Spokane, Washington. Mr. Harpham reportedly had ties to white supremacist groups. The plot he's accused of planning came dangerously close to succeeding. Had it succeeded with the bomb that he had, the results could have been devastating -- large crowd of people. And I commend the FBI for making this arrest, which shows the continuing threat posed by domestic terrorism. It makes very clear that no one ethnic group has a monopoly on terror.

Now, in the last Congress, we've made great strides towards more fraud-prevention enforcement. I worked hard with Senator Grassley and others to craft and pass the Fraud Enforcement and Recovery Act, the most expansive anti-fraud legislation in more than a decade. It adds resources, statutory tools for effective prevention, detection and enforcement of mortgage fraud and financial fraud.

We worked hard to ensure that both the health care reform legislation and Wall Street reform legislation passed last year, had important new tools in cracking down on fraud. Senator Grassley and I are hard at work in new legislation to provide greater support for aggressive enforcement of our fraud laws.

And I'm pleased to see the FBI has been taking advantage of this heightened support for fraud enforcement. They've greatly increased the number of agents investigating fraud. They've led to more fraud arrests, but also -- the taxpayer should be happy about this -- they've led to greater fraud recoveries. And I'm glad that the FBI has maintained its historic focus on combating corruption. So I hope that they will continue to crack down on the kinds of fraud that contributed so greatly to our current financial crisis, and on corruption that undermines America's faith in their democracy.

And lastly, I've been heartened to see the FBI statistics continue to show reductions in violent crime nationwide, despite the painful recession. And I commend the FBI for their work in combatting

violent crime. And I hope the Congress will continue to provide the urgently needed assistance to state and local law enforcement, which has been vital to keep down crime throughout the country.

Then of course areas of major concern include the FBI's continuing struggles with modernizing technology and information-sharing system. We will have vigorous oversight. And I know that today's hearing will shed light in these areas.

But I thank the director for returning to committee, for his responsiveness to his oversight efforts, but especially to his personal example and impressive leadership over the past decade. He (returned ?) the FBI to its best tradition. If you get to know the director, his family and all, you can see he carries the same values to work, and I commend him for that. I also say I commend him for the times when difficult things happening. He's called me at home or on the road or in Vermont and actually traveled to Vermont with me to talk about it. And that meant -- that meant a great deal and means a great deal.

And of course, I thank the hardworking men and women of the FBI. Again, and our -- according to all our personal conversations, we were -- earlier, the director and I were talking about how fortunate we are to have the kind of men and women who put their lives on hold to uphold what's needed in our country.

Senator Grassley.

SENATOR CHUCK GRASSLEY (R-IA): Thank you. Mr. Chairman, oversight of the FBI is probably one of the most important oversight hearings that you have, and so I thank you.

I would take a moment to publicly thank you, Director Mueller, for your service to America, and I do that just in case this might be the last time as director of the FBI you're before this committee. But I'll bet you after you're in private life, you'll be asked to testify on various things before Congress in that capacity because of your experience.

While we have had our share of disagreements, Director Mueller, I've always appreciated your candor and your willingness to work with us to get answers, even if we don't always agree with what those answers are.

For instance, I know there's a lot of agreement between you and me on the need to extend the Patriot Act provisions that are set to expire in May. The three expiring provisions of the Patriot Act are very important tools used by law enforcement and the intelligence community to protect us from threats to our national security. They are vital to our ability to investigate, identify and track and deter terrorists.

It was recently revealed that the FBI successfully utilized a Section 215 order as part of the investigation that prevented a terrorist attack planned by a Saudi national in Texas. In that case, it was revealed that the individual in question purchased bomb-making materials,

such as three gallons of sulfuric acid, clocks, chemistry sets and a gas mask from online retailers amazon.com and eBay. This case is the latest of many examples of successes of the Patriot Act provisions and your successful use of that. Given the numerous threats we face and the fact that the three expiring provisions have not been found to have been abused, the Senate should work to reauthorize the expiring authority without amendment.

Aside from the critical national security authority we need to reauthorize, I want to today eventually ask Director Mueller about a recent report that was issued by Homeland Security and Government Affairs Committee released in February entitled, quote, "A Ticking Bomb," unquote, that examined the tragic shootings at Fort Hood that occurred November 2009. That report highlighted a number of problems at both the Department of Defense and the FBI and found, quote, "systematic failures in the government's handling of the Hasan case," end of quote. I was troubled to hear allegations contained in the report, including that an analyst on a joint terrorism task force was not provided full access to a key FBI database simply because he was from a non-FBI agency.

I want to hear from the director whether he agreed with some of these key findings, what is being done to correct any deficiencies in the way terrorism cases are reviewed, and whether information sharing has been improved.

I will also ask the director some questions about FBI employee personnel matters. I have long been concerned about the plight about the whistleblowers within the FBI. Director Mueller has made it a priority to instruct all employees of the FBI that retaliation against whistleblowers will not be tolerated, but unfortunately, that directive has not always been followed by agents in the field, and I find one case particularly troubling.

In 2007 a Department of Justice inspector general issued a memorandum finding that a 30-year nonagent employee of the FBI, Robert Kobus, was retaliated against for protecting -- for protected whistleblowing. The inspector general found that, quote, "The FBI management in New York field division improperly moved Kobus from the position of a senior administrative support manager to several nonsupervisory positions," end of quote. One of those positions included being demoted to OSHA safety officer. The retaliation was blatant and included moving his office to a cubicle on a vacant 24th floor of the FBI building. The inspector general ultimately concluded that the decision to move him was in retaliation for disclosing wrongdoing to a special agent in charge of the field office -- in this case, an attendance fraud by FBI agents. This is exactly the type of retaliation against whistleblowers that should never occur.

So I'm working on a request that I shared with Chairman Leahy -- you may not know about it, but I have given it to your staff -- hoping that we can work together on this issue. But I would also request that the Government Accountability Office conduct a top-to-bottom review of the Department of Justice's process for dealing with FBI whistleblowers. Delays like the one in the Kobus case send a clear -- a clear signal to

potential whistleblowers that reporting wrongdoing will only lend (sic) up in an expensive bureaucratic mess.

Another area of concern that I have relates to the FBI employee misconduct. In January of this year the internal FBI Office of Professional Responsibility documents were leaked to the press. Those documents contained a number of shocking allegations about misconduct committed by employees of the FBI. An example: The document detailed FBI agents who were dismissed because they were arrested for drunk driving and engaged in improper relationship with FBI informants, leaked classified information to reporters, sought reimbursement for expenditures they never made and in one instance brought foreign nationals back into the FBI space for -- after hours.

I want to know more about these penalties, how they were determined. I think it is necessary and important to know, in light of the fact that the inspector general found in the May 2009 report that there is a perception among FBI employees that there's a double standard for discipline among higher-ranking and lower-ranking employees.

Director Mueller, over the past eight months I have been investigating systemic problems at the Philadelphia Public Housing Authority -- outlandish salaries, sexual harassment settlements and excessive legal billings, just to name a few of the problems. And I'd like to -- I want to express my appreciation regarding the FBI's ongoing investigation and recent seizure of expensive luggage purchased as gifts by the Philadelphia Public Housing Authority, and I hope the FBI follows through vigorously in any criminal violations that may have occurred at the Philadelphia public housing.

Finally, I want to ask the director about fiscal 2012 budget request that was submitted to Congress. I continue to have concerns with the FBI's agencywide case management system known as Sentinel. I want to know when this is going to end, how much taxpayers' money will be necessary and how the FBI plans to maintain the older case management database as part of the new system. After a decade of upgrading the system, not another dime of taxpayers' money should be awarded until the FBI can prove the system will work and will be done on time.

That's a lot to cover. I thank you for your patience as I cover those items.

SEN. LEAHY: Thank you very much.

And Director Mueller, please go ahead, sir.

MR. MUELLER: Thank you, and good morning, Chairman Leahy and Ranking Member Grassley and other members of the committee who are here today. I appreciate the opportunity to appear before the committee.

I will start by saying that the FBI faces today unprecedented and increasingly complex challenges.

We must identify and stop terrorists before they launch attacks against our citizens. We must protect our government, businesses and critical infrastructure from espionage and from the potentially devastating impact of cyber-based attacks. We must root out public corruption, fight white collar and organized crime, stop child predators and protect civil rights.

We must also ensure we are building a structure that will carry the FBI into the future, by continuing to enhance our intelligence capabilities, improve our business practices and training, and develop the next generation of bureau leaders. And we must do all of this while respecting the authority given to us under the Constitution, upholding civil liberties and the rule of law.

The challenges of carrying out this mission have never been greater, as the FBI has never faced a more complex threat environment than it does today. Over the past year, the FBI has faced an extraordinary range of threats, from terrorism, espionage, cyber attacks and traditional crime. A few examples: Last October, there were the attempted bombings on air cargo flights bound for the United States from Yemen, directed by al-Qaida in the Arabian Peninsula. Last May, there was the attempted car bombing in Times Square, aided by TTP in Pakistan. These attempted attacks demonstrate how al-Qaida and its affiliates still have the intent to strike inside the United States.

In addition, there were a number of serious terror plots by lone offenders here in the United States. Their targets ranged from the Martin Luther King Day march in Spokane, Washington, as mentioned by the chairman, to a Christmas tree lighting ceremony in Portland, Oregon, to subway stations in the Washington, D.C., metro system. And while the motives and methods for these plots were varied, they do and were among the most difficult threats to combat.

The espionage threat persisted, as well. Last summer, there were the arrests of 10 Russian spies, known as "illegals," who secretly blended into American society in order to clandestinely gather information for Russia. And we continue to make significant arrests for economic espionage, as foreign interests seek to steal controlled technologies.

The cyber intrusion at Google last year highlighted the potential danger from a sophisticated Internet attack. And along with countless other cyber incidents, these attacks threaten to undermine the integrity of the Internet and to victimize the businesses and persons who rely on it.

In our criminal investigations, we continue to uncover billion-dollar corporate and mortgage frauds that weaken the financial system and victimize investors, homeowners and, ultimately, taxpayers. We also exposed health care scams involved -- involving false billings and fake treatments that endangered patients and fleeced government health care programs.

The extreme violence across our southwest border continued to impact the United States, as we saw the murders last March of American consulate workers in Juarez, Mexico, and the shooting last month of two U.S. Immigration and Customs Enforcement agents in Mexico. And throughout the year, there were numerous corruption cases that undermined the public trust, and countless violent gang cases that continue to take innocent lives and endanger our communities.

As these examples demonstrate, the FBI's mission to protect the American people has never been broader, and the demands on the FBI have never been greater. And to carry out these responsibilities, we do need Congress' continued support more than ever.

Let me briefly discuss two areas where Congress can help the FBI with its mission. First, I do encourage Congress to reauthorize the three FISA tools that are due to expire later this spring. The roving Internet -- intercept authority is necessary for our national security mission, and provides us with tools similar to what we use in criminal cases already, and have used for a number of years. The business records authority permits us to obtain key documents and data in our national security cases, including in our most serious terrorism matters. And the "lone wolf" provision is important to combat the growing threat from lone offenders and homegrown radicalization. These authorities, all of which are conducted with full court review and approval, are critical to our national security.

Second, the FBI and other government agencies are now facing a growing gap in our ability to execute court-approved intercepts of certain modern communications technologies.

We call this the problem of going dark. With the acceleration of new, Internet-based technologies, we are increasingly unable to collect valuable evidence in cases ranging from child exploitation and pornography to organized crime and drug trafficking, as well as to terrorism and espionage.

Let me emphasize at the outset that collecting this evidence has been approved by a court, but because -- and because the laws have not kept pace with the changes in technology, we cannot obtain -- often we cannot obtain the information responsive to the court orders from the communications carrier. And we look forward to working with this committee and Congress on the legislative fixes that may be necessary to close this gap and preserve our ability to protect all Americans.

Lastly, let me say a few words about the impact of the continuing budget resolutions on the FBI and on our workforce. The support from this committee and Congress has been an important part of transforming the FBI into the national security agency it is today. But for our transformation to be complete, we must continue to hire, train and develop our cadre of agents, analysts and staff to meet the complex threats we face now and in the future.

Under the current levels in the continuing resolution, the FBI will have to absorb over \$200 million in cuts; and without any changes,

the current CR will leave us with over 1,100 vacant positions by the end of the year. Put simply, these cuts would undermine our efforts to continue to transform the bureau and undermine our efforts to carry out our mission.

I appreciate the opportunity to review the FBI's work in responding to the far-reaching threats we face today, before you today. I also want to thank the committee for your continued support, the support over the years that I have held this position, and not only support for me, but most particularly for your support of the men and women of the FBI who do the work of this great institution.

Thank you. And I'd be happy to answer any questions, Mr. Chairman.

SEN. LEAHY: Well, thank you -- thank you, Director. And again I reiterate my personal feelings and appreciation for what you've done and for the openness you've shown when we've had -- when I've had questions, and others on the committee, and all senators have -- I think have found you to be very accessible. Earlier this month - I mentioned this in my opening statement, about the FBI arresting Kevin Harpham in connection with a plot to bomb a parade in honor of Martin Luther King Day in Spokane, Washington. And what I've read in the press is that the bomb was very sophisticated. The plot almost succeeded. With the large number of people around there, at least in looking at some of the press photographs, if the bomb had gone off, the results would have been horrible. He reportedly had ties to white supremacist groups. And I mention this only because I don't want us to lose sight of the fact that domestic terrorism may not be as visible as international terrorism, but also a threat to us, just as Timothy McVeigh in Oklahoma City, and others.

What is the threat posed by domestic terrorism? How would you - - just generally, not this particular case, but generally how do you see the threat of domestic terrorism?

MR. MUELLER: Well, every -- we have not lost sight, even with September 11th, of the devastation that was wreaked by McVeigh in Oklahoma City in 1995. And we have -- certainly before then, but most particularly since then -- been -- had domestic terrorism as almost an important issue as the international terrorism that we have seen over the years. Whether it be white supremacists, (emotional ?) extremists, sovereign citizen extremists, we continue to undertake investigations with adequate -- where we have the predication to make certain that these groups do not present terrorist threats.

I will tell you that most concerning is -- yes, the groups themselves in some ways, but most concerning are the lone wolves, those persons who may have had some loose affiliation with one of these groups but have -- may have been rejected by the group as being too extreme or individually found the group was not extreme enough and then, on their own, undertake an attack.

And so that is a -- I would say the possibility of a -- activity from a lone wolf is the thing that we're most concerned about --

SEN. LEAHY: Those are -- those are the people who'd be the hardest to track, I would take it.

MR. MUELLER: That is correct. They don't communicate with any others. There's -- really difficult to put into place the capabilities of alerting us when one of those individuals looks like they want to go operational.

SEN. LEAHY: Unabomber, people like that?

MR. MUELLER: Exactly.

SEN. LEAHY: Very hard. No, I agree with you. And I raise this just because I would hate to have anybody lose sight of the fact in a nation of 300 million people and the size of our country, we do face questions of domestic terrorism. And we have to -- not just at the FBI level but state and local, others -- keep track of that too.

Last week, the press released an FBI memorandum providing guidance to the field on the interrogation of terror suspects arrested in the United States. Now, you could have people playing on all sides of the debate about how to treat terrorism suspects. But as I can tell, the memo essentially reiterates current law.

When I first became a prosecutor, Miranda came down. You had to ask -- read them the Miranda. And I remember working with the police within my jurisdiction, how to adapt to it. You have your regular training programs with any new FBI how to do it. This memo reiterates requirements of Miranda decisions and restates the narrow parameters of the public safety exception. And there's always been -- contrary to some of the (plain ?) rhetoric -- there's always been a public safety exception. And it makes no changes in requirements covering presentment of a suspect in court. If the agents believe the suspect has valuable intelligence, they can continue the interrogation even beyond the recognized parameters of the public safety exception, understanding the possible exclusion in court. I think you were wise to do it this way and not do it through -- try to make a congressional change. I'll get to that in a moment.

But have these procedures been effective in the past? You've had this in place now for a while. Have they been effective? Do you think they will be effective in the future? MR. MUELLER: I do think they have been effective and will continue to be effective in the future. We are in some sense in uncharted but guided territory in the sense that the Quarles decision issued by the Supreme Court that establishes the public safety exception was applicable to a discrete set of facts relating to a robbery.

And I -- what we have to anticipate is how that public safety exception translates to the area of terrorism. And our guidance errs on the side of obtaining that information we need to prevent the next

terrorist attack, but within what we think would be the parameters of the public safety exception, if and when the Supreme Court has an opportunity to look at how expansive that particular exception is.

SEN. LEAHY: And you have to assume they will. I recall being in a long meeting with the president, and I believe Attorney General Holder joined the meeting part way through. And we were talking about whether we'd make changes, try to make changes legislatively, to Miranda. I argued that you can't really do that. The Dickerson case of the Supreme Court said that Miranda is a constitutional decision. The -- a legislative act could not overrule that. But as a constitutional decision, it has been your experience, I take it, that the Supreme Court has carved out certain areas that show practicality in there, for want of a better word.

MR. MUELLER: Well, I think we have to wait and see what the Supreme Court does. In the meantime, our principal responsibility when it comes to counterterrorism is stopping the next terrorist attack. And consequently, we look at each case as an opportunity to gather that intelligence and information that will stop the next terrorist attack. And that is foremost on our minds, but doing that within the construct that's been given to us by the Congress and the Supreme Court.

SEN. LEAHY: And those memoranda get some flexibility in a --

MR. MUELLER: It does.

SEN. LEAHY: Okay. Thank you. I mentioned your tenure began just before the September 11th attacks, the wrap-up just before the 10th anniversary of that. You've seen a big transformation.

Now, your successor, whoever he or she may be, is going to sit down, if they're at all wise -- certainly I would recommend it -- to talk about what's happened in the last 10 years and certainly views of the next 10 years.

When you hand that leadership over, what would say is the most -- what would you tell them the most effective way to manage the extraordinary amount of data that is gathered by the FBI. I mean, you've got -- it's like a tsunami, the day that it comes in there. How do you do that and identify threats and hold our values? What kind of advice would you give? And that'll be my last question.

MR. MUELLER: Well, generally, my advice would be to rely on the people in the FBI. I started a week before September 11th. I was -- I had knew -- did not know really how the FBI operated other than looking at it from afar as an assistant United States attorney. And the remarkable thing is how that organization pulled together to undertake the responsibilities of responding to September 11th. And so regardless of what one does as the director, the FBI is an organization and an institution that has the strength to carry us.

With regard to the tsunami of information that you talk about, one of the lessons we have learned since September 11th is, there have

been a profusion of databases, different data bases, given different authorities. And what we have needed over a period of time -- and not only us, but others in the intelligence community -- are the capabilities for federated searches that enable you to pull out the pieces of information from disparate databases and put them together to prevent the next terrorist attack.

But as much as you can do this digitally, as much as you can do this with database -- databases, there always is the human element, the personal element that ultimately is successful. And developing the persons that are capable of sifting through this data with the help of algorithms and the like is as important as developing the digital capability to sort through it. And so continuing to build the analytical cadre, continuing to build the type of agents and analysts and professional staff that know and understand the technological area, but know and understand the human element of it, is as important as anything else. And that's what we try to do -- build up that capability since September 11th. And I would expect my successor would continue on that path.

SEN. LEAHY: Thank you very, very much. Senator Grassley.

SEN. GRASSLEY: Director Mueller, I am going to start out with a question or two that probably you touched on in your testimony. But I think it's important that we get answers to specific questions. This is in regard to the Patriot Act -- and you know the three provisions that are expiring -- do you agree that these three provisions should be made permanent?

MR. MUELLER: Yes, sir.

SEN. GRASSLEY: Have these three tools been useful to the FBI to prevent terrorist attacks in our country?

MR. MUELLER: They have. Let me, if I briefly can mention, the business records provision has been used 380 times. You alluded to an instance where it was used recently. It's absolutely essential that we have the ability to gather these records through that provision. Whether it be for identifying intelligence officers from other countries, these records enable us to get hotel records, travel records and the like. And without that capability, we would -- and -- would be -- it would be difficult to develop the cases and the investigations in that arena, as well as the counterterrorism arena without this provision.

The roving wiretap provision has been used more than 190 times. It is limited in the sense that we have to show that the individual for whom we wish this authority is trying to avoid surveillance. And again, it is reviewed by the court before it's issued. And as I did mention in my testimony, we have had this capability on the criminal side of the House for any number of years. It has been very helpful on national security and important.

The one we have not yet used is the lone wolf provision. But I still believe that that is important. We have come close to using it in

several of our cases. The one thing I would point out there is that the only time it is to be used is on a non-U.S. citizen and with court approval. And consequently, while we have not used that provision, with the profusion of lone wolf cases domestically and, indeed, some internationally, my expectation is we will be using this in the future. And I believe that it's important that it be reauthorized.

SEN. GRASSLEY: Yeah. I think that your answer shows that if these provisions were not reauthorized, or if they were substantially weakened by including new requirements, that it would be detrimental to the agents in the field. Would that be a correct assumption?

MR. MUELLER: Yes, sir.

SEN. GRASSLEY: And do you -- I -- kind of from your point of view, whether any of these three provisions have been subject to any negative reports of finding abuse?

MR. MUELLER: I'm not aware of any.

SEN. GRASSLEY: OK. Let me go to three other tools which are not set to expire and are not part of the needed reauthorization. These are the Foreign Intelligence Surveillance Act pen register and trap and trace orders, national security letters, delayed notice search warrants. The FBI regularly uses pen register, trap and trace authority in both national security and criminal areas. Is that a correct assumption on my part?

MR. MUELLER: Yes, sir.

SEN. GRASSLEY: Under current law, these authorities have the same legal standard relevance? That's correct, isn't it?

MR. MUELLER: Yes, sir.

SEN. GRASSLEY: Do you believe increasing the legal burden on these investigative tools is necessary?

MR. MUELLER: No. Speaking generally, I would say, no, I believe we are at a point in time where there has been the appropriate balance between, on the one hand, the necessity for addressing the terrorist threat and threat from other criminal elements to the United States; and yet on the other hand, the protection of privacy, civil liberties. And I think that balance has been worked out satisfactorily over the -- over the years since September 11th.

SEN. GRASSLEY: National security letters are an essential part of building blocks of national security investigations. They've never had a sunset in law. Do you think that they need one now?

MR. MUELLER: I do not. SEN. GRASSLEY: Delayed notice search warrants are primarily a criminal tool, not a national security tool; is that right?

MR. MUELLER: That's correct.

SEN. GRASSLEY: Has there been any criticism of their use that you know of requiring us to change the delay from 30 days to seven days?

MR. MUELLER: Not that I'm aware of.

SEN. GRASSLEY: Is there any advantage to decreasing the delay period?

MR. MUELLER: I -- did you say decreasing the delay period?

SEN. GRASSLEY: Yeah.

MR. MUELLER: I think the suggestion was decreasing it from --

SEN. GRASSLEY: Thirty to seven.

MR. MUELLER: Yeah, it's something we'd have to look at the impact there. But I do not -- I am not aware of any abuse or any activity that warrant -- that directs or mandates such a change. Let me put it that way.

SEN. GRASSLEY: At least as of now, then, I can conclude that you would not be able to say that you support a change at this point?

MR. MUELLER: I'd have to look at the legislation. And quite obviously, the last word is the Justice Department, in terms of a views letter.

SEN. GRASSLEY: OK. I'd like to go over the Electronic Communications Protection (sic) Act. The -- there's a coalition called the Digital Due Process coalition, business and interest groups supporting a probable cause standard for obtaining all electronic communications, regardless of its age, the location of storage facilities or the provider's access to information. Do you support raising the legal standard for obtaining electronic communications to probable cause determination?

MR. MUELLER: I do not. And that would be tremendously problematic in our capability of undertaking, and successfully undertaking, investigations to prevent terrorist attacks.

SEN. GRASSLEY: OK.

MR. MUELLER: We use the information -- not the subject -- not the content of communications, but the existence in fact of communications, to make the case for probable cause that would enable us to utilize the more intrusive investigative powers that have given -- been given to us by Congress. If that standard was to change, it would severely inhibit our ability to make those probable cause showings to the court in order to continue the investigation as is warranted.

SEN. GRASSLEY: Let me ask you specifically along that line if you think the legal standard to obtain information through a pen register or trap and trace order should be increased to probable cause or 2703(d) standard.

MR. MUELLER: No, for the same reasons as I stated before.

SEN. GRASSLEY: OK. Do you agree that a change like this would be unworkable and burdensome? I think you've answered that, that it would be burdensome.

MR. MUELLER: I'd have to look at the provision -- particular provision, and to look more closely at it, to be able to answer that particular question.

SEN. GRASSLEY: I think Mr. -- I have more questions, but I think my time's up. So I'm going to leave for a few minutes to go to Agriculture, but I'll come back. My seven minute --

SEN. LEAHY: Well, thank you.

Thank you very much, and I yield to Senator Kohl.

SENATOR HERB KOHL (D-WI): Thank you very much, Mr. Chairman.

And Director Mueller, I remember 10 years ago -- it's like yesterday -- when you came on board, and as for all of us, as with all of us, time goes by very, very quickly. But I want to express my deep, deep admiration and respect for you as a person and as an individual. With the capabilities that you have and have demonstrated over the past 10 years, you have been a crucial asset to our country, and I, along with, I think, everybody who has been connected with you over these past 10 years looks at your tenure in terms of how much it's done for our country and how much we owe you by way of appreciation.

MR. MUELLER: Thank you, Senator.

SEN. KOHL: I want to speak just a bit about what happened at Fort Hood. As you know, the Senate Homeland Security Committee released a report critical of the FBI. They said that the FBI conducted only a cursory investigation into evidence that existed that the shooter was frequently involved in talking with an al-Qaida- affiliated terrorist overseas. The reporter also said that the FBI failed to give the Pentagon full access to an FBI database that likely would have sparked an in-depth inquiry that would most likely have avoided what occurred at Fort Hood.

Going forward, which is really all we need to be concerned about at this time, what can you tell us about new procedures that are in place that will head off another Fort Hood and if -- in the future?

MR. MUELLER: Let me just say at the outset that just as one of -- the pieces of information on the individuals responsible for foot -- Fort Hood was -- it was found in one of the thousands of cases we handle

with -- day in and day out. But what we found as a result of Hasan's incident -- attack on that day was that there were gaps that we had to fill. Immediately afterwards, we looked at our procedures. We found that we could do much better -- a better job in information sharing with DOD.

And consequently, today elements of the Department of Defense serve on our National Joint Terrorism Task Force. They're in many of our joint terrorism task forces around the country. But most particularly, we have a formalized process where we sit down, go through all the cases, whether DOD case or our cases that may touch on DOD, so that we have before us both, both entities, a full review of those cases that may impact DOD.

Secondly, we put into place technological improvements relating to the capabilities of a database to pull together past emails as -- and future ones as they come in, so that it does not require a(n) individualized search, so putting together a technological improvement to enhance our capabilities.

Lastly, we -- not lastly, actually, with two more things -- thirdly, what we had done is assure that we have not just one office that is reviewing, say, communications traffic but have a redundancy of review at headquarters as well to make certain that we don't miss something.

And lastly, you alluded to the -- an analyst's inability to either access or knowledge of a particular database. And we underwent an extensive training initiative for all persons serving on joint terrorism task forces in the wake of what happened at Fort Hood, to assure that not only that persons have access to the databases but were knowledgeable and knew when and where to utilize those particular databases.

So I do believe that we have -- we have addressed the issues that came to our attention immediately after the foot -- Fort Hood incident.

SEN. KOHL: Director Mueller, the ability of American companies to outinnovate and outcompete the rest of the world is more important today than ever. In 1996 I worked to pass the Economic Espionage Act. This is a law that makes it a federal crime to steal trade secrets. And yet the FBI estimates that U.S. companies continue to lose billions of dollars each year when criminals do steal their trade secrets.

I'm currently reviewing the Economic Espionage Act to see what improvements are needed to better protect American companies. As the first step in this process, I'm introducing legislation to increase maximum sentence for economic espionage from 15 to 20 years in the sentencing guideline range. Do you support these penalty increases?

Will you work with me as we consider additional updates to the law, and do you have any suggestions as to what we should be doing?

MR. MUELLER: Well, I would have to quite obviously consult with Justice in terms of the response, but it seems to me that -- I would think we'd look quite favorably on suggestions of enhanced penalties in

this arena. And of course, we would work with you and your staff in terms of looking at what other areas might be improved through legislation.

SEN. KOHL: Maybe you can respond to this. In 1996, we considered including a federal-civil private right of action as a tool for companies to combat and deter theft of trade secrets. At the time, we decided to forego this and rely on state trade-secret laws.

Other criminal laws like the Computer Fraud and Abuse Act contain companion civil -- federal-civil remedies for victims. What are your views as to how prosecutions and investigations could be improved if a private right of action was available. Might you support a change of this sort?

MR. MUELLER: I think we -- by "we" I mean ourselves in the Justice Department -- would have to look and see what's in the statute. I might be leery at the outset of including a private right of action, (maybe ?) because I would be somewhat concerned about overlap and conflicts in terms of investigations. And it's something that I would think that we would have to look at very closely to determine what adverse impact there might be on our ability as the government actor to pursue these cases if there was a private right of action. I'm not saying it should not be; I'm just saying that it's something that we ought to look at closely before the Justice Department gives a position on whatever legislation proposed -- that is proposed.

SEN. KOHL: Finally, what advice would you give your successor in avoiding pitfalls that you experienced during your tenure?

MR. MUELLER: I would say rely on the great people in the FBI -- just a remarkable organization; remarkable grouping of people. I would also say when I've gotten in trouble, it's because I haven't asked the hard questions, and I've been satisfied with answers that were, you know, fine on the surface, but they're areas where I should have delved deeper and found out the answers myself. I could kick myself in some of those arenas. One of the other things I would say is that it's important for us in the organization to understand what is necessary to protect the American public, to grow and adjust to the new threats that are coming so much faster than they did 10, 15 or 20 years ago, and be flexible and agile to address -- to address those threats. And the organization has to do what is -- it needs to do for the American public as opposed to what we may enjoy or like doing as prosecutors or as agents. And the bureau has always done that in its history. And it's -- we're going to have to do it and do it swifter, faster in the future.

SEN. KOHL: Thank you very much. Senator Graham.

SENATOR LINDSEY GRAHAM (R-SC): Thank you, sir. I would like to acknowledge your service for probably the most challenging times in American history. I really appreciate what you're trying to do for our country --

MR. MUELLER: Thank you, sir.

SEN. GRAHAM: -- and your whole force.

Mexico -- you mentioned, I think, in your testimony about Border Patrol agents being killed. What's your assessment of the violence in Mexico? Is there border areas more dangerous? And where do you see this going in Mexico?

MR. MUELLER: I think anybody looking at what's happened in the last several years in -- along the border but also inside Mexico in terms of the increase in homicides, the breakdown of the -- to the extent that there was any cartel -- I don't want to say justice but, you know, restraint -- has long since been lost with the -- an increase in homicides, despite the efforts and intent of the Calderon administration from the outset to address it.

From our perspective, the concern is the violence coming north of the border. And from our perspective, we've seen and had several years ago an uptick in kidnappings of individuals who may live in the United States but have businesses or family in Mexico, be kidnapped in Mexico and the ransoms sought from persons in the United States. We've put together task forces to address that. And that has been reduced somewhat.

We have a priority of looking at corruption along the border. Again, we have a number of agents that are looking at border corruption. We've had a number of cases of border corruption that we have successfully investigated. We have put together fusion squads or individuals from -- who are familiar with corruption, familiar with the narcotics trafficking, white-collar crime, money laundering and the like in the squads that we are using to -- hybrids squads, we call them -- to address the activities on the border.

And finally, we put together an intelligence capability down in El Paso that brings in the intelligence from each of our offices, as well as from our legal attache in Mexico City and headquarters. And we integrate that with the other players that are working on the border.

SEN. GRAHAM: Would you say it'd be a fair observation that securing our border is probably more important than ever, that criminal activity is growing and that terrorism threats are growing and that we should really look at securing the borders as a national security imperative?

MR. MUELLER: I think securing the borders has always been a national security imperative. Yes, sir.

SEN. GRAHAM: But it seems to be even more so from your testimony.

Now, you mentioned something in your testimony, you should ask -- you know, maybe ask hard questions, and I think that's probably good advice for us all.

When it comes to Miranda warnings, is it the FBI's view that Miranda warnings are required for interviews that involve intelligence gathering for national security purposes?

MR. MUELLER: If there is a -- no intent to utilize the results of those interviews in a courtroom and the purpose was gathering intelligence, yes, it'd be that. And that happens all the time, particularly overseas.

SEN. GRAHAM: Is it fair to say that homegrown terrorism is on the rise?

MR. MUELLER: Yes. SEN. GRAHAM: Is it fair to say that we need to get our laws in shape to deal with a new threat, which is people attacking us who may be American citizens themselves, who are here legally?

MR. MUELLER: Yes. Yes.

SEN. GRAHAM: So would it -- wouldn't it be fair to say that we should, as a nation, the Congress and the administration, try to find a solution that would withstand court scrutiny to deal with the fact that when we're facing this threat, that providing a lawyer and reading someone their rights when they may be involved in an act of terrorism is something we should -- maybe counterproductive at times?

MR. MUELLER: I'm not certain I could go that far. I would say we are bound by what the Supreme Court has issued in terms of --

SEN. GRAHAM: Do you think -- do you think Congress should be involved in helping you create a solution to this problem?

MR. MUELLER: I would have to -- it would be nice if Congress could, but we've got the Supreme Court as the ultimate arbiter in terms of the application of Miranda to the admissibility of statements, as I'm sure --

SEN. GRAHAM: But -- and I totally understand what you're saying. But it's my view that Miranda warnings are not required if the purpose of the interrogation is to gather intelligence about existing threats or future threats. Because when you fight a war, you don't read people Miranda rights on the battlefield.

Where is the battlefield? Is the United States part of the battlefield?

MR. MUELLER: I -- one can speculate. I know there -- a person could say, everything is the battlefield now.

SEN. GRAHAM: Well, what do you think?

MR. MUELLER: I would stay away from speculating (on ?) the battlefield.

SEN. GRAHAM: Well --

MR. MUELLER: I know where you're going, but I stay away from the definitions of the battlefield.

SEN. GRAHAM: In all fairness to you, I think it's pretty important to know where the battlefield is. To me, the battlefield is here at home, that we're having. We've caught people who are trying to blow us up that are connected with people in Pakistan, allegedly. So, Mr. Director, I think home is the battlefield, and we need to craft solutions in light of this growing threat. And I look forward to working -- and I would urge the administration to come to Congress to see if we can work together.

But under your policy guide -- and it says "memorandum" -- how long can you hold someone without reading them their Miranda rights? If you catch someone here in America, an American citizen who you suspect of being involved with al-Qaida or some foreign entity, terrorist group, how long can you hold them without reading them their rights? How many questions can you ask them? And when do you have to present them to court?

MR. MUELLER: Well, generally, within 24, 48 hours, one has to present -- make the presentment to court, at which point in time they'll be read their Miranda warning.

SEN. GRAHAM: (Inaudible.)

MR. MUELLER: It depends on where you might be. It may be longer if you're in --

SEN. GRAHAM: Right.

MR. MUELLER: -- and not that close to -- (inaudible).

SEN. GRAHAM: Well, let's continue asking hard questions. So, under the policy -- under the problem with presentment to court --

MR. MUELLER: Yes.

SEN. GRAHAM: -- you're talking about 24 or 48 hours. Is that enough time to gather intelligence?

MR. MUELLER: It may well be. In certain cases, we have with --

SEN. GRAHAM: Could it well not be?

MR. MUELLER: It could not be.

SEN. GRAHAM: Yeah. I mean you might actually want to call foreign intelligence services and see what do you know about this guy. You would certainly want to call the CIA. You'd want to call the DOD. And you'd want to make a good assessment.

I think the honest answer is that the presentment and Miranda warnings need to be looked at anew in light of the domestic -- in light of homegrown terrorism. That's just my view. And I want to invite the administration to be a good partner on this, but I just feel like we're less safe with the current policy, because the questions I've asked about how long you can hold them, 24 to 48 hours without a presentment problem, is probably not a good solution to what I think is a growing problem.

The last thing I want to ask you about is your budget. We're having a real debate up here about, you know, cutting government. And God knows it needs to be reduced. But one thing about government from my point of view is the first thing you want to do is protect your citizens. You're telling me that H.R. 1, if implemented the way it is today, would cost 1,100 job slots?

MR. MUELLER: We would not be able to fill 1,100 slots by September, in order to meet the budget constrictions.

SEN. GRAHAM: So when we're deciding what's the right number to pick -- you're losing \$200 million, is that correct?

MR. MUELLER: There's -- yes, we are.

SEN. GRAHAM: And the plus-up you're asking in 2012, is that really --

MR. MUELLER: Depending on what happens in 2011 --

SEN. GRAHAM: Right.

MR. MUELLER: -- will dictate to a certain extent the plus-ups in 12.

SEN. GRAHAM: I got it.

MR. MUELLER: And what we're struggling for is to get what we did not get in 2011 for '12. SEN. GRAHAM: Well, you know we're deeply in debt, right?

MR. MUELLER: Absolutely. Absolutely.

SEN. GRAHAM: (Chuckles.) Thought you might agree with me there. And you've looked at this budget from a perspective the nation is deeply in debt.

MR. MUELLER: Yes.

SEN. GRAHAM: And you're telling us, the Congress, that due to the threats that are multiplying exponentially, that you need this force to protect America.

MR. MUELLER: Yes.

SEN. GRAHAM: Thank you very much for your testimony.

SEN. LEAHY: Senator Schumer.

SENATOR CHARLES SCHUMER (D-NY): Thank you, Mr. Chairman. Thank you.

And I want to thank you, Director, for your service. You started a week before 9/11, and it's been quite -- quite a decade. But thank you; you've done an excellent job.

MR. MUELLER: Thank you, sir.

SEN. SCHUMER: I'd like to discuss first a(n) issue that affects a small upstate community, Newburgh, New York. As you know, two years ago Newburgh saw gang activity, had a violent crime spike. There were shootouts in the streets, repeated bank robberies, numerous homicides. At the time, you and Attorney General Holder assured me the FBI and other federal partners would work closely with local law enforcement and significantly increase federal resources to counter gangs operating in the area, and you've done a good job on that. Last spring this work led to an FBI investigation, a multi-sweep -- multi-agency sweep involving some 500 local, state and federal law enforcement agents and the arrest of 70 gang members in the city of Newburgh. It's not a large city, so that was very significant.

Early last month there was another sweep, 10 more gang suspects were arrested, and there have been reports now that the FBI is considering moving its Hudson Valley resident agency to Newburgh. I want to personally express my strong support of such a proposal. When I toured the streets of Newburgh with the local police department and your field agents, residents thanked the officers and agents and saw hope.

As the community works to rebuild, I know that housing the FBI within the community will serve as an important gang deterrent and important community resource. So can you commit to consider Newburgh closely as the location for the FBI resident agency location? MR. MUELLER: I think I can make that commitment. I know the decision is in process and that the activities in or about Newburgh would be a factor, amongst other factors as well. But certainly we would consider the activity that you adverted to, over the last year or two, in terms of where that -- a resident agency should be located.

SEN. SCHUMER: Okay. And if space -- if you're having any space problems, we'll find them for you. Okay?

MR. MUELLER: (Chuckles.)

SEN. SCHUMER: But it's very important to --

MR. MUELLER: I understand.

SEN. SCHUMER: -- (inaudible). So I hope you'll do everything you can to do that.

MR. MUELLER: (Yes ?) sir.

SEN. SCHUMER: OK. Second question deals with the background checks pilot. In 2003, Congress passed a criminal background check pilot program as part of the PROTECT Act. The legislation was introduced by Senator Hatch, cosponsored by a number of senators on the committee. I was one of them.

This pilot program was established to determine the feasibility of a nationwide fingerprint-based background check system for volunteers of youth-serving organizations, like the Boys and Girls Club, the National Mentoring Partnership.

x x partnership. Thanks to the great work of the FBI and the National Center for Missing and Exploited Children, which processed background check requests, some 90,000 records have been requested and used since this pilot program's inception; 6 percent of the records included criminal histories of concern, including serious offenses, sexual abuse of minors, assault, child cruelty, even murder.

So, Director Mueller, has the FBI experienced any problems in running these checks for these youth-serving organizations? For instance, does the FBI believe the costs associated with this pilot program to be overly burdened or the work overly complex?

MR. MUELLER: My understanding is that we've -- the -- there's been no problems with the processing of these requests through NCMEC, and NCMEC is a tremendous organization.

SEN. SCHUMER: Right.

MR. MUELLER: And -- so we have not seen any problems. And I do believe that the charges that we -- what we charge for is an appropriate charge. And my understanding is there have been no problems in terms of receiving the monies for those checks.

SEN. SCHUMER: OK. Because you know, NCMEC recently announced it no longer operate -- it would no longer operate the pilot program, leaving a number of youth service organizations without access. So given the bureau's experience with the pilot, do you agree such a permanent program could be helpful in the continued protection of our children? Are you willing to work with whatever organization takes NCMEC's place?

MR. MUELLER: We would take directly from those youth services organizations the request for doing the background checks.

SEN. SCHUMER: Good.

MR. MUELLER: And consequently --

SEN. SCHUMER: That's good.

MR. MUELLER: -- I probably cannot say to what extent that would be -- going back to that practice would be detrimental to either those

organizations or others. And -- SEN. SCHUMER: OK. But you're willing to work and make sure that this gap is filled again? Because it's a worthwhile (pilot ?).

MR. MUELLER: If there is, indeed, a gap there, yes, we are willing to work with NCMEC or the youth services organizations in order to make certain that the process is undertaken efficiently.

SEN. SCHUMER: Great. OK.

Finally, guns, gun checks. The president himself has noted information included in our gun-check system, NICS, which is supposed to prevent guns from being sold to the wrong people is, quote, "often incomplete and inadequate." The FBI relies on state governments supply many -- to supply many of the records about people who are not allowed to possess guns. And there are lots of examples of this: People who are involuntarily committed to a mental institution by a state court, someone on probation for a state crime fails a drug test. And yet we are finding that many states are not complying.

Do you have any idea why so many states are not doing anything to help you enforce federal law in this regard, why we're not getting the information that we should to be on this list -- which, by the way, everyone supports. This is not about who should own a gun. This is, once there's a consensus that, say, a felon or somebody who is adjudicated mentally ill not get a gun, that they be on the list so they won't be sold a gun.

MR. MUELLER: Well, we do everything we can to encourage the states to provide us the information that would be present in NICS that would prevent the sale of those particular guns. I don't think there's one particular factor that contributes to the inability or unwillingness of a state to provide that information. It may well be it costs additional time and money to ferret out that information and put into place a process to assure it goes into NICS. But all we can do in the bureau is encourage that the states will provide us that information.

SEN. SCHUMER: Well, you could just send us things we might be able to do. Now, as you know, I've been working on legislation on this for a long time. Representative McCarthy and I passed a legislation about the mentally infirmed -- adjudicated mentally infirm after Virginia Tech. Recently, Jared Loughner, the Tucson gunman, was rejected by the Army due to his admitted drug use under the bill that McCarthy and I have put in. Under federal law -- it seems to me such information could have been sent to NICS under the -- under existing law.

So given that the president has stated that the NICS Improvement Act hasn't been properly implemented and Loughner's ability to purchase a firearm even after admitting to the federal government -- this was when he was applying to the armed forces -- about his drug abuse, will you agree to examine the implementation of this legislation to ensure it's serving its intended purpose -- for instance, having the armed forces report to NICS in these types of instances like Loughner?

MR. MUELLER: As I say, in every one of these instances, we encourage but we have no ability to do much more than encourage the responsiveness.

SEN. SCHUMER: OK.

And can you provide me with updated numbers, in the next few days, on how many people have been identified as drug abusers by each federal agency?

MR. MUELLER: I think I know we can.

SEN. SCHUMER: Great.

Thank you, Mr. Chairman. My time has expired.

SEN. LEAHY: Thank you, Senator Schumer.

And Senator Sessions.

SENATOR JEFF SESSIONS (R-AL): Thank you, Mr. Chairman.

And Director Mueller, thank you for your service. You came to this office with unparalleled experience and proven judgment and integrity, to lead the agency in an effective way. I believe you've done that. I salute you for it. The country has been lucky to have you there.

I've worked with the FBI many, many years, and I have the greatest respect for the men and women who serve in that fabulous agency -- truly, I think it's fair to say the greatest law enforcement agency in the world. Would you agree?

MR. MUELLER: I can't dispute that.

SEN. SESSIONS: Thank you. I'd --

SEN. LEAHY: I would have some problems if you did, Director.
(Laughter.)

MR. MUELLER: (Laughs.)

SEN. SESSIONS: (Laughs.) It may not be perfect, and none of us are, but it is a great institution with fabulous men and women who serve every day long hours, and doing the things that are necessary to help protect us from crime and terrorist activities.

I'd like to follow a little bit -- follow up a little on Senator Graham's questions about the Miranda warnings and the nature of the struggle that we're in with terrorism today. I remain totally baffled by this administration and, frankly, your perception that those who are dedicated to the destruction of this country, who enter our country with the design to attack and kill Americans, somehow should be presumptively treated as criminals and should be provided Miranda warnings and other

legal protections that we provide American citizens, but the kind of things that have never been provided to enemy combatants on the battlefield.

And first of all, I want to just make clear that I don't think it's speculative about where the battlefield is. I think the battlefield is where the enemy is attacking us. And we've seen that they are attacking us in our homeland. So I guess my first question is: How do you feel about the fundamental question of the apprehension of someone directly connected to al-Qaida in the United States, bent on attacking the United States; do you believe that should be treated as an act of war, or a crime? MR. MUELLER: I am going to leave that up to others to decide. I will tell you that we as an organization, if the responsibility is given to us under the laws to make the arrest and we -- and there is an intent and a decision made by the president, whichever president it may be -- it may be Bush before or Obama now -- that the person goes through the federal district courts and the procedures are mandated that we go through in order to have testimony admissible in a courtroom.

Now, a decision can be made by the executive that they not go through the federal criminal process of the United States, which is a decision to be made by the executive at whatever point in time --

SEN. SESSIONS: Well, I would assume --

MR. MUELLER: -- and then different procedures kick in. But if we are given the mandate to do the arrest and take them to trial and convict them under our courts, then there's a pathway that has been decided by the executive that we must follow.

SEN. SESSIONS: Have you made a recommendation that that is the way, the presumptive way that the --

MR. MUELLER: I have not. No, sir.

SEN. SESSIONS: Have you opposed that?

MR. MUELLER: I -- that is an issue that is left to the president and the --

SEN. SESSIONS: It's been decided at a level above you?

MR. MUELLER: Way above me, yes, sir. (Chuckles.)

SEN. SESSIONS: Well, I don't know. You being an long-time appointment, so you can speak candidly about what's important to protecting the safety of the United States of America. And you're not just expected to come here and rubber-stamp what some decision is made in the White House.

But according to the documents you've put out on custodial interrogations, you say that the FBI policy -- you will continue to adhere to the FBI policy regarding the use of Miranda warnings for

custodial interrogations of operational terrorists. And you define "operational terrorist" as an arrestee who is reasonably believed to be either a high-level member of an international terrorist group or an operative, and it goes on to describe that.

So let's take the situation that Senator Graham was asking you about, and I think is very important. If this is an enemy combatant -- and I believe these -- many of these terrorists are -- associated with al-Qaida or other organizations committed to the destruction of the United States, then they should be seen as a potential source of intelligence information that could help us identify who else may be in this organization, who else is threatening the United States.

And isn't it possible that you can obtain that kind of information through effective interrogation techniques?

MR. MUELLER: Well, I agree with you that it's absolutely essential in our first -- when we have individuals who are involved in terrorist attacks, our first objective is to obtain the intelligence.

SEN. SESSIONS: Well --

MR. MUELLER: And what our guidance is to our persons -- that should be your objective, taking advantage --

SEN. SESSIONS: Well, that's your objective, but you indicate that there's some potentially window of public safety exception, which is not clear in any case law that I'm aware of, not really clear what this public safety is. I don't think -- as you indicated, it can't exceed 24 or 48 hours when they have to be brought before a federal court, if you're treating them as a criminal, right?

MR. MUELLER: Well, if you're--

SEN. SESSIONS: Looking --

MR. MUELLER: -- if you're going to be treated in the -- in the -- in the courts of the United States, it requires --

SEN. SESSIONS: How many hours has a court ever approved --

SEN. LEAHY: (Off mic) -- finish -- (off mic).

SEN. SESSIONS: Well, my time is about up, Mr. Chairman.

SEN. LEAHY: (Off mic) --

SEN. SESSIONS: It's an important issue.

SEN. LEAHY: -- he's answered these questions several times already, but I'd like to have him give a full answer -- (off mic).

SEN. SESSIONS: I'd like to get a square answer out of it too.

MR. MUELLER: And I'm -- and I'm happy to answer.

SEN. SESSIONS: Well, Director Mueller -- MR. MUELLER: And let me just say that it's important to --

SEN. SESSIONS: -- let me just say to you this, and I'll let you answer further. I believe that an individual arrested carrying a bomb about to board an airplane in the United States directly connected to al-Qaida should be treated as an enemy combatant, does not need to be taken to court in 24 or 48 hours and given a lawyer, does not need to be given Miranda rights, may need to be subjected to weeks of interrogation utilizing the best information and techniques we have, to find out who else in this country may be prepared to kill thousands of American citizens. And for you to say -- and not acknowledge that Miranda warnings can be counterproductive to that is inexplicable to me. So I'd be glad to hear your comment.

MR. MUELLER: Well, I haven't exactly said that, Senator. What I have said is a person is arrested --

SEN. SESSIONS: (Off mic.)

MR. MUELLER: Can -- may I -- may I finish? If a person is arrested in the United States, under our laws, we are guided by the statutes and by the Supreme Court in terms of what we can do. We have expanded and identified what we anticipate we should get when a terrorist has been arrested in the United States, in terms of intelligence, and that is the first thing, without Miranda warnings, we do.

But ultimately if that individual's to be prosecuted in the United States, there may well come a point in time where Miranda warnings are warranted.

If the decision is made that the person is not going to go through our courts, that is a decision that's made by the executive, and we quite obviously would follow that. But that person would not be in our custody or going through what we do day in and day out under the criminal justice system of the United States.

SEN. SESSIONS: (Off mic) -- on -- as exception?

MR. MUELLER: Under the exception? It's indeterminate. And we've had a number of occasions where we have put off both giving Miranda warnings as well as presentment for a number of days where we've got the person and the person agrees that they want to cooperate --

SEN. SESSIONS: Well, they agree!

MR. MUELLER: -- provide intelligence for a period of time.

SEN. SESSIONS: They agree.

SEN. LEAHY: Thank you. Senator Franken.

SENATOR AL FRANKEN (D-MN): Thank you, Mr. Chairman.

Director Mueller, I'd like to associate myself with all the other senators who have commended you for your service. Thank you so much.

I'd also like to commend you for aggressively investigating mortgage fraud and predatory lending cases. Recently I became chair of a new Subcommittee on Privacy, Technology and the Law, and one thing I learned as I've been preparing for the subcommittee's work is that at the height of the subprime lending crisis in the summer of 2007, the number-one buyer of Internet advertising across all industries was a subprime lender. This was a company called Low Rate Source. Another top-five Internet advertiser in this period may sound more familiar, Countrywide Financial. And Mr. Chairman, without objection, I would like to add the Nielsen Net Ratings reports to the record.

SEN. LEAHY: Without objection.

SEN. FRANKEN: My point here is that subprime mortgages didn't sign themselves.

And one of the key ways that Countrywide Financial and other subprime lenders identified their target -- their targets was by gathering data about those customers online to see who might be a good mark and targeting them online, often without the customers having any idea that this was happening.

Is this a trend that the FBI is seeing during its investigations of subprime lenders?

MR. MUELLER: I am not familiar myself with that. I'd have to get back to you on it. But we can do that.

SEN. FRANKEN: Well, Mr. Director, it seems to me this is an area in which the FBI would be well-served by working with the Federal Trade Commission. Can you tell me what you are currently doing to work with the FTC on this issue?

MR. MUELLER: Again, I'd have to get back to you on --

SEN. FRANKEN: OK. Thank you.

MR. MUELLER: I know we have -- we are in a number of task forces and working groups with them, but I would have to get back to you with the specifics.

SEN. FRANKEN: I appreciate that.

A while back I saw, I saw Representative Peter King, chairman of the Homeland Security Committee in the House, say on TV, pretty categorically, that there was no cooperation from the Somali community or from community leadership in Minnesota after a very small number of members of that community went to Somalia to train with al-Shabab.

My experience is that no one is more upset about what happened than the Twin Cities Somali community itself, and my understanding from talking to law enforcement is that there has been real cooperation from the community in Minnesota. Is that your understanding?

MR. MUELLER: Yes, sir. I think that the Somali community in Minneapolis was taken aback by the number of young men who had traveled to Somalia to work with al-Shabab, and that that community, understanding what had happened to that community and the threat to the young men in that community, became very cooperative in terms of not wanting that to happen again. SEN. FRANKEN: Yes, that was my understanding. And I actually took some umbrage at Chairman King's remarks regarding that, because it was quite categorical that -- he said quite categorically the opposite was true. And I take umbrage on behalf of the Somali community in the Twin Cities, whom I represent.

Now, it seems to me that it would make sense to have a Somali face on some of our counterterrorism efforts in the Somali community in Minnesota. Are you actively working to encourage and recruit members of key communities like the Somali community to actually become field agents?

MR. MUELLER: Yes, we are. We have not been as successful as we would like, but we continue to press hard and recruit from all segments of the community.

SEN. FRANKEN: Thank you.

Many incidents have come to light recently of banks and debt collection agency -- agencies fraudulently signing affidavits. This has likely resulted in wrongful foreclosures and in consumers paying thousands of dollars in money that they don't owe. In fact, Lori Swanson, Minnesota's attorney general, filed a suit just yesterday against a large debt collection company alleging that it improperly signed hundreds of affidavits without verifying information.

This has reportedly resulted in situations like that of a woman from Eagan, Minnesota -- it's a southern suburb of the Twin Cities -- who has pursued -- this woman was pursued for years for a bill that she had already paid on time. She repeatedly sent her cancelled check as proof of payment to the debt collector, but it took her a very long time to get the case dismissed finally by a court. And she has never been able to repair her credit.

Do you think existing penalties for this type of fraud are strong enough? What more can we be doing to deter this kind of activity, since it's so hard to make the victims whole after they've been defrauded?

MR. MUELLER: First I'd have to give some thought as to what additional legislation is necessary, whether it be enhanced penalties in a particular area. I can tell you that we have a number of investigations going into this general area, and we have found that with

the success of these investigations, we do have indictments and persons do go away for a substantial period of time.

I am not familiar with this particular case, and so I can't say whether those activities in that case are under investigation. I couldn't anyhow.

SEN. FRANKEN: Right.

MR. MUELLER: But I can assure you we have a number of investigations --

SEN. FRANKEN: Don't tell me anything I shouldn't know.

As you know, I've been very interested in how mortgage fraud has affected Minnesota. After our last oversight hearing, I submitted a question for the record asking you to explain the process by which the FBI chooses to prioritize resources for mortgage fraud cases. You said the FBI addresses the most prolific schemes that have the greatest impact on the communities where the fraud has occurred.

I want to follow up on this, because Minnesota hasn't just been affected by really big fraud cases; we've been hit by smaller frauds too, where someone comes in and offers to refinance someone's home loan, gets all of the homeowner's information and then just steals the check when it arrives.

Do you have the resources you need to investigate these smaller schemes and not just the highest-profile ones? And how are you working with state and local law enforcement to ensure that these outrageous cases of fraud are being prosecuted?

MR. MUELLER: Well, what we endeavor to do is to work with state and local law enforcement in the form of either task forces or working groups. And we have currently 94 of these task forces and working groups around the country. We have 400 now, almost -- 340 agents, I should say, doing this. It's probably -- we could use some more, but we do do a triage across not just the federal -- the universe of cases in the federal arena, but also with state and local law enforcement to see if we can't get resolution of all the cases across the board. And so we will sit down with a working group and say, okay, how can this case be best addressed? Some will go to federal court. Some will go to state court to be handled by district attorneys and the like. But our endeavor is to identify the universe and make certain that we get all cases that we can addressed in some way, whether it be at the federal level, state or local. And that requires the coordination with state and local law enforcement.

SEN. FRANKEN: Thank you. And again, thank you for your service. And I hope your next job is slightly less pressure; but I do want you to keep serving our country -- and I know you will -- in whatever way you choose.

MR. MUELLER: Thank you, sir.

SEN. LEAHY: Thank you very much, Senator Franken.

Senator Kyl.

SENATOR JON KYL (R-AZ): Thank you very much.

Director, I want to add my voice to those who have thanked you for your service. We appreciate it very much and obviously do wish you well. I would note, though, as in my case, your job isn't quite done yet. I asked the chairman if we might be calling you up one more time before you left. He said probably not. But I wouldn't hold your breath yet.

MR. MUELLER: I'm with the chairman. (Laughter.)

SEN. KYL: Let me first just follow up on a question that Senator Franken asked. The FBI does rely on the cooperation of the Muslim community to investigate radicalization particularly of young Muslims in the community. Is that not correct?

MR. MUELLER: True.

SEN. KYL: And I gather it would not be helpful to your efforts if members of the Muslim community refused to even talk to FBI agents without having their lawyer present.

MR. MUELLER: I'd say at the outset everybody in the United States has a right to have a lawyer present, but what we would like and ask for these communities that they encourage their persons to cooperate with us and provide us the information, the tripwires that will help prevent the next terrorist attack.

SEN. KYL: So it's not particularly helpful if they're advised that they don't -- that they do not talk to you unless they have a lawyer present. MR. MUELLER: I am familiar with one of the placards that one entity had there which across the board urged persons not to talk to the FBI. And that is not the contributions we want from our citizens to stop crime, stop terrorist attacks.

SEN. KYL: Any citizen, for that matter.

MR. MUELLER: Anything.

SEN. KYL: Right.

Let me ask you about -- could you describe just for the record in about 20 seconds what your Team Telecom mission is?

MR. MUELLER: Team Telecom?

SEN. KYL: Well, as I understand it, you've stood up a mission which assists in the evaluation of cyberactivity by foreign corporations,

for example. Maybe I should set the stage. I was just trying to set the preliminary stage.

You're familiar with the Chinese companies Huawei and CTE?

MR. MUELLER: Yes, sir.

SEN. KYL: And there are a couple of specific things that your Team Telecom has been advised -- maybe you have a different name for it.

MR. MUELLER: We call it CFIUS -- I understand -- the process whereby the government looks at the purchase of companies by --

SEN. KYL: Right. And the FBI has a specific group that assists in that.

MR. MUELLER: We do. We call it CFIUS. Yes, we do.

SEN. KYL: Okay. One of the things that's been reported is that our country's sixth-largest cellular provider, U.S. Cellular, is contemplating having Huawei build out its 4G network.

Now, given the fact that we were concerned enough about Huawei's potential contracting with AT&T and Sprint to the point that we intervened and both of those companies separated themselves from Huawei and did not move forward, what would your concerns be about such a contract with U.S. Cellular?

MR. MUELLER: Well, I -- this is not something I'm not certain we could address in open session. I can tell you the process is, while we do not sit at the table with those who are in the CFIUS process, our recommendations or advice is often elicited. And we would do that in a classified setting.

SEN. KYL: And the kinds of advice that the FBI would give would be based upon, just hypothetically, what kind of a concern?

MR. MUELLER: Well, concerns that -- and speaking generally, not about one company or one particular process --

SEN. KYL: Just generally, yes.

MR. MUELLER: -- but the concerns that through entities that are operating with the backing of the government, that foreign governments may have access to classified communications, to our intellectual property, through proxies. And so the process, the CFIUS process, has been set up to assure that that possibility is examined, looked at, and a determination made as to whether or not a particular purchase of a company should go through.

SEN. KYL: Right. One of the things that has occurred, at least we understand that Huawei has partnered with the company Hibernia to help build and deploy a cable from New York to the U.K. that will transmit sensitive data, including market information from the New York Stock

Exchange. And I'm curious whether or not you -- your Team CFIUS or Team Telecom has reviewed that partnership with Hibernia and the cable license involved with this cable landing, and whether you could inform us about any considerations that you would have there.

MR. MUELLER: At the outset, I'm not familiar with the facts of -- you know, of that. But even if I were, I do believe it is the type of subject that would be addressed in a classified setting.

SEN. KYL: OK. Just so folks that might not be quite as aware of this would understand a little bit of background, this firm Huawei has a background with the People's Liberation Army of China, is supported strongly by the Chinese government. And at least in the past, concerns have been raised about its involvement in the U.S. network. And that's the reason for the questions.

Would you have a concern about FBI systems being integrated -- or having Huawei, for example, being integrated into FBI systems?

MR. MUELLER: I can't speak to any particular company. I can say that ourselves, the intelligence community, are always concerned about assuring that -- the security of our systems and the persons that are working on our systems or providing the capabilities that support our systems.

SEN. KYL: Would that also include even down to the local level? In other words, any network that might carry sensitive information or be connected with one that would carry sensitive information would potentially fall within the mission of the FBI taking a look at it; is that correct?

MR. MUELLER: It may well be that in those circumstances we would take a look at it. If you're looking at -- if you're talking about our systems, I mean, we would always be concerned about trap doors or back doors and ways into our systems. If we are -- if there is a business purchase, at some point we may be asked to look at the impact of that purchase.

SEN. KYL: Is there any -- just generally speaking, is there anything that you would ask of us at this point? Or could I just ask you to perhaps think about that and supply for the record any recommendations or suggestions you would have about assistance that Congress could provide for you to do your part of this mission?

MR. MUELLER: Yes, sir. Happy to.

SEN. KYL: OK. Great. And then just one last question. One of the things that's been ongoing with the FBI and other -- and the Department of Health -- I mean, excuse me, DHS, Homeland Security, has been the matter -- I'm going back to the terrorist issue -- the matter of lexicon. And there's one theory that says you don't call people jihadists or Islamists, because that simply gives credibility to their ideological foundation for their action. The other school of thought says if we're going to defeat a terrorist enemy, we need to at least be

able to call it by its true name, understanding its etiology, its motivation of the people and what makes it tick, so that we can effectively deal with it.

Where does the FBI come down in this matter of terminology?

MR. MUELLER: Well, we call it as we see it. I understand that there's some discussion out there, but nobody has ever told us how we are supposed to describe terrorists or terrorist groups. And we try to give it the most clear definition but call it what it is.

SEN. KYL: Would you agree that one accurate description of some of these groups like al-Qaida, for example, is Islamist?

MR. MUELLER: Islamic extremists, absolutely.

SEN. KYL: Okay. Thank you very much.

MR. MUELLER: Extremists. But I think -- extremist is an accurate definition.

SEN. KYL: Nobody -- and just to be crystal clear -- nobody is suggesting that the Muslim faith or Islam is responsible for all of this. But in the name of their view of their faith, a lot of folks are -- not maybe a lot -- but a number of young people have been radicalized; and radicalized to extreme actions, I guess, is the reason for the extremists. But there's no denying the connection in their mind at least to their Islamist faith, (I gather ?). Would you agree with that?

MR. MUELLER: Yes.

SEN. KYL: Thank you very much, Mr. Director.

SEN. LEAHY: Thank you, Senator Kyl.

Senator Coons.

SENATOR CHRISTOPHER COONS (D-DE): Thank you, Mr. Chairman. And Director, thank you so much for your testimony today, for your service to our country and for your diligent stewardship of the FBI.

I have a number of areas I'd like to touch on. First, in my former role as a county executive, I had responsibility for a county police department. And hopefully we'll be focusing some later summer on the federal and local law enforcement interface and collaboration. The FBI is an enormous source of valuable intelligence not just in the national security area and antiterrorism area, but just in routine local law enforcement: drug interdiction, violent crime and so forth. Could you just comment on successes and areas of improvement for FBI intelligence sharing with local law enforcement and how you feel local law enforcement is doing nationally at moving towards intelligence-based policing?

MR. MUELLER: Let me start with the information sharing. One of the great successes, I think, since September 11th is the growth of the joint terrorism task forces and that concept. And to the extent that we've been successful in cases, virtually all of them have been utilizing the command resources of the FBI, other federal agencies and state and local in the context of the Joint Terrorism Task Force.

SEN. COONS: Right.

MR. MUELLER: I am a great believer also in task forces across the board, whether it be mortgage fraud task forces or gang task forces, violent crime task forces, because it gives you the combined capabilities of the entities but also gets everybody on the same page, so those vehicles provide a sharing of intelligence.

Secondly, I'd say we are doing, I believe, a lot better job of informing generally state and local law enforcement of what is happening in the terrorism arena. We will all be, however, beat to the punch occasionally by CNN. And that's just a fact of life in this day and age. But right now, we put out bulletins almost immediately after something becomes public with regard to a terrorist attack to all state and local law enforcement around the country.

Fusion centers that are -- and I think there are 70 odd around the country now that also contribute to the sharing. On many of these, the majority of them, we have FBI personnel, even though there are state entities that are participating -- that contributes to the sharing as well.

There will always be some tension between ourselves and others, particularly when the information that we're utilizing is classified because it may come from the CIA or NSA. And persons who do not get that information are often frustrated. So there will always be that tension, but I think we've made substantial progress. And that's one of the pluses since -- positive aspects of what's happened since September 11th.

SEN. COONS: And how do you address concerns about classified information access? What's your process or prioritization when you reach a tipping point and conclude that it's essential that local law enforcement have access to that information?

MR. MUELLER: Well, any person who is assigned to a joint terrorism task force goes to a -- through a background check and gets a top-secret clearance. And so if you're state and local, you're on a task force, you have access to that which the agent sitting to your right and left have. Many police chiefs have also gotten clearances so that they can have access to -- police chiefs or sheriffs -- access to the information. But it has been our position throughout, if a person is responsible for the safety of a particular community, classification should not stay in the way -- stand in the way of getting the information they need to protect their community if there is a threat to a particular -- to Wilmington, Delaware, and --

SEN. COONS: Speaking hypothetically.

MR. MUELLER: -- hypothetically, and the chief of police has not got a clearance, but there's a potential threat, you'll get the information on that. We will find a way to get it, because I firmly believe those persons who have the responsibility for security have the right to that information if there is an immediate threat.

SEN. COONS: That's very helpful. Thank you.

One other area I've worked on, in collaboration with our attorney general, is DNA testing. We have only one state lab, our Office of Medical Examiner, which, oddly, comes under our state health and human services department; is understaffed, overworked; has a significant backlog.

This is a challenge in many different states, staying on top of the developing technology, now that everyone watches it on TV; every defense lawyer believes they're entitled, you know, top-level DNA testing. And there are a significant number of unconvicted offender samples -- thousands, in our case, that haven't been reviewed as well.

One possible solution to this backlog that was suggested to us was to allow private labs to do some of the backlogged testing, but there is an FBI standard -- I believe it's Standard 17 -- that requires that there be a full -- essentially a public lab double-check for any work that's being done by a private lab before the FBI will accept the results. I just would be interested in whether you're doing anything to ensure that FBI regulations aren't resulting in needless inefficiencies. Our Office of Medical Examiner identified that standard as one challenge that essentially made it not worth their time to engage with private labs to have them, at reduced cost and better speed, help them with their significant backlog.

MR. MUELLER: Well, there is a quality control process --

SEN. COONS: Yes, I understand.

MR. MUELLER: -- a technological review process that you're adverting to, that is required that one go through before it's ingested into the -- into the database.

Over the last year this has been an issue. We know those who are pressing to avoid the -- this, and it may be in certain circumstances a bottleneck. To the extent that it has been, we are trying to reduce that and put into place more efficient capabilities to assure that that quality control can be done without slowing the ingestion of the new samples into the database.

Most people agree that there needs to be a quality control --

SEN. COONS: Of course.

MR. MUELLER: -- before the samples do go in the database. So what we've tried to do and will continue to do is make that process more

efficient to remove the time lags and make certain that -- and all of us want to get it in as soon as possible -- make certain that is done as efficiently as possible.

SEN. COONS: Well, thank you. I appreciate your testimony on both these questions.

MR. MUELLER: Thank you.

SEN. LEAHY: Thank you very much, Senator Coons.

Senator Blumenthal.

SENATOR RICHARD BLUMENTHAL (D-CT): Thank you, Mr. Chairman.

MR. MUELLER: Good to see you, sir.

SEN. BLUMENTHAL: And I want to join in thanking you for your service over the years, where I've had the privilege of working with you as attorney general of the state of Connecticut. And I know that the attorneys general of the United States appreciate your working so closely with them and really in a very close partnership. And I particularly want to thank you for training and attracting the great men and women of the FBI, who serve us so well day in and day out.

And on that note, I just want to come back to the questions you answered about your budget. The inability to fill those 1,100 slots in my view would be really a disservice to the FBI and severely disadvantage this great organization. And I hope you agree with me in that. MR. MUELLER: It would set us back. It is a setback, and we have been moving forward with the help of Congress and the committee and appropriators.

And this would stall the progress that's being made.

SEN. BLUMENTHAL: Thank you.

You know, I want to commend the FBI for its focus on an area that I think is extremely important: anabolic steroids. Recently in Danbury, there was a major set of arrests involving breaking a drug ring that was selling steroids to high school users in the Danbury area, selling 70 bottles each month of these steroids to so-called individual users.

And I know that very often we focus on street drugs, and the DEA has a responsibility in this area, but I want to commend the FBI for its focus on the steroid problem, which sometimes receives too little attention or awareness. And I wonder if the FBI is planning additional efforts to combat the spread and use of steroids, particularly among young users; high school, college users around the country

MR. MUELLER: I would say this generally is not an area that we would, particularly in this time of budget constraints, spend a lot of effort on, particularly when the primacy -- or the primary agency with the jurisdiction is DEA.

Now, we have become involved in investigations with DEA when steroids are coming from outside the United States, with Customs and Border Patrol. And we will contribute and participate in those investigations when we can provide something unique to further that investigation. But beyond that, I'd have to go back and see what we're doing and get back to you on that, but I cannot say that given the challenges that we have and the threats that we have, that this would be as high as a priority as all of us would like.

SEN. BLUMENTHAL: Well, I know that you have enormous challenges, and some of them we've heard today.

But I would be interested in your additional information and also increased participation and support for other agencies that may have a primary role in this area, because I do think that the spread of these steroids, indeed, an epidemic of their use and an acceptance of their legitimacy is one of the great threats to our young people today, and I appreciate your willingness to cooperate in that effort.

MR. MUELLER: Thank you.

SEN. BLUMENTHAL: On a subject that others have asked you about, the mortgage foreclosure issue, I have to confess that I am unhappy and frustrated with the most recent efforts by the administration to send a message in this area, the robo-signers, which are a subject of ongoing investigation by the state attorney general, which I helped to initiate.

So far, we have seen virtually no major actions by the task force, that the president's appointed, in the face of blatant fraud on the court involving the robo-signers, false affidavits -- clearly, in my view, criminal violations that are a fraud on our justice system. And I wonder if you could respond, please.

MR. MUELLER: Sure. I share that concern and belief that there is fraud out there, and I can tell you we have ongoing investigations.

SEN. BLUMENTHAL: And I hope that we'll see prosecutions soon. I don't want to put words in your mouth, but if you share my frustration, I hope that you also share my belief that we ought to have action soon.

MR. MUELLER: I don't disagree with that.

SEN. BLUMENTHAL: Thank you.

On the issue of missing children -- and you've covered a little bit -- as you -- as you may know, the FBI was very constructively involved in a recent highly publicized search in the New Haven area for a missing 13-year-old, Isabella Oleschuk, who fortunately was found after three days. She appeared -- in fact, left her own home on her own initiative, so she was not actually abducted or taken.

But as you know, this problem is pervasive around the country. In Connecticut alone, the National Center for Missing and Exploited

Children, a great organization that does wonderful work, received 67 reports of missing children in Connecticut last year, and 19 are still missing. And I know that the FBI has extraordinarily important other tasks, but I wonder whether this has taken increase -- has come to be seen as a subject of increased priority in the FBI.

MR. MUELLER: I wouldn't -- I would say it's always been a priority. When a child is lost, every SAC, every special agent in charge wants to work with state and local law enforcement to find that child. And we will participate in the investigation so long as there's a federal basis, and generally that is the thought being that the person may well have been taken -- abducted across state lines. There are occasions where we have to withdraw from investigations where the child has been found and yet there's some investigative work to be done, but we have lost federal jurisdictional basis for it. But I can tell you, when a child is lost, we, as well as every other law enforcement entity around, brings whatever we can to make certain that we -- that we find that child.

We have experts -- actually, we have an -- expert teams that are set up specifically to go to and address the -- that circumstance when a child is lost.

SEN. BLUMENTHAL: I welcome that response. And I would note that it marks a departure from many years ago when missing children were thought to be exclusively a local or state issue. And particularly now that many missing children are likely to be taken across state lines, either by parents or others, I think that's a very commendable approach.

MR. MUELLER: I can tell you that while not all missing children find their way to my BlackBerry, many of them do. And we monitor that all the way up to the top.

SEN. BLUMENTHAL: Well, I thank you very much. And again, thank you for your extraordinary service to this nation. And I think since I'm the last questioner, I may enable you to leave this hearing unscathed and unwounded.

And thank you, Mr. Chairman.

MR. MUELLER: Thank you. Thank you, sir.

SEN. LEAHY: Thank you. And my only concern is we have CALEA, the Communications Assistance for Law Enforcement Act, which I helped draft back in the '90s. We worked closely with the bureau and everybody else. In fact, as I recall, part of it was finally drafted my (hideaway ?) office with the predecessor and others around. I hear concerns it may go dark. I just urge you and your office to work with me and others who don't want that to happen, to make sure that we can keep this going.

Can I have that assurance?

MR. MUELLER: Yes, sir.

SEN. LEAHY: Thank you.

MR. MUELLER: Absolutely.

SEN. LEAHY: OK. Well, I thank you very much. I appreciate you being here; appreciate Attorney General Blumenthal wrapping it up. And thank you.

MR. MUELLER: OK. Thank you, sir.

END.

From: Monaco, Lisa (ODAG)
Sent: Friday, April 29, 2011 3:46 PM
To: Greenfeld, Helaine (SMO); Richardson, Margaret (SMO)
Subject: FW: Monaco QFRs

From: Appelbaum, Judy (SMO)
Sent: Friday, April 29, 2011 3:40 PM
To: Monaco, Lisa (ODAG); Agrast, Mark D. (SMO)
Cc: Weich, Ron (SMO)
Subject: FW: Monaco QFRs

Transmitted – in plenty of time for you to be listed on the agenda for May 5, Lisa. Well done.
Judy

From: Appelbaum, Judy (SMO)
Sent: Friday, April 29, 2011 3:38 PM
To: 'Paris, Jeremy (Judiciary-Dem)'; 'Hasazi, Sarah (Judiciary-Dem)'; 'Gagne, Julia (Judiciary-Dem)';
(b)(6) David Best; (b)(6) Lauren Pastarnack
Cc: Weich, Ron (SMO); Aguilar, Rita C. (SMO)
Subject: Monaco QFRs

Attached please find the answers of Lisa Monaco to Questions for the Record from Ranking Member Grassley.
Judy



Letter to SJC.pdf



Grassley QFRs for
Monaco_Final...

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Senator Chuck Grassley
Questions for the Record
Lisa O. Monaco, Nominee to be Assistant Attorney General (National Security)

1. Please provide the Committee with detail on the positions you have held within the Department of Justice and how they qualify you to be an Assistant Attorney General as head of the National Security Division.

Throughout the positions I have held at the Department of Justice, first as a line prosecutor and later during my time at the Federal Bureau of Investigation (FBI), I have gained national security experience from both an operational and prosecutorial perspective. As an Assistant United States Attorney (AUSA), I learned the value of rigorous analysis and legal argument and how to build and prosecute an effective criminal case. Since 2006, I have devoted the vast majority of my time to working on national security issues, first at the FBI, as Special Counsel and then as Chief of Staff to the Director, and later at the Deputy Attorney General's Office as an Associate Deputy Attorney General and then as the Principal Associate Deputy Attorney General. I have developed expertise in the area of national security by working on intelligence investigations, national security-related and other criminal investigations and prosecutions, and other legal, operational and policy challenges relating to the Department's national security mission.

At the FBI, I provided advice and guidance to Director Mueller on a range of national security matters and worked with the FBI's leadership team to develop the FBI's National Security Branch and to further the integration of intelligence across all facets of that organization. I helped manage the Bureau's national security assets and worked to advance the FBI's transformation from a law enforcement agency to a national security organization focused on preventing terrorist attacks. Among other things, I gained an understanding of and appreciation for, the FBI's national security program and operations, the Bureau's role as an element of the intelligence community, and the importance of FISA as an intelligence collection tool from which the whole intelligence community benefits. During my tenure at the FBI, I gained firsthand experience working within the Intelligence Community to understand the role that effective and coordinated intelligence operations play in safeguarding our nation's security.

In the Deputy Attorney General's Office, I have helped to supervise the national security functions of the Department, including the National Security Division (NSD), United States Attorneys Offices, the FBI and components of the Drug Enforcement Administration. I have worked with partners in the intelligence community and in the interagency process and have developed an understanding of the national security architecture of the federal government. In my career working with agents, analysts and lawyers across the government I have developed an appreciation of the challenges confronting national security professionals and prosecutors as they pursue their mission of developing intelligence, sharing information, and working together to disrupt national security threats and protect the nation. As a result of all these experiences, I have gained a

broader understanding of the range and complexity of national security issues confronting the Department's components and United States Attorneys Offices as well as the importance of striking the appropriate balance of intelligence community equities, legal requirements and prosecutorial interests.

As a lawyer as well as a national security official, I have a keen appreciation of the significant threats we face as a nation and the importance of effectively addressing those challenges in a manner that promotes the nation's security while also preserving our fundamental rights and liberties. I understand the importance of using all tools in order to combat the national security threats we face and of doing so consistent with statute, executive order, relevant regulations, and the Constitution. Drawing on my experience as a prosecutor as well as the perspective I have gained at the FBI and with the Department of Justice working on the operational aspects of national security investigations, I will exercise independent judgment in managing the Department's national security functions while ensuring that the Division's activities are properly coordinated with the nation's other national security activities when appropriate. I will do the same in providing advice to and advancing partnerships with the Division's partners within the intelligence community and in working cooperatively with congressional oversight committees.

2. At your hearing, I asked if you agreed with the sentiment that because there is not an enemy state against which such a war can be waged, the very notion of a "war" on terror is at best a public relations expression. In the alternative, I asked if you believed the United States is engaged in a war on terror. You replied "I believe we are at war and I believe we are at war against determined enemy and a very adaptable enemy, and that's been my experience in the time that I've served in the FBI and in the department."

- a. With whom do you believe we are at war?

Pursuant to the Authorization for the Use of Military Force enacted by the Congress in September 2001, the United States is engaged in hostilities with Al Qaeda, the Taliban and associated forces.

- b. Why do you describe the enemy as an "adaptable enemy?"

I describe them as an adaptable enemy because over time, and as has become publicly known, Al Qaeda and those who are inspired by it, have evidenced evolving tactics in their recruitment, planning, operations, and operational security. Throughout this time, the threat environment has become increasingly complex, encompassing terrorist plots, espionage, and sophisticated cyber intrusions from state and non-state actors.

- c. If confirmed as Assistant Attorney General, what will you do to support this war and to respond to adaptations made by the enemy?

If confirmed as Assistant Attorney General for National Security, I will work to ensure that agents, analysts, and prosecutors share information and use all lawful tools to detect national security threats mindful of the need to ensure that our tools keep pace with the threat we face and that they are used in a manner consistent with the rule of law. Among other things, the Assistant Attorney General for National Security has the responsibility, pursuant to designation from the Attorney General, to approve applications to the Foreign Intelligence Surveillance Court and to approve the use of information from FISA warrants in criminal and other contexts. If confirmed, I will lend my support, and legal guidance to these and other efforts to ensure that the advances achieved through authorities like the PATRIOT Act, the FISA Amendments Act and other tools are not diminished. My guideposts in this regard will be to ensure clarity, stability and flexibility for agents and operators in the field and the prosecutors who work with them consistent with the laws and the Constitution.

3. In a talk you gave to a class at American University you recommended two books for the class to read. One of these books was *Terror and Consent* by Professor Phillip Bobbitt. In the introduction to his book, Professor Bobbitt writes: “Among well-informed persons, a number of dubious propositions about twenty-first century terrorism and the Wars against Terror are widely and tenaciously held.” He then lists a number of the assumptions he believes are dubious. I am interested in knowing your views on several of these assumptions. Please respond to the following questions:

In my remarks to a group of undergraduate students in an International Affairs class at the American University I referred to two books that had recently been released: Terror and Consent, by Phillip Bobbitt; and Law and the Long War, by Benjamin Wittes. I have not reread either book but my recollection is that I mentioned these books in order to encourage a group of college students interested in international and current affairs to seek out and expose themselves to a range of approaches – historical and analytical – to the complex issues of terrorism and security.

- a. Do you believe “that because terrorism will always be with us, there can be no victory in the war against terror”?

I have not reviewed the portions referenced above but, as a general matter, I understand that there have been examples of terrorist movements throughout history, including of course the goal of al Qaeda to establish a global Islamic caliphate. Although the war on terror is not likely to end like past wars that does not mean that terrorist movements cannot be disrupted and degraded. Since September 11, 2001, the United States has made substantial progress in addressing the threat posed by al Qaeda, the Taliban and associated forces. The leadership and operational capabilities

of al Qaeda have been degraded and it should be our goal to continue to apply all instruments of national power to detect, deter and disrupt the terrorist threat.

- b. Do you believe “that because terrorism is only a means to an end...‘one man’s terrorist is another man’s freedom fighter’”?

I have not reviewed the portion referenced above or the context in which it appears, but as a general matter, I believe terrorism can fairly be described as the use of violence and assassination to intimidate governments and civilian populations and that terrorists or terrorist organizations are so designated because they engage in terrorist activity or threaten the security of United States nationals or the security of the United States. I do not believe that violence or assassination to intimidate civilian populations should be justified as a “freedom fight.”

- c. Do you believe “that terrorism is best treated as a problem of crime, by law enforcement officials, and not as a matter for defense departments, which are inappropriate when there are no battlefield lines or armies to confront...”?

I have not reviewed the portion referenced above or the context in which it appears, but as a general matter, I believe that we must bring to bear all instruments of national power against the terrorist threat and use whatever tool works best -- military, intelligence, prosecution (military or civilian), diplomatic -- in order to disrupt and incapacitate a particular threat. Sometimes that tool will be law enforcement and the criminal justice system, sometimes that tool will be a military prosecution, sometimes that tool will be the use of military or intelligence assets.

- d. Do you believe “that terrorists ‘win’ if they are able to force government to enhance their power of detention, surveillance, and information collection or if the citizenry significantly modifies its everyday behavior”?

I have not reviewed the portion referenced above or the context in which it arises, but as a general matter, I do not believe terrorists “win” in these circumstances. I believe that we must ensure that we use all lawful means to disrupt national security threats and we must do so consistent with the Constitution and the laws of the United States. If confirmed, my priority will be to ensure that if there are new tools that can be brought to bear that are consistent with the Constitution, we explore them and work with Congress to ensure that those on the front lines have the tools they need.

- e. Do you believe “that the root causes of terrorism lie in conditions of poverty, economic exploitation, neglect of health and education, and religious indoctrination that must be reversed before a war against terrorism can be won?”

I have not reviewed the portion referenced above or the context in which it appears, but it seems reasonable to me that a number of the factors could contribute to a particular terrorist threat or movement.

4. In all of the outlines you provided the Committee on talks you have given on national security issues you include a section concerning “balancing national security and civil liberties.”

- a. Do you believe that an appropriate balance has been struck between national security concerns and civil liberties?

Agents, analysts and prosecutors who work every day to protect us from national security threats do so pursuant to the authorities Congress has given them under the Constitution. I believe these authorities reflect an effort to strike a balance between the imperative of protecting national security interests of the United States on the one hand and the importance of doing so consistent with the fundamental rights guaranteed under the Constitution. Through carefully crafted authorities, compliance efforts within the Executive Branch and robust Congressional oversight of those compliance efforts, I believe we have been able to strike the right balance over time. As the threat continues to evolve, and technology develops that better enables us to detect and disrupt threats while at the same time providing new tactics and capabilities to those who would do us harm, we must be constantly vigilant in our efforts to maintain that balance.

- b. What, if any, reforms do you think are necessary for the protection of privacy and civil liberties?

As noted above, as a general matter I believe we have been able to strike a balance over time in protecting security and guarding the privacy and civil liberties of the American people. As the threat continues to evolve, and as technology develops that better enables us to detect and disrupt threats while also providing new tactics and tools to those who would do us harm, I believe it is important that Congress and the Executive Branch continue to be vigilant in working together to develop tools that enable us to keep pace with the threat while ensuring that that balance is maintained.

5. At your hearing, I asked you about the 1995 Gorelick memo which established a wall between the criminal investigators and the intelligence community. I specifically asked whether or not you were involved in any subsequent review, revision or implementation of the memo. You replied that you didn’t believe so, but would give that question more thought. Do you have anything to add to the response you gave at your hearing?

No.

6. At your hearing, I asked if you support the permanent extension of PATRIOT Act provisions which are soon to expire – the “lone wolf” provision, the roving wiretaps provision, and the business records provision. You responded that you “think we need to have those provisions reauthorized for a substantial period of time in order to give stability and clarity to our agents in the field who need those tools quite essentially.” Do you disagree with FBI Director Mueller’s testimony that these should be permanent?

In my testimony I intended to convey the critical importance to the nation’s national security efforts of the PATRIOT Act reforms and, in particular, the need to reauthorize for a substantial period the three provisions currently set to expire next month. I understand and agree with Director Mueller’s desire to provide the agents of the FBI with clarity and stability in the tools they use through a permanent reauthorization of these critical tools. If Congress determines that it should revisit these authorities, and if I am confirmed as the Assistant Attorney General for National Security, I will work with Congress to ensure that the operators charged with detecting and disrupting threats have the tools they need to do so consistent with the rule of law.

7. You worked for the FBI for years, providing advice and making decisions on national security issues. Have the three provisions referenced above (lone wolf, roving wiretaps, business records) been useful to the FBI to prevent terrorist attacks in the United States? Please explain how you would use these tools if confirmed as an Assistant Attorney General.

Based on my experience, the three expiring provisions are critical tools that have given national security investigators many of the same capabilities that have long been available to criminal investigators. For instance, the roving wire tap provision has permitted investigators to track spies and terrorists who are trying to evade surveillance and the business record provision has permitted investigators access to key documents and data in national security, espionage and terrorism cases. The lone wolf provision, although not used to date, permits investigators to keep up with the growing threat of the lone or self-radicalized offender. If I am confirmed, my job would be to ensure that these tools are used aggressively and appropriately – and with full court review and approval. If confirmed, I would have the responsibility of approving, pursuant to Attorney General designation, applications to the Foreign Intelligence Surveillance Court, including applications for the use of these and other tools.

8. If these three provisions are not reauthorized, or if they are substantially weakened by including new requirements, what would be the consequence for agents in the field? What would be the general effect on national security investigations?

If these provisions are not reauthorized or are substantially weakened, agents in the field would be deprived of vital investigative tools, and their efforts to detect terror threats and

ferret out espionage actors and to protect the national security would be impeded. This would have a potentially devastating effect on national security investigations.

9. Three other tools which are not set to expire and do not need reauthorization are the Foreign Intelligence Surveillance Act (FISA) pen register and trap-and-trace orders, national security letters, and delayed notice search warrants.
- a. The FBI regularly uses pen register and trap-and-trace authority in both national security and criminal areas. Do you believe increased legal burdens to obtain these investigative tools are needed?

I do not believe there is a need to increase the legal burdens to use these tools. I would want to ensure that any changes to the legal standards governing the use of this authority not adversely affect its operational effectiveness.

- b. Legislation has been introduced that would increase the legal standard for FISA pen registers, while keeping the criminal legal standard lower. Do you support increasing the legal standard for national security pen registers while keeping the criminal standard unchanged?

I have not reviewed any specific legislative proposal in this regard, but as a general matter, I would be concerned about any effort to increase the legal standard on the use of the FISA pen register tool. I would want to ensure that any changes did not adversely affect its operational effectiveness and would want to consult with agents and operators in that regard. This tool is utilized with full court authority and approval to establish non-content information in order to demonstrate probable cause for other more intrusive investigative steps where warranted.

- c. If the legal standards are modified, to make FISA pen registers more difficult to obtain than criminal pen registers, would this create incentive for law enforcement to use a criminal pen registers and not FISA pen registers?

Increasing the standard for obtaining FISA pen registers could conceivably increase the likelihood that investigators would use criminal pen registers instead.

- d. Please describe your view on the use of National Security Letters as part of the building blocks of a national security investigation.

National Security Letters are essential to many national security investigations. They are used to obtain transactional and subscriber information – not content – in order to permit national security investigators to identify threats and, as importantly, to rule out potential threats thereby conserving and focusing investigative and agent resources. Important reforms have been put in place in recent years – both at the FBI and within the Department of Justice -- to review and monitor the use of NSLs, to ensure the proper predication exists and is documented, and to report to Congress on their use. These reforms have strengthened this vital national security tool.

- e. What is your view on imposing a sunset on National Security Letters?

NSLs have never had a sunset requirement; I do not believe a sunset is necessary for the reasons described above. Should Congress decide to impose a sunset, and if I am confirmed, I would want to work with Congress to ensure that agents and prosecutors continue to have this vital national security tool and that it is used consistent with the laws of the United States.

- f. Please describe your view on the use of Delayed Notice Search Warrants as a national security tool.

Delayed notice search warrants are an important national security tool. As in the criminal context, they can be used when it is important to maintain operational security and secrecy regarding a particular investigative step. This can be particularly important when the target of the investigation or search is a terrorist suspect, foreign intelligence officer or spy.

- g. Is there any necessity for, or advantage to be obtained, in decreasing the delay period for Delayed Notice Search Warrants?

I am not aware of any necessity or advantage to investigators to decreasing the period of delay in the use of this tool. As I understand it, when seeking authority for a delayed notice search warrant, the government must make a showing to the court to establish the necessity for a particular period of delay permitted within the statute. The court has the discretion to grant that request or to grant a period of delay that is less than the maximum allowable period permitted by statute.

10. Regarding the Electronic Communications Protection Act (ECPA) – the Digital Due Process Coalition supports a probable cause standard for obtaining *all* electronic communications, regardless of its age, the location or storage facility, or the provider’s access to the information.

- a. Do you support raising the legal standard for obtaining electronic communications to a “probable cause” determination?

I have not reviewed any particular legislative proposal in this regard, but speaking generally, I would be concerned with an increase in the legal standard for obtaining electronic communications and would want to ensure that any change not adversely affect operational effectiveness. As noted above, NSLs (some of which are issued under ECPA) form the building blocks of national security investigations under a relevance standard. This is vital to the ability of national security investigators to obtain information that forms the basis for probable cause and to further national security investigations.

- b. Do you believe the legal standard to obtain information through a pen register or trap-and-trace order should be increased to probable cause or 2703(d) standard?

No, for the reasons described above.

- 11. With the advancement of technology, the gap is widening between what the courts authorize under the Communications Assistance for Law Enforcement Act and what communications companies are capable of providing.
 - a. Please comment on your understanding of the gap between capability and current legal authority.

Based on my experience working with law enforcement and the intelligence community for the last several years, my understanding is that the advance of technology has created a gap between law enforcement's ability to access and obtain information to which it is legally entitled and the information it is technically able to obtain. This gap has impeded investigators' ability to obtain information to which they are entitled pursuant to court order and has slowed national security investigations.

- b. Would you agree that the Communications Assistance for Law Enforcement Act needs updating?

I agree that Congress and the Executive Branch should work together to ensure that investigators can effectuate the authority given to them by Congress and the courts. Whether that takes the form of updates to the Communications Assistance for Law Enforcement Act (CALEA) or another mechanism, if I am confirmed I will make it a priority to work with Congress in this regard.

- c. If Congress does not pass a law requiring corporate compliance, what will happen to the ability to collect what a judge has ordered them to get?

If the increasing inability to effectuate current legal authorities is not addressed, and as technology advances, law enforcement will likely continue to lose the ability to access information to which a court has granted to them lawful access. This will pose further challenges for law enforcement and national security investigators and make it more difficult to detect, deter and disrupt threats.

- d. Are you concerned about the possibility of law enforcement “going dark?” How would “going dark” affect terrorism investigations?

For the reasons described above, as a former federal prosecutor and as a national security professional, I am concerned about the inability of law enforcement and national security investigators to access information to which a court has granted them lawful access. This problem has been described as the “going dark” problem. As terrorists and spies increasingly use new modes of communication there is greater risk that national security investigators will not be able to access critical pieces of information to prevent terrorist attacks despite having legal authority to obtain such information.

- e. If confirmed, will you work with Congress to find a legislative solution to this problem?

If I am confirmed, I will welcome the opportunity to work with Congress to identify solutions to this critical national security problem.

- 12. You previously worked as Counsel and Chief-of-Staff to the FBI Director. The FBI was recently criticized by the Homeland Security and Government Reform Committee, (HSGAC) in a committee report addressing the lessons learned from the Fort Hood shootings by Major Nidal Hasan. The report recommended that the FBI “more convincingly share information and coordinate operations with other federal, state, and local agencies.”

- a. If you received information that the FBI is not sharing information with federal prosecutors, what is the responsibility of the National Security Division Assistant Attorney General? What would you do to fix the problem?

The responsibility of the Assistant Attorney General (AAG) for National Security is to ensure a coordinated approach to national security investigations working with the FBI, United States Attorneys Offices, and the intelligence community. As AAG, I would work to continue the strong partnerships between the FBI and the National Security Division (NSD) and to maintain cooperative relationships now realized by agents, analysts, and prosecutors working side-by-side on investigations. NSD was created to ensure that criminal investigators and prosecutors on the one hand, and

intelligence lawyers and the intelligence community on the other, have the same information about the same terrorists and intelligence targets. If I identified an instance where information that should be shared was not being shared, I would work diligently to break down whatever barrier was impeding that communication and put in place a system to ensure that problem did not recur.

- b. As the Assistant Attorney General, will you have any problem separating yourself from the FBI, given your previous affiliation with that agency, and holding them accountable when needed?

No. If I am confirmed as the Assistant Attorney General for National Security, it will be part of my responsibility to provide oversight of intelligence, counterintelligence, and national security matters at the FBI to ensure conformity with applicable laws and regulations. My experience at the FBI will be an asset in my ability to do so as it will enable me to ask the right questions, probe the answers provided, and to work productively, efficiently and professionally to find and implement solutions to whatever issues and problems arise.

- c. The 9/11 Commission discussed information-sharing as a key problem in failing to “connect the dots”. In fact, they pointed out that the acting head of the Office of Intelligence Policy and Review complained to the Attorney General about the lack of information-sharing controls. As a result, he began imposing his own information-sharing procedures on Foreign Intelligence Surveillance Act (FISA) material. What protections are in place at the National Security Division to prevent this from happening again?

There are structural and procedural protections in place at the National Security Division (NSD) to ensure robust information sharing. First, the structure of the NSD is one way in which the Department’s and the government’s national security architecture ensure information sharing. Congress created the NSD in order to bring the Department’s national security functions under one roof and under one senior official reporting to the Deputy Attorney General and the Attorney General. In creating NSD and the position of the Assistant Attorney General for National Security, Congress ensured that there would be one place where both law enforcement investigators and intelligence lawyers could share and synthesize information. Today, national security investigators, intelligence lawyers, and prosecutors sit together, share information, expertise and perspective, and focus together on national security targets. Finally, the oversight responsibilities of the NSD – including national security reviews conducted by NSD lawyers along with lawyers from the FBI’s Office of General Counsel, and review by NSD of regular reporting regarding FBI’s national security investigations -- provide a check on the use of these authorities and an ability to identify and correct deficiencies in information sharing.

13. While you served as Associate Deputy Attorney General, were you involved in the Justice Department's decision in November 2009 to try 9/11 mastermind Khalid Sheikh Mohammed and four co-conspirators in Article III courts? Did you agree with that decision?

I was among a group of lawyers who participated in discussions regarding the disposition of the 9/11 conspirators. As the Attorney General said, he made his decision after considering carefully the full case presented to him by career prosecutors and after consulting with the Department of Defense. The Attorney General has also said that the 9/11 attacks were both an act of war and federal criminal violations and that his was a difficult decision on which reasonable persons could differ. I agree that it was a close call and that it is appropriate for the Attorney General to make such decisions. The Attorney General has now decided to refer the case to the military commissions in order to hold the 9/11 attackers accountable. If confirmed, my priority will be to assist the Department of Defense and the military commission proceeding to ensure that the 9/11 attackers are held accountable.

14. At your hearing we discussed the Attorney General's policy reversal regarding trying terrorists in military court. Specifically, I noted that although it was his opinion that the best venue for prosecution of terrorists was in federal court, he made a decision to try terrorists in a military court. He noted that he made his decision only because Congress forced him to do so. You indicated you agreed with the Attorney General's decision to try terrorists in a military tribunal.

- a. Do you have any doubts that military tribunals can be a successful tool in the prosecution of terrorists?

The military commissions system, as reformed through the Military Commissions Act of 2009, is an important tool in the effort to incapacitate terrorists and I have confidence the commissions can be used successfully to prosecute terrorists.

- b. Do you have any doubts about the constitutionality of military tribunals?

The Military Commissions system, as reformed by the Military Commissions Act of 2009, provides many of the same safeguards and protections that Americans associate with protections afforded for fair trials in the criminal justice system; I have no reason to doubt its constitutionality.

15. I also asked if you agreed with his opinion that the best venue for prosecution is in federal court and that Congress forced him to do otherwise. I do not believe you provided a clear answer to this question. Do you agree with the Attorney General that the best venue for prosecution of terrorists is in federal court rather than before military tribunals?

I agree with the Attorney General that both federal courts and military commissions are critical tools. As the President and the Attorney General have said, federal courts have proven over many years to be one of the most effective tools in the detention and incapacitation of terrorists and military commissions are also an important tool in combating terrorists and the threat they pose. As I indicated in my opening statement, we must ensure that we can use all tools to disrupt terrorist threats. In some cases the most effective tool may be prosecution in the criminal justice system while at other times it may be the use of military commissions, and in still other instances the use of military, intelligence or diplomatic assets may be the best method by which to incapacitate a particular terrorist threat.

16. In Attorney General Holder's public statement on this issue, he criticized Congress for encroaching on the "responsibility of the executive branch" and warned that it "could have serious ramifications" to our national security.

- a. Do you agree with the Attorney General that Congress inappropriately interfered with the executive branch?

I believe that Congress has an important role in both the authorization and oversight of the national security activities of the Executive Branch. As the President, the Attorney General and the Secretary of Defense have all indicated, the exercise of prosecutorial discretion has always been an Executive Branch function. I recognize that it is important to balance the roles of the respective branches in exercising national security responsibilities.

- b. What oversight role does Congress have with regard to executive branch decisions concerning national security?

I believe the Congress plays a unique and important role in oversight and authorization of the Executive Branch's national security activities. Under the National Security Act, Congress must be kept fully and currently informed of significant intelligence activities and has the responsibility to exercise appropriate oversight of the Executive's national security activities.

- c. If confirmed, will you cooperate with the Congress and its Committees in the exercise of its oversight responsibilities?

Yes.

17. The President, commenting on the decision to try the 9/11 co-conspirators in military tribunals instead of in Article III courts, stated: "To treat these folks as profoundly

different than the run-of-the-mill murderer or rapist is wrong in one respect - it elevates them." Do you agree with the President that subjecting terrorists to military tribunals elevates them?

I am not familiar with this statement or the context in which it was made. I understand that there are many deeply held and principled views regarding the choice of forum in which to prosecute the 9/11 attackers. I also understand that all seem to agree on the need to hold the 9/11 attackers accountable. I believe that the attacks of 9/11 were both an act of war and criminal violations and that it is appropriate to hold the 9/11 attackers accountable in military commissions.

18. Please describe with particularity the process by which these questions were answered.

I received these questions from the Office of Legislative Affairs on April 20, 2011. I then completed a draft of these answers and discussed them with colleagues within the Department of Justice. I then finalized my answers and authorized their transmission to the Committee.

19. Do these answers reflect your true and personal views?

Yes.

April 29, 2011

The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

Thank you very much for giving me the opportunity to appear before the Committee on April 13, 2011. I enclose my responses to the Questions for the Record that I received from Ranking Member Grassley.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Monaco", written in a cursive style.

Lisa O. Monaco

LOM/
Enclosure

Monaco, Lisa (ODAG)

From: Monaco, Lisa (ODAG)
Sent: Monday, May 9, 2011 5:57 PM
To: Delery, Stuart F. (OAG); O'Neil, David (ODAG)
Subject: ssci pre-qfrs
Attachments: Monaco prehearing questions_V1(3).doc

Would you guys mind reviewing the attached, paying particular attention to: Qs: 11, 13, 14, 17-20. I think much of it is too long – so appreciate your thoughts on cutting down as well. Also, w/r/t to the q;s re (b) (5)

– Perhaps best to just

(b) (5)

Thanks

SELECT COMMITTEE ON
INTELLIGENCE
UNITED STATES SENATE



**Prehearing Questions
for
Lisa O. Monaco
Upon her Nomination to be
The Assistant Attorney General for National Security**

Keeping the Intelligence Committee Fully and Currently Informed

QUESTION 1: Section 502 of the National Security Act of 1947 provides that the obligation to keep the congressional intelligence committees fully and currently informed of all intelligence activities applies not only to the Director of National Intelligence (DNI) but to the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities. Section 503 establishes a similar requirement concerning covert actions. Sections 502(a)(2) and 503(b)(2) provide that these officials shall furnish to the congressional intelligence committees any information or material concerning intelligence activities or covert actions, including the legal basis for them, that is requested by either of the committees in order to carry out its authorized responsibilities. 28 C.F.R. § 0.72(a) provides that the Assistant Attorney General for National Security (AAG/NS) shall conduct, handle, or supervise the briefing of Congress, as appropriate, on matters relating to the national security activities of the United States.

- a. What is your understanding of the obligation of the Attorney General and the Director of the Federal Bureau of Investigation (FBI) to keep the congressional intelligence committees, including all their Members, fully and currently informed?

Answer: (b) (5)

[REDACTED]

- b. To what activities of the Department of Justice (Department), including the FBI, does this obligation ordinarily apply?

Answer: (b) (5)

[REDACTED]

- c. What is your understanding of the obligation of the Attorney General to provide to the congressional intelligence committees any information or material concerning the legal basis for intelligence activities or covert actions which either committee requests in order to carry out its legislative or oversight responsibilities?

Answer: (b) (5)

[REDACTED]

- d. The Committee utilizes detailed information on the overall national security threat environment and other intelligence matters to appropriately fulfill its intelligence authorization and oversight functions. Do you agree that the Department should comply with requests from the Committee for information relating to intelligence matters? Do you agree that the Department and FBI should fully brief the Committee on potential counterterrorism and counterintelligence threats to the United States, as well as FBI intelligence-related activities to thwart such threats?

Answer: (b) (5)

[REDACTED]

Liaison to the Director of National Intelligence

QUESTION 2: Pursuant to 28 U.S.C. §507A(b)(2), the AAG/NS shall serve as primary liaison to the DNI for the Department. In response to a prehearing question during his nomination proceeding, David Kris summarized a report published by the Department in April 2008 on the liaison relationship between the National Security Division (NSD) and the DNI.

- a. What is your understanding of how this responsibility has been performed in the time since that report?

Answer: (b)(5); (b)(5) per ODNI

[REDACTED]

- b. Have you discussed with the DNI, and with personnel in the Office of the Director of National Intelligence (ODNI), your respective understandings of that responsibility? If so, describe.

Answer: (b) (5)

[REDACTED]

- c. Describe the principal matters that should be addressed in performing this responsibility.

Answer: (b) (5)

[REDACTED]

(b) (5) [REDACTED]
[REDACTED]
[REDACTED]

- d. Given the extensive role of the NSD in intelligence matters, do you believe the NSD should be made a part of the Intelligence Community and funded through the National Intelligence Program?

Answer: (b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Priorities of the Attorney General

QUESTION 3: Have you discussed with the Attorney General his specific expectations of you, if confirmed as Assistant Attorney General, and his expectations of the NSD as a whole? If so, please describe those expectations.

Answer: (b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Evaluation of National Security Division

QUESTION 4: On the basis of your experience in the Department, and the observations or recommendations of preceding Assistant Attorneys General for National Security, do you have any observations on the strengths or weaknesses of the NSD, including matters which you would

like to study further, relating to organization, tasks, allocation of personnel, skills and training, or any other factors that you believe are relevant to a successful mission for the NSD? If so, please describe.

Answer: (b) (5)

[REDACTED]

Oversight of Intelligence Activities

QUESTION 5: 28 C.F.R. § 0.72(17) provides that the Assistant Attorney General for National Security shall provide oversight of intelligence, counterintelligence, and national security matters by executive branch agencies to ensure conformity with applicable law, regulations, and departmental objectives and report to the Attorney General.

- a. What is your understanding of the NSD's oversight role, including the manner in which it has been exercised, concerning intelligence activities of the FBI?

Answer: (b) (5)

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

- b. What is your understanding of the NSD's oversight role, including the manner in which it has been exercised, concerning intelligence activities, and related prosecutorial activities, undertaken in the offices of United States Attorneys?

Answer: (b) (5)

[REDACTED]

(b) (5) [REDACTED]

(b) (5) [REDACTED]

- c. What is your understanding of the NSD’s oversight role, including the manner in which it has been exercised, concerning intelligence activities of IC elements outside of the Department of Justice?

Answer: (b) (5) [REDACTED]

- d. Are there improvements, in terms of resources, methodology, and objectives in the conduct of this oversight that you believe should be considered?

Answer: (b) (5) [REDACTED]

(b) (5)

- e. What are the most significant lessons that have been learned with respect to the conformity with applicable law, regulations and departmental objectives of entities subject to NSD oversight?

Answer: (b) (5)

Administration of the Foreign Intelligence Surveillance Act—Section 215 Applications

QUESTION 6: 28 C.F.R. § 0.72(6) provides that the Assistant Attorney General for National Security shall administer the Foreign Intelligence Surveillance Act (FISA). Audits by the Inspector General of the Department of Justice in 2007 and 2008 found that the processing of FBI requests for Section 215 orders for “tangible things” (Title V of FISA) had been subject to significant delays. The audits found the FBI had not used Section 215 orders as effectively as it could have because of legal, bureaucratic, or other impediments to obtaining these orders.

- a. What is your understanding of the findings of the IG audits and the response of the Department? Please include in this response your assessment whether problems identified in these audits, with respect to processing of Section 215 applications, have been adequately addressed.

Answer: (b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

- b. What additional steps should be taken by the Department to ensure that unnecessary delays are eliminated?

Answer: (b) (5) [Redacted]

- c. Given that Section 215 applications to the FISA Court are submitted without an Attorney General certification, would you support attorneys from the Office of General Counsel of the FBI presenting applications directly to the FISA Court?

Answer: (b) (5)

[REDACTED]

Obtaining Approvals from the Department/National Security Undercover Operations

QUESTION 7: In general, if a particular investigative authority has been under-utilized because of administrative burdens imposed by the Department of Justice, are you committed to eliminating unnecessary administrative burdens so that intelligence professionals are more willing to use the authority?

- a. In particular, how long does it now take for the FBI to obtain authority for exemptions in national security undercover operations?

Answer: (b) (5)

[REDACTED]

- b. What steps have been taken to implement Section 366 of the Intelligence Authorization Act for Fiscal Year 2010 (Public Law 111-259) which changes the delegation level for approval of exemptions within the FBI and the Department for national security

undercover operations? Has this statutory change improved the process for obtaining such exemptions?

Answer: (b) (5) [REDACTED]
[REDACTED]

- c. What additional steps should be taken by the Department to ensure that unnecessary delays are eliminated?

Answer: (b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Reauthorization of FISA Provisions

QUESTION 8: Three FISA provisions—lone wolf coverage, roving wiretaps, and orders for business records and other tangible things—sunset on May 27, 2011. A fourth, collection against persons reasonably believed to be outside the United States which was added by the FISA Amendments Act of 2008, sunsets on December 31, 2012.

- a. Do you support, and for what principal reasons, reauthorization for a period of years or making permanent these provisions?

Answer: (b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(b) (5)

[REDACTED]

- b. What is the impact of additional short-term extensions for one year or less of the authorities now scheduled to sunset on May 27?

Answer: (b) (5)

[REDACTED]

- c. Does the Department of Justice support the alignment of the four authorities with respect to any future sunset date?

Answer: (b) (5)

Declassification of FISA Opinions

QUESTION 9: On February 28, 2011, the Department of Justice wrote to this Committee to confirm that representatives of the ODNI Office of General Counsel and the NSD had established a process to declassify relevant opinions of the FISA courts (both the Foreign Intelligence Surveillance Court and the Court of Review) without compromising intelligence sources and methods or other properly classified information.

- a. Is the Department applying this process not only to new decisions but also to prior decisions that contain important rulings of law?

Answer: (b) (5)

- b. Please describe the concrete steps that the Department and the ODNI are taking, if any, to review both new and previous opinions of the FISA courts for declassification?

Answer: (b) (5)

- c. Please describe the priority that you will give to this effort if confirmed.

Answer: (b) (5)

National Security Letters and Administrative Subpoenas

QUESTION 10: National security investigators seeking certain types of records must use specific national security letter authorities, each with its own statutory requirements. In the USA PATRIOT Improvement and Reauthorization Act of 2005, Congress directed the undertaking of a Department of Justice Inspector General audit on the use of national security letters.

- a. What is your understanding of the administrative reforms implemented by the FBI in response to that audit?

Answer: (b) (5)

(b) (5)

[Redacted text block]

- b. What is your view on whether to place into law any administrative improvements, any other changes to improve the effectiveness or lawfulness of national security letters, or to enact further improvements in response to any judicial decisions about national security letters?

Answer: (b) (5)

[Redacted text block]

- c. Please compare the availability of administrative subpoenas to investigators in solely criminal matters—regarding the procedures for those subpoenas, their scope, or any other relevant comparison—with the national security letters available in national security investigations.

(b) (5)

- d. What is your view of the pros and cons of creating a single statutory national security administrative subpoena? Is this a concept that you would support? If so, please describe the scope and procedures that should be applicable to any such administrative subpoena authority.

Answer: (b) (5)

[REDACTED]

High Value Detainee Interrogation Group

QUESTION 11: What is your assessment of the effectiveness of the High Value Detainee Interrogation Group? In answering this question, please include your assessment of its effectiveness with respect to interrogation of terrorist suspects in different settings and circumstances, such as those in custody within the United States, those in U.S. custody outside the United States, and those in the custody of foreign countries.

Answer: (b) (5)

[REDACTED]

Unauthorized Disclosures of Classified Information

QUESTION 12: 28 C.F.R. § 0.72(a) assigns to the Assistant Attorney General for National Security the responsibility to advise the Attorney General, the Office of Management and Budget, and the White House on matters relating to the national security. In addition, the Assistant Attorney General is assigned the responsibility to prosecute crimes involving national security, foreign relations, and terrorism.

- a. Describe the personnel resources, both attorneys and others, within the NSD that are devoted to the prosecution of media leak cases, and how the NSD divides responsibility on these matters with the Criminal Division.

Answer: (b) (5)

[REDACTED]

(b) (5)

[REDACTED]

- b. Describe the role that the NSD has played since its inception in media leak prosecutions in United States district courts and on appeal to the U.S. courts of appeals. Please provide up-to-date information on the status of major prosecutions during the last two years.

Answer: (b) (5)

[REDACTED]

(b) (5)

[REDACTED]

- (b) (5) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

- (b) (5) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

- (b) (5) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

- (b) (5) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

(b) (5)

- c. Are there any steps that the Department could take to increase the number of individuals who are prosecuted for making unauthorized disclosures of classified information to members of the news media? If so, please describe.

Answer: (b) (5)

- d. Are there any steps that should be taken to improve the civil enforcement of nondisclosure agreements under the authority of *Snepp v. United States*? If so, please describe.

Answer: (b) (5)

- e. Are there any additional steps that the U.S. government as a whole should take to prevent the unauthorized disclosures of classified information from occurring? If so, please describe.

Answer: (b)(5); (b)(5) per ODNI
[Redacted]

- f. Please describe the prepublication review responsibilities of the NSD and the administrative and judicial review which is available to an officer or employee, or former officer or employee, with respect to the Department’s exercise of prepublication authorities, including those applicable to the FBI. In answering this question, please provide your evaluation of the extent to which present and former officers and employees of the Department adhere to their prepublication obligations.

Answer: (b) (5)
[Redacted]

(b) (5)
[Redacted]

(b) (5)
[Redacted]

- g. Please describe how the NSD ensures the protection of information within the organization itself, including the use of auditing and monitoring of information technology systems. Who is responsible for counterintelligence and security at NSD?

Answer: (b) (5)

[REDACTED]

(b) (5)

[REDACTED]

(b) (5)

[REDACTED]

Free Flow of Information Act

QUESTION 13: In the past Congress, the House and Senate considered legislation on federally compelled disclosure of information from the news media through subpoena, court order, or other compulsory legal process. What is your opinion of the Free Flow of Information Act of 2009, S. 449, as reported from the Senate Judiciary Committee on December 11, 2009, and any modifications that should be made in that proposed legislation?

Answer: (b) (5)

[Redacted text block]

Attorney General Guidelines for Domestic FBI Operations/Miranda Warnings

¹ (b) (5)

[Redacted text block]

QUESTION 14: In September 2008, Attorney General Mukasey issued guidelines on the domestic operations of the Federal Bureau of Investigation. To implement the guidelines, the FBI developed and put into effect a Domestic Investigations and Operations Guide, referred to as the DIOG. Revisions to the DIOG have been under consideration within the Department for some time.

- a. What is your understanding of the main decisions made by the Attorney General in the September 2008 guidelines for domestic FBI operations?

Answer: (b) (5)

[REDACTED]

(b) (5)

[REDACTED]

(b) (5)

[REDACTED]

- b. What is your understanding of the principal concerns raised by civil liberties groups and others about these Attorney General guidelines, such as concerns about pretext interviews and physical surveillance?

Answer: (b) (5)

[REDACTED]

- c. In what ways, and how well or not, do you believe that the Attorney General guidelines and the implementing FBI DIOG address those concerns?

Answer: (b) (5)

[REDACTED]

(b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- d. Do you believe the Attorney General guidelines and the DIOG provide sufficient flexibility for the FBI to investigate aggressively alleged terrorists and spies?

Answer: (b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- e. Are there any revisions that you believe should be made either to the guidelines or the FBI's policies implementing the guidelines?

Answer: (b) (5) [REDACTED]
[REDACTED]
[REDACTED]

- f. What is your view of the FBI policy, incorporated into the DIOG, on Custodial Interrogation for Public Safety and Intelligence Gathering Purposes of Operational Terrorists Arrested Inside the United States with respect to advising terrorist suspects arrested in the United States of their *Miranda* rights? Is there a legal requirement that all terrorist suspects arrested in the United States be advised of their *Miranda* rights prior to custodial interrogation? Under what circumstances do you believe a terrorist suspect should be interrogated based upon exceptions to or without regard to *Miranda*, *Quarles*, and presentment requirements?

Answer: (b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(b) (5) [REDACTED]
[REDACTED]

(b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Counterterrorism Prosecutions

QUESTION 15: 28 C.F.R. § 0.72(a)(8) assigns to the Assistant Attorney General for National Security the responsibility to prosecute and coordinate prosecutions and investigations targeting individuals and organizations involved in terrorist acts at home or against U.S. persons or interests abroad, or that assist in the financing of or providing support to those acts.

- a. Describe the personnel resources, both attorneys and others, within the NSD that are devoted to the prosecution of terrorism cases.

Answer: (b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- b. Describe the role that the NSD has played since its inception in terrorism prosecutions in United States district courts and on appeal to the U.S. courts of appeals. Please provide up-to-date information on the status of major prosecutions during the last two years.

Answer: (b) (5)

[REDACTED]

(b) (5)

- (b) (5)

[REDACTED]

- (b) (5)

[REDACTED]

- (b) (5)

[REDACTED]

(b) (5) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

- (b) (5) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

- (b) (5) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

- (b) (5) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

(b) (5) [Redacted text block]

- (b) (5) [Redacted list item]

- (b) (5) [Redacted list item]

(b) (5) [REDACTED]

- c. Describe the role that the NSD has played with respect to decisions whether to prosecute before U.S. military commissions, and what role it will play, if any, in prosecutions before military commissions.

Answer: (b) (5) [REDACTED]

(b) (5) [REDACTED]

(b) (5) [REDACTED]

Counterespionage Prosecutions

QUESTION 16: 28 C.F.R. § 0.72(a)(7) assigns to the Assistant Attorney General for National Security the responsibility to prosecute federal crimes involving national security, foreign relations and terrorism, including espionage statutes.

- a. Describe the personnel resources, both attorneys and others, within the NSD that are devoted to the prosecution of espionage cases.

Answer: (b) (5)

[REDACTED]

- b. Describe the role that the NSD has played since its inception in espionage prosecutions in United States district courts and on appeal to the U.S. courts of appeals. Please provide up-to-date information on the status of major prosecutions during the last two years.

Answer: (b) (5)

[REDACTED]

(b) (5)

[REDACTED]

- (b) (5)

[REDACTED]

(b) (5) [Redacted text block]

- (b) (5) [Redacted list item]

- (b) (5) [Redacted list item]

- (b) (5)
[REDACTED]

- (b) (5) [REDACTED]

- (b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[illegible]

- [illegible]

(b) (5) [REDACTED]
[REDACTED]

- (b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

OLC Opinions on Matters within Responsibility of the National Security Division

QUESTION 17: With respect to opinions of the Office of Legal Counsel (OLC) on matters within or related to the responsibilities of the NSD, or if preceding the establishment of the Division were related to such matters as electronic surveillance, physical searches, or other methods of national security investigations that would now be of interest to the Division, will you, if confirmed, undertake to do the following:

- Provide to the Committee a comprehensive list and description of OLC opinions on these subjects for opinions that remain OLC precedent or are of significant historical value in understanding the development of the Government's legal theories in support of the matters addressed in the opinions.
- Provide to the Committee copies of those opinions, for handling in accordance with their classification, which are identified by or on behalf of the Committee as useful to it in the performance of its legislative and oversight responsibilities.
- Promptly update the list and description as new opinions are issued with respect to the legal basis for intelligence activities or covert actions and provide such new opinions to the Committee on request.
- If your answer to any part of Question 17 is no, or is qualified, please describe the basis, if any, for the Department to decline to provide information or material requested by the

Committee under sections 502 or 503 of the National Security Act of 1947 for the purpose of being fully and currently informed about the legal basis for intelligence activities or covert actions, including the level of authorization in the Executive Branch required for any such refusal.

Answer: (b) (5)

[REDACTED]

(b) (5)

[REDACTED]

(b) (5)

[REDACTED]

State Secrets

QUESTION 18: The Attorney General’s September 23, 2009 memorandum on state secrets states: “The Department will provide periodic reports to appropriate oversight committees of Congress with respect to all cases in which the Department invokes the privilege on behalf of departments or agencies in litigation, explaining the basis for invoking the privilege.”

- a. Have you worked directly on the formulation or implementation of the policies set forth in the Attorney General's memorandum? If so, please describe.

Answer: (b) (5)

[REDACTED]

- b. Has the Department implemented the commitment of the Attorney General to provide the reports promised in the Attorney General's memorandum? If so, or if not, please describe.

Answer: (b) (5)

[REDACTED]

- c. Has the Department declined, or failed to respond to, requests by the Committee for classified declarations filed by the heads of elements of the Intelligence Community in support of the assertion of the state secrets privilege in matters relating to intelligence activities or covert actions? If so, please describe the legal basis, if any, for not providing to the Committee those declarations, including the level of authorization in the Executive Branch required for any such refusal.

Answer: (b) (5)

[REDACTED]

Requests for Certain Documents

QUESTION 19: In responding to the following, please review the August 3, September 29, October 5, November 19, and December 9, 2010, correspondence with the Department of Justice

regarding requests for certain documents relating to the work of the Guantanamo Bay Detainee Review Task Force, including any September 2009 Attorney General memorandum or other guidance or recommendations related to the Task Force process, the unredacted recommendations contained in the Task Force assessments of each Guantanamo detainee, and a list of the 92 detainees approved for transfer as of August 28, 2009.

- a. Did the Attorney General provide in or about September 2009 any guidance or recommendations in any form to Executive Branch officials or employees, whether in or outside of the Department of Justice, on any presumption that should be applied in favor of transferring or releasing a certain category of detainees? If so, will the Department now provide those documents to the Committee?

Answer: (b) (5)

[REDACTED]

(b) (5)

[REDACTED]

- b. Will the Department now provide the unredacted recommendations contained in the Task Force assessments of each Guantanamo detainee and the list of the 92 detainees approved for transfer as of August 28, 2009 that were requested in the referenced correspondence?

Answer: (b) (5)

[REDACTED]

- c. If the Department is declining to provide these requested documents to the Committee, please describe the specific factual and legal basis for not doing so. Also, please state whether you concur in that decision and your rationale.

Answer: (b) (5)

[REDACTED]

- d. Do you believe that the “deliberative process” privilege allows the Department to withhold the documents and information requested by the referenced correspondence? If so, please describe the specific factual and legal basis for this assertion.

Answer: (b) (5)

[REDACTED]

Professional Experience

QUESTION 20: For each of the following, describe specifically how your experiences will enable you to serve effectively as the Assistant Attorney General for National Security. Include within each response a description of issues relating to the NSD that you can identify based on those experiences.

- a. Principal Associate Deputy Attorney General and Associate Deputy Attorney General, Department of Justice;

Answer: (b) (5)

[REDACTED]

(b) (5)

[REDACTED]

(b) (5)

[REDACTED]

(b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- b. Chief of Staff to the Director, Federal Bureau of Investigation;

Answer: (b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- c. Enron Task Force, Department of Justice;

Answer: (b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- d. Assistant U.S. Attorney, Office of the U.S. Attorney for the District of Columbia.

Answer: (b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(b) (5)

Greenfeld, Helaine (SMO)

From: Greenfeld, Helaine (SMO)
Sent: Tuesday, May 10, 2011 10:59 AM
To: Agrast, Mark D. (SMO); Richardson, Margaret (SMO)
Cc: Weich, Ron (SMO); Appelbaum, Judy (SMO); Burton, Faith (SMO)
Subject: RE: For your review: Monaco pre-hearing questions
Attachments: Monaco prehearing questions_V1(3) hg edits.doc

My edits.

From: Agrast, Mark D. (SMO)
Sent: Monday, May 09, 2011 7:37 PM
To: Richardson, Margaret (SMO); Greenfeld, Helaine (SMO)
Cc: Weich, Ron (SMO); Appelbaum, Judy (SMO); Burton, Faith (SMO)
Subject: For your review: Monaco pre-hearing questions

Attached for your review are Lisa's draft responses to the SSCI supplemental pre-hearing questions. These are due to SSCI on Thursday, so allowing time for White House review, we will need any comments by tomorrow (Tuesday) at 5pm. Thanks for your assistance.

From: Monaco, Lisa (ODAG)
Sent: Monday, May 09, 2011 5:59 PM
To: Agrast, Mark D. (SMO)
Subject:

Mark – attached is a current draft of the pre-qfrs. some of this is too long I think (in particular would appreciate your thoughts on the info provided in response to the q's requesting current status of CT and espionage prosecutions – the info provided is publicly available stuff from NSD, but would appreciate your feedback, and that of the cmte, r (b) (5)

(b) (5)

<< File: Monaco prehearing questions_V1(3).doc >>

SELECT COMMITTEE ON
INTELLIGENCE
UNITED STATES SENATE



**Prehearing Questions
for
Lisa O. Monaco
Upon her Nomination to be
The Assistant Attorney General for National Security**

Keeping the Intelligence Committee Fully and Currently Informed

QUESTION 1: Section 502 of the National Security Act of 1947 provides that the obligation to keep the congressional intelligence committees fully and currently informed of all intelligence activities applies not only to the Director of National Intelligence (DNI) but to the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities. Section 503 establishes a similar requirement concerning covert actions. Sections 502(a)(2) and 503(b)(2) provide that these officials shall furnish to the congressional intelligence committees any information or material concerning intelligence activities or covert actions, including the legal basis for them, that is requested by either of the committees in order to carry out its authorized responsibilities. 28 C.F.R. § 0.72(a) provides that the Assistant Attorney General for National Security (AAG/NS) shall conduct, handle, or supervise the briefing of Congress, as appropriate, on matters relating to the national security activities of the United States.

- a. What is your understanding of the obligation of the Attorney General and the Director of the Federal Bureau of Investigation (FBI) to keep the congressional intelligence committees, including all their Members, fully and currently informed?

(b) (5)

- b. To what activities of the Department of Justice (Department), including the FBI, does this obligation ordinarily apply?

(b) (5)

basis for intelligence activities or covert actions which either committee requests in order to carry out its legislative or oversight responsibilities?

(b) (5)

- d. The Committee utilizes detailed information on the overall national security threat environment and other intelligence matters to appropriately fulfill its intelligence authorization and oversight functions. Do you agree that the Department should comply with requests from the Committee for information relating to intelligence matters? Do you agree that the Department and FBI should fully brief the Committee on potential counterterrorism and counterintelligence threats to the United States, as well as FBI intelligence-related activities to thwart such threats?

(b) (5)

Liaison to the Director of National Intelligence

QUESTION 2: Pursuant to 28 U.S.C. §507A(b)(2), the AAG/NS shall serve as primary liaison to the DNI for the Department. In response to a prehearing question during his nomination proceeding, David Kris summarized a report published by the Department in April 2008 on the liaison relationship between the National Security Division (NSD) and the DNI.

- a. What is your understanding of how this responsibility has been performed in the time since that report?

(b)(5), (b)(5) per ODNI

- b. Have you discussed with the DNI, and with personnel in the Office of the Director of National Intelligence (ODNI), your respective understandings of that responsibility? If so, describe.

(b) (5)

- c. Describe the principal matters that should be addressed in performing this responsibility.

(b) (5)

(b) (5)

- d. Given the extensive role of the NSD in intelligence matters, do you believe the NSD should be made a part of the Intelligence Community and funded through the National Intelligence Program?

(b) (5)

Priorities of the Attorney General

QUESTION 3: Have you discussed with the Attorney General his specific expectations of you, if confirmed as Assistant Attorney General, and his expectations of the NSD as a whole? If so, please describe those expectations.

(b) (5)

Evaluation of National Security Division

QUESTION 4: On the basis of your experience in the Department, and the observations or recommendations of preceding Assistant Attorneys General for National Security, do you have any observations on the strengths or weaknesses of the NSD, including matters which you would

like to study further, relating to organization, tasks, allocation of personnel, skills and training, or any other factors that you believe are relevant to a successful mission for the NSD? If so, please describe.

(b) (5)

Oversight of Intelligence Activities

QUESTION 5: 28 C.F.R. § 0.72(17) provides that the Assistant Attorney General for National Security shall provide oversight of intelligence, counterintelligence, and national security matters by executive branch agencies to ensure conformity with applicable law, regulations, and departmental objectives and report to the Attorney General.

- a. What is your understanding of the NSD's oversight role, including the manner in which it has been exercised, concerning intelligence activities of the FBI?

(b) (5)

- b. What is your understanding of the NSD's oversight role, including the manner in which it has been exercised, concerning intelligence activities, and related prosecutorial activities, undertaken in the offices of United States Attorneys?

(b) (5)

(b) (5)

- c. What is your understanding of the NSD's oversight role, including the manner in which it has been exercised, concerning intelligence activities of IC elements outside of the Department of Justice?

(b) (5)

- d. Are there improvements, in terms of resources, methodology, and objectives in the conduct of this oversight that you believe should be considered?

(b) (5)

- e. What are the most significant lessons that have been learned with respect to the conformity with applicable law, regulations and departmental objectives of entities subject to NSD oversight?

(b) (5)

Administration of the Foreign Intelligence Surveillance Act—Section 215 Applications

QUESTION 6: 28 C.F.R. § 0.72(6) provides that the Assistant Attorney General for National Security shall administer the Foreign Intelligence Surveillance Act (FISA). Audits by the Inspector General of the Department of Justice in 2007 and 2008 found that the processing of FBI requests for Section 215 orders for “tangible things” (Title V of FISA) had been subject to significant delays. The audits found the FBI had not used Section 215 orders as effectively as it could have because of legal, bureaucratic, or other impediments to obtaining these orders.

- a. What is your understanding of the findings of the IG audits and the response of the Department? Please include in this response your assessment whether problems

identified in these audits, with respect to processing of Section 215 applications, have been adequately addressed.

(b) (5)

- b. What additional steps should be taken by the Department to ensure that unnecessary delays are eliminated?

(b) (5)

(b) (5)

- c. Given that Section 215 applications to the FISA Court are submitted without an Attorney General certification, would you support attorneys from the Office of General Counsel of the FBI presenting applications directly to the FISA Court?

(b) (5)

Obtaining Approvals from the Department/National Security Undercover Operations

QUESTION 7: In general, if a particular investigative authority has been under-utilized because of administrative burdens imposed by the Department of Justice, are you committed to eliminating unnecessary administrative burdens so that intelligence professionals are more willing to use the authority?

(b) (5)

- a. In particular, how long does it now take for the FBI to obtain authority for exemptions in national security undercover operations?

(b) (5)

- b. What steps have been taken to implement Section 366 of the Intelligence Authorization Act for Fiscal Year 2010 (Public Law 111-259) which changes the delegation level for approval of exemptions within the FBI and the Department for national security undercover operations? Has this statutory change improved the process for obtaining such exemptions?

(b) (5)

- c. What additional steps should be taken by the Department to ensure that unnecessary delays are eliminated?

(b) (5)

Reauthorization of FISA Provisions

QUESTION 8: Three FISA provisions—lone wolf coverage, roving wiretaps, and orders for business records and other tangible things—sunset on May 27, 2011. A fourth, collection against persons reasonably believed to be outside the United States which was added by the FISA Amendments Act of 2008, sunsets on December 31, 2012.

- a. Do you support, and for what principal reasons, reauthorization for a period of years or making permanent these provisions?

(b) (5)

(b) (5)

- b. What is the impact of additional short-term extensions for one year or less of the authorities now scheduled to sunset on May 27?

(b) (5)

- c. Does the Department of Justice support the alignment of the four authorities with respect to any future sunset date?

(b) (5)

Declassification of FISA Opinions

QUESTION 9: On February 28, 2011, the Department of Justice wrote to this Committee to confirm that representatives of the ODNI Office of General Counsel and the NSD had established a process to declassify relevant opinions of the FISA courts (both the Foreign Intelligence Surveillance Court and the Court of Review) without compromising intelligence sources and methods or other properly classified information.

- a. Is the Department applying this process not only to new decisions but also to prior decisions that contain important rulings of law?

(b) (5)

- b. Please describe the concrete steps that the Department and the ODNI are taking, if any, to review both new and previous opinions of the FISA courts for declassification?

(b) (5)

- c. Please describe the priority that you will give to this effort if confirmed.

(b) (5)

National Security Letters and Administrative Subpoenas

QUESTION 10: National security investigators seeking certain types of records must use specific national security letter authorities, each with its own statutory requirements. In the USA PATRIOT Improvement and Reauthorization Act of 2005, Congress directed the undertaking of a Department of Justice Inspector General audit on the use of national security letters.

- a. What is your understanding of the administrative reforms implemented by the FBI in response to that audit?

(b) (5)

(b) (5)

- b. What is your view on whether to place into law any administrative improvements, any other changes to improve the effectiveness or lawfulness of national security letters, or to enact further improvements in response to any judicial decisions about national security letters?

(b) (5)

- c. Please compare the availability of administrative subpoenas to investigators in solely criminal matters—regarding the procedures for those subpoenas, their scope, or any other relevant comparison—with the national security letters available in national security investigations.

(b) (5)

- d. What is your view of the pros and cons of creating a single statutory national security administrative subpoena? Is this a concept that you would support? If so, please describe the scope and procedures that should be applicable to any such administrative subpoena authority.

(b) (5)

High Value Detainee Interrogation Group

QUESTION 11: What is your assessment of the effectiveness of the High Value Detainee Interrogation Group? In answering this question, please include your assessment of its effectiveness with respect to interrogation of terrorist suspects in different settings and circumstances, such as those in custody within the United States, those in U.S. custody outside the United States, and those in the custody of foreign countries.

(b) (5)

Unauthorized Disclosures of Classified Information

QUESTION 12: 28 C.F.R. § 0.72(a) assigns to the Assistant Attorney General for National Security the responsibility to advise the Attorney General, the Office of Management and Budget, and the White House on matters relating to the national security. In addition, the Assistant Attorney General is assigned the responsibility to prosecute crimes involving national security, foreign relations, and terrorism.

- a. Describe the personnel resources, both attorneys and others, within the NSD that are devoted to the prosecution of media leak cases, and how the NSD divides responsibility on these matters with the Criminal Division.

(b) (5)

- b. Describe the role that the NSD has played since its inception in media leak prosecutions in United States district courts and on appeal to the U.S. courts of appeals. Please provide up-to-date information on the status of major prosecutions during the last two years.

(b) (5)

(b) (5)

(b) (5)

- c. Are there any steps that the Department could take to increase the number of individuals who are prosecuted for making unauthorized disclosures of classified information to members of the news media? If so, please describe.

(b) (5)

- d. Are there any steps that should be taken to improve the civil enforcement of nondisclosure agreements under the authority of *Snepp v. United States*? If so, please describe.

(b) (5)

- e. Are there any additional steps that the U.S. government as a whole should take to prevent the unauthorized disclosures of classified information from occurring? If so, please describe.

(b) (5)

- f. Please describe the prepublication review responsibilities of the NSD and the administrative and judicial review which is available to an officer or employee, or former officer or employee, with respect to the Department's exercise of prepublication authorities, including those applicable to the FBI. In answering this question, please provide your evaluation of the extent to which present and former officers and employees of the Department adhere to their prepublication obligations.

(b) (5)

g. Please describe how the NSD ensures the protection of information within the organization itself, including the use of auditing and monitoring of information technology systems. Who is responsible for counterintelligence and security at NSD?

(b) (5)

Free Flow of Information Act

QUESTION 13: In the past Congress, the House and Senate considered legislation on federally compelled disclosure of information from the news media through subpoena, court order, or other compulsory legal process. What is your opinion of the Free Flow of Information Act of 2009, S. 449, as reported from the Senate Judiciary Committee on December 11, 2009, and any modifications that should be made in that proposed legislation?

(b) (5)

Attorney General Guidelines for Domestic FBI Operations/Miranda Warnings

¹ (b) (5)

QUESTION 14: In September 2008, Attorney General Mukasey issued guidelines on the domestic operations of the Federal Bureau of Investigation. To implement the guidelines, the FBI developed and put into effect a Domestic Investigations and Operations Guide, referred to as the DIOG. Revisions to the DIOG have been under consideration within the Department for some time.

- a. What is your understanding of the main decisions made by the Attorney General in the September 2008 guidelines for domestic FBI operations?

(b) (5)

- b. What is your understanding of the principal concerns raised by civil liberties groups and others about these Attorney General guidelines, such as concerns about pretext interviews and physical surveillance?

(b) (5)

- c. In what ways, and how well or not, do you believe that the Attorney General guidelines and the implementing FBI DIOG address those concerns?

(b) (5)

(b) (5)

- d. Do you believe the Attorney General guidelines and the DIOG provide sufficient flexibility for the FBI to investigate aggressively alleged terrorists and spies?

(b) (5)

- e. Are there any revisions that you believe should be made either to the guidelines or the FBI's policies implementing the guidelines?

(b) (5)

- f. What is your view of the FBI policy, incorporated into the DIOG, on Custodial Interrogation for Public Safety and Intelligence Gathering Purposes of Operational Terrorists Arrested Inside the United States with respect to advising terrorist suspects arrested in the United States of their *Miranda* rights? Is there a legal requirement that all terrorist suspects arrested in the United States be advised of their *Miranda* rights prior to custodial interrogation? Under what circumstances do you believe a terrorist suspect should be interrogated based upon exceptions to or without regard to *Miranda*, *Quarles*, and presentment requirements?

(b) (5)

(b) (5)

Counterterrorism Prosecutions

QUESTION 15: 28 C.F.R. § 0.72(a)(8) assigns to the Assistant Attorney General for National Security the responsibility to prosecute and coordinate prosecutions and investigations targeting individuals and organizations involved in terrorist acts at home or against U.S. persons or interests abroad, or that assist in the financing of or providing support to those acts.

- a. Describe the personnel resources, both attorneys and others, within the NSD that are devoted to the prosecution of terrorism cases.

(b) (5)

- b. Describe the role that the NSD has played since its inception in terrorism prosecutions in United States district courts and on appeal to the U.S. courts of appeals. Please provide up-to-date information on the status of major prosecutions during the last two years.

(b) (5)

(b) (5)

(b) (5)

(b) (5)

- c. Describe the role that the NSD has played with respect to decisions whether to prosecute before U.S. military commissions, and what role it will play, if any, in prosecutions before military commissions.

(b) (5)

Counterespionage Prosecutions

QUESTION 16: 28 C.F.R. § 0.72(a)(7) assigns to the Assistant Attorney General for National Security the responsibility to prosecute federal crimes involving national security, foreign relations and terrorism, including espionage statutes.

- a. Describe the personnel resources, both attorneys and others, within the NSD that are devoted to the prosecution of espionage cases.

(b) (5)

- b. Describe the role that the NSD has played since its inception in espionage prosecutions in United States district courts and on appeal to the U.S. courts of appeals. Please provide up-to-date information on the status of major prosecutions during the last two years.

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

OLC Opinions on Matters within Responsibility of the National Security Division

QUESTION 17: With respect to opinions of the Office of Legal Counsel (OLC) on matters within or related to the responsibilities of the NSD, or if preceding the establishment of the Division were related to such matters as electronic surveillance, physical searches, or other methods of national security investigations that would now be of interest to the Division, will you, if confirmed, undertake to do the following:

- a. Provide to the Committee a comprehensive list and description of OLC opinions on these subjects for opinions that remain OLC precedent or are of significant historical value in understanding the development of the Government's legal theories in support of the matters addressed in the opinions.
- b. Provide to the Committee copies of those opinions, for handling in accordance with their classification, which are identified by or on behalf of the Committee as useful to it in the performance of its legislative and oversight responsibilities.
- c. Promptly update the list and description as new opinions are issued with respect to the legal basis for intelligence activities or covert actions and provide such new opinions to the Committee on request.
- d. If your answer to any part of Question 17 is no, or is qualified, please describe the basis, if any, for the Department to decline to provide information or material requested by the

Committee under sections 502 or 503 of the National Security Act of 1947 for the purpose of being fully and currently informed about the legal basis for intelligence activities or covert actions, including the level of authorization in the Executive Branch required for any such refusal.

(b) (5)

State Secrets

QUESTION 18: The Attorney General's September 23, 2009 memorandum on state secrets states: "The Department will provide periodic reports to appropriate oversight committees of Congress with respect to all cases in which the Department invokes the privilege on behalf of departments or agencies in litigation, explaining the basis for invoking the privilege."

- a. Have you worked directly on the formulation or implementation of the policies set forth in the Attorney General's memorandum? If so, please describe.

(b) (5)

- b. Has the Department implemented the commitment of the Attorney General to provide the reports promised in the Attorney General's memorandum? If so, or if not, please describe.

(b) (5)

- c. Has the Department declined, or failed to respond to, requests by the Committee for classified declarations filed by the heads of elements of the Intelligence Community in support of the assertion of the state secrets privilege in matters relating to intelligence activities or covert actions? If so, please describe the legal basis, if any, for not providing to the Committee those declarations, including the level of authorization in the Executive Branch required for any such refusal.

(b) (5)

Requests for Certain Documents

QUESTION 19: In responding to the following, please review the August 3, September 29, October 5, November 19, and December 9, 2010, correspondence with the Department of Justice

regarding requests for certain documents relating to the work of the Guantanamo Bay Detainee Review Task Force, including any September 2009 Attorney General memorandum or other guidance or recommendations related to the Task Force process, the unredacted recommendations contained in the Task Force assessments of each Guantanamo detainee, and a list of the 92 detainees approved for transfer as of August 28, 2009.

- a. Did the Attorney General provide in or about September 2009 any guidance or recommendations in any form to Executive Branch officials or employees, whether in or outside of the Department of Justice, on any presumption that should be applied in favor of transferring or releasing a certain category of detainees? If so, will the Department now provide those documents to the Committee?

(b) (5)

As noted in the Department's November 19, 2010, correspondence referenced above, beyond the Final Report of the Guantanamo Review Task Force, the Guantanamo Review Task Force Detainee Review Guidelines and the supplement to those guidelines referenced in the correspondence and provided to the Committee, the requested material would be contained in confidential communications between the Attorney General and other Executive Branch principals about the Task Force process. As such and as the correspondence indicates, the Department and the Executive Branch has substantial confidentiality interests in internal Executive Branch records which are not guidance or guidelines to the Task Force but rather the Attorney General's advice and recommendations within the National Security Council decision-making process.

- b. Will the Department now provide the unredacted recommendations contained in the Task Force assessments of each Guantanamo detainee and the list of the 92 detainees approved for transfer as of August 28, 2009 that were requested in the referenced correspondence?

(b) (5)

- c. If the Department is declining to provide these requested documents to the Committee, please describe the specific factual and legal basis for not doing so. Also, please state whether you concur in that decision and your rationale.

(b) (5)

- d. Do you believe that the “deliberative process” privilege allows the Department to withhold the documents and information requested by the referenced correspondence? If so, please describe the specific factual and legal basis for this assertion.

(b) (5)

Professional Experience

QUESTION 20: For each of the following, describe specifically how your experiences will enable you to serve effectively as the Assistant Attorney General for National Security. Include within each response a description of issues relating to the NSD that you can identify based on those experiences.

- a. Principal Associate Deputy Attorney General and Associate Deputy Attorney General, Department of Justice;

(b) (5)

(b) (5)

b. Chief of Staff to the Director, Federal Bureau of Investigation;

(b) (5)

c. Enron Task Force, Department of Justice;

(b) (5)

d. Assistant U.S. Attorney, Office of the U.S. Attorney for the District of Columbia.

(b) (5)

(b) (5)

O'Neil, David (ODAG)

From: O'Neil, David (ODAG)
Sent: Tuesday, May 10, 2011 7:34 PM
To: Monaco, Lisa (ODAG)
Subject: My edits
Attachments: Monaco prehearing questions DAO edits.doc

I mostly tried to shorten answers and cut out redundant parts. I'll explain some of the comments. In general I think the substance of the answers is right on.

SELECT COMMITTEE ON
INTELLIGENCE
UNITED STATES SENATE



**Prehearing Questions
for
Lisa O. Monaco
Upon her Nomination to be
The Assistant Attorney General for National Security**

Keeping the Intelligence Committee Fully and Currently Informed

QUESTION 1: Section 502 of the National Security Act of 1947 provides that the obligation to keep the congressional intelligence committees fully and currently informed of all intelligence activities applies not only to the Director of National Intelligence (DNI) but to the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities. Section 503 establishes a similar requirement concerning covert actions. Sections 502(a)(2) and 503(b)(2) provide that these officials shall furnish to the congressional intelligence committees any information or material concerning intelligence activities or covert actions, including the legal basis for them, that is requested by either of the committees in order to carry out its authorized responsibilities. 28 C.F.R. § 0.72(a) provides that the Assistant Attorney General for National Security (AAG/NS) shall conduct, handle, or supervise the briefing of Congress, as appropriate, on matters relating to the national security activities of the United States.

- a. What is your understanding of the obligation of the Attorney General and the Director of the Federal Bureau of Investigation (FBI) to keep the congressional intelligence committees, including all their Members, fully and currently informed?

(b) (5)

- b. To what activities of the Department of Justice (Department), including the FBI, does this obligation ordinarily apply?

(b) (5)

- c. What is your understanding of the obligation of the Attorney General to provide to the congressional intelligence committees any information or material concerning the legal

basis for intelligence activities or covert actions which either committee requests in order to carry out its legislative or oversight responsibilities?

(b) (5)

- d. The Committee utilizes detailed information on the overall national security threat environment and other intelligence matters to appropriately fulfill its intelligence authorization and oversight functions. Do you agree that the Department should comply with requests from the Committee for information relating to intelligence matters? Do you agree that the Department and FBI should fully brief the Committee on potential counterterrorism and counterintelligence threats to the United States, as well as FBI intelligence-related activities to thwart such threats?

(b) (5)

Liaison to the Director of National Intelligence

QUESTION 2: Pursuant to 28 U.S.C. §507A(b)(2), the AAG/NS shall serve as primary liaison to the DNI for the Department. In response to a prehearing question during his nomination proceeding, David Kris summarized a report published by the Department in April 2008 on the liaison relationship between the National Security Division (NSD) and the DNI.

- a. What is your understanding of how this responsibility has been performed in the time since that report?

(b)(5), (b)(5) per ODNI

- b. Have you discussed with the DNI, and with personnel in the Office of the Director of National Intelligence (ODNI), your respective understandings of that responsibility? If so, describe.

(b) (5)

- c. Describe the principal matters that should be addressed in performing this responsibility.

(b) (5)

Intelligence Community elements to develop and implement guidelines for activity under Executive Order 12333 and to coordinate with its partners in the intelligence community on matters of law and policy that arise in investigations and intelligence operations.

- d. Given the extensive role of the NSD in intelligence matters, do you believe the NSD should be made a part of the Intelligence Community and funded through the National Intelligence Program?

(b) (5)

Priorities of the Attorney General

QUESTION 3: Have you discussed with the Attorney General his specific expectations of you, if confirmed as Assistant Attorney General, and his expectations of the NSD as a whole? If so, please describe those expectations.

(b) (5)

Evaluation of National Security Division

QUESTION 4: On the basis of your experience in the Department, and the observations or recommendations of preceding Assistant Attorneys General for National Security, do you have any observations on the strengths or weaknesses of the NSD, including matters which you would

like to study further, relating to organization, tasks, allocation of personnel, skills and training, or any other factors that you believe are relevant to a successful mission for the NSD? If so, please describe.

(b) (5)

Oversight of Intelligence Activities

QUESTION 5: 28 C.F.R. § 0.72(17) provides that the Assistant Attorney General for National Security shall provide oversight of intelligence, counterintelligence, and national security matters by executive branch agencies to ensure conformity with applicable law, regulations, and departmental objectives and report to the Attorney General.

- a. What is your understanding of the NSD's oversight role, including the manner in which it has been exercised, concerning intelligence activities of the FBI?

(b) (5)

- b. What is your understanding of the NSD's oversight role, including the manner in which it has been exercised, concerning intelligence activities, and related prosecutorial activities, undertaken in the offices of United States Attorneys?

(b) (5)

(b) (5)

- c. What is your understanding of the NSD's oversight role, including the manner in which it has been exercised, concerning intelligence activities of IC elements outside of the Department of Justice?

(b) (5)

- d. Are there improvements, in terms of resources, methodology, and objectives in the conduct of this oversight that you believe should be considered?

(b) (5)

- e. What are the most significant lessons that have been learned with respect to the conformity with applicable law, regulations and departmental objectives of entities subject to NSD oversight?

(b) (5)

Administration of the Foreign Intelligence Surveillance Act—Section 215 Applications

QUESTION 6: 28 C.F.R. § 0.72(6) provides that the Assistant Attorney General for National Security shall administer the Foreign Intelligence Surveillance Act (FISA). Audits by the Inspector General of the Department of Justice in 2007 and 2008 found that the processing of FBI requests for Section 215 orders for “tangible things” (Title V of FISA) had been subject to significant delays. The audits found the FBI had not used Section 215 orders as effectively as it could have because of legal, bureaucratic, or other impediments to obtaining these orders.

- a. What is your understanding of the findings of the IG audits and the response of the Department? Please include in this response your assessment whether problems identified in these audits, with respect to processing of Section 215 applications, have been adequately addressed.

(b) (5)

- b. What additional steps should be taken by the Department to ensure that unnecessary delays are eliminated?

(b) (5)

(b) (5)

- c. Given that Section 215 applications to the FISA Court are submitted without an Attorney General certification, would you support attorneys from the Office of General Counsel of the FBI presenting applications directly to the FISA Court?

(b) (5)

Obtaining Approvals from the Department/National Security Undercover Operations

QUESTION 7: In general, if a particular investigative authority has been under-utilized because of administrative burdens imposed by the Department of Justice, are you committed to eliminating unnecessary administrative burdens so that intelligence professionals are more willing to use the authority?

- a. In particular, how long does it now take for the FBI to obtain authority for exemptions in national security undercover operations?

(b) (5)

- b. What steps have been taken to implement Section 366 of the Intelligence Authorization Act for Fiscal Year 2010 (Public Law 111-259) which changes the delegation level for approval of exemptions within the FBI and the Department for national security undercover operations? Has this statutory change improved the process for obtaining such exemptions?

(b) (5)

- c. What additional steps should be taken by the Department to ensure that unnecessary delays are eliminated?

(b) (5)

Reauthorization of FISA Provisions

QUESTION 8: Three FISA provisions—lone wolf coverage, roving wiretaps, and orders for business records and other tangible things—sunset on May 27, 2011. A fourth, collection against persons reasonably believed to be outside the United States which was added by the FISA Amendments Act of 2008, sunsets on December 31, 2012.

- a. Do you support, and for what principal reasons, reauthorization for a period of years or making permanent these provisions?

(b) (5)

(b) (5)

- b. What is the impact of additional short-term extensions for one year or less of the authorities now scheduled to sunset on May 27?

(b) (5)

- c. Does the Department of Justice support the alignment of the four authorities with respect to any future sunset date?

(b) (5)

Declassification of FISA Opinions

QUESTION 9: On February 28, 2011, the Department of Justice wrote to this Committee to confirm that representatives of the ODNI Office of General Counsel and the NSD had established a process to declassify relevant opinions of the FISA courts (both the Foreign Intelligence Surveillance Court and the Court of Review) without compromising intelligence sources and methods or other properly classified information.

- a. Is the Department applying this process not only to new decisions but also to prior decisions that contain important rulings of law?

(b) (5)

- b. Please describe the concrete steps that the Department and the ODNI are taking, if any, to review both new and previous opinions of the FISA courts for declassification?

(b) (5)

- c. Please describe the priority that you will give to this effort if confirmed.

(b) (5)

National Security Letters and Administrative Subpoenas

QUESTION 10: National security investigators seeking certain types of records must use specific national security letter authorities, each with its own statutory requirements. In the USA PATRIOT Improvement and Reauthorization Act of 2005, Congress directed the undertaking of a Department of Justice Inspector General audit on the use of national security letters.

- a. What is your understanding of the administrative reforms implemented by the FBI in response to that audit?

(b) (5)

(b) (5)

- b. What is your view on whether to place into law any administrative improvements, any other changes to improve the effectiveness or lawfulness of national security letters, or to enact further improvements in response to any judicial decisions about national security letters?

(b) (5)

- c. Please compare the availability of administrative subpoenas to investigators in solely criminal matters—regarding the procedures for those subpoenas, their scope, or any other relevant comparison—with the national security letters available in national security investigations.

(b) (5)

- d. What is your view of the pros and cons of creating a single statutory national security administrative subpoena? Is this a concept that you would support? If so, please describe the scope and procedures that should be applicable to any such administrative subpoena authority.

(b) (5)

High Value Detainee Interrogation Group

QUESTION 11: What is your assessment of the effectiveness of the High Value Detainee Interrogation Group? In answering this question, please include your assessment of its effectiveness with respect to interrogation of terrorist suspects in different settings and circumstances, such as those in custody within the United States, those in U.S. custody outside the United States, and those in the custody of foreign countries.

(b) (5)

Unauthorized Disclosures of Classified Information

QUESTION 12: 28 C.F.R. § 0.72(a) assigns to the Assistant Attorney General for National Security the responsibility to advise the Attorney General, the Office of Management and Budget, and the White House on matters relating to the national security. In addition, the Assistant Attorney General is assigned the responsibility to prosecute crimes involving national security, foreign relations, and terrorism.

- a. Describe the personnel resources, both attorneys and others, within the NSD that are devoted to the prosecution of media leak cases, and how the NSD divides responsibility on these matters with the Criminal Division.

(b) (5)

- b. Describe the role that the NSD has played since its inception in media leak prosecutions in United States district courts and on appeal to the U.S. courts of appeals. Please provide up-to-date information on the status of major prosecutions during the last two years.

(b) (5)

(b) (5)

(b) (5)

- c. Are there any steps that the Department could take to increase the number of individuals who are prosecuted for making unauthorized disclosures of classified information to members of the news media? If so, please describe.

(b) (5)

- d. Are there any steps that should be taken to improve the civil enforcement of nondisclosure agreements under the authority of *Snepp v. United States*? If so, please describe.

(b) (5)

- e. Are there any additional steps that the U.S. government as a whole should take to prevent the unauthorized disclosures of classified information from occurring? If so, please describe.

(b) (5)

- f. Please describe the prepublication review responsibilities of the NSD and the administrative and judicial review which is available to an officer or employee, or former officer or employee, with respect to the Department's exercise of prepublication authorities, including those applicable to the FBI. In answering this question, please provide your evaluation of the extent to which present and former officers and employees of the Department adhere to their prepublication obligations.

(b) (5)

(b) (5)

(b) (5)

- g. Please describe how the NSD ensures the protection of information within the organization itself, including the use of auditing and monitoring of information technology systems. Who is responsible for counterintelligence and security at NSD?

(b) (5)

Free Flow of Information Act

QUESTION 13: In the past Congress, the House and Senate considered legislation on federally compelled disclosure of information from the news media through subpoena, court order, or other compulsory legal process. What is your opinion of the Free Flow of Information Act of

2009, S. 449, as reported from the Senate Judiciary Committee on December 11, 2009, and any modifications that should be made in that proposed legislation?

(b) (5)

(b) (5)

Attorney General Guidelines for Domestic FBI Operations/Miranda Warnings

QUESTION 14: In September 2008, Attorney General Mukasey issued guidelines on the domestic operations of the Federal Bureau of Investigation. To implement the guidelines, the FBI developed and put into effect a Domestic Investigations and Operations Guide, referred to as the DIOG. Revisions to the DIOG have been under consideration within the Department for some time.

- a. What is your understanding of the main decisions made by the Attorney General in the September 2008 guidelines for domestic FBI operations?

(b) (5)

(b) (5)

- b. What is your understanding of the principal concerns raised by civil liberties groups and others about these Attorney General guidelines, such as concerns about pretext interviews and physical surveillance?

(b) (5)

- c. In what ways, and how well or not, do you believe that the Attorney General guidelines and the implementing FBI DIOG address those concerns?

(b) (5)

(b) (5)

- d. Do you believe the Attorney General guidelines and the DIOG provide sufficient flexibility for the FBI to investigate aggressively alleged terrorists and spies?

(b) (5)

- e. Are there any revisions that you believe should be made either to the guidelines or the FBI's policies implementing the guidelines?

(b) (5)

- f. What is your view of the FBI policy, incorporated into the DIOG, on Custodial Interrogation for Public Safety and Intelligence Gathering Purposes of Operational Terrorists Arrested Inside the United States with respect to advising terrorist suspects arrested in the United States of their *Miranda* rights? Is there a legal requirement that all terrorist suspects arrested in the United States be advised of their *Miranda* rights prior to custodial interrogation? Under what circumstances do you believe a terrorist suspect

should be interrogated based upon exceptions to or without regard to *Miranda*, *Quarles*, and presentment requirements?

(b) (5)

Counterterrorism Prosecutions

QUESTION 15: 28 C.F.R. § 0.72(a)(8) assigns to the Assistant Attorney General for National Security the responsibility to prosecute and coordinate prosecutions and investigations targeting individuals and organizations involved in terrorist acts at home or against U.S. persons or interests abroad, or that assist in the financing of or providing support to those acts.

- a. Describe the personnel resources, both attorneys and others, within the NSD that are devoted to the prosecution of terrorism cases.

(b) (5)

- b. Describe the role that the NSD has played since its inception in terrorism prosecutions in United States district courts and on appeal to the U.S. courts of appeals. Please provide up-to-date information on the status of major prosecutions during the last two years.

(b) (5)

(b) (5)

(b) (5)

(b) (5)

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(b) (5)

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(b) (5)

- b. Has the Department implemented the commitment of the Attorney General to provide the reports promised in the Attorney General's memorandum? If so, or if not, please describe.

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- a. Did the Attorney General provide in or about September 2009 any guidance or recommendations in any form to Executive Branch officials or employees, whether in or outside of the Department of Justice, on any presumption that should be applied in favor of transferring or releasing a certain category of detainees? If so, will the Department now provide those documents to the Committee?

(b) (5)

- b. Will the Department now provide the unredacted recommendations contained in the Task Force assessments of each Guantanamo detainee and the list of the 92 detainees approved for transfer as of August 28, 2009 that were requested in the referenced correspondence?

(b) (5)

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(b) (5)

(b) (5)

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(b) (5)

(b) (5)

b. Chief of Staff to the Director, Federal Bureau of Investigation;

(b) (5)

c. Enron Task Force, Department of Justice;

(b) (5)

d. Assistant U.S. Attorney, Office of the U.S. Attorney for the District of Columbia.

(b) (5)