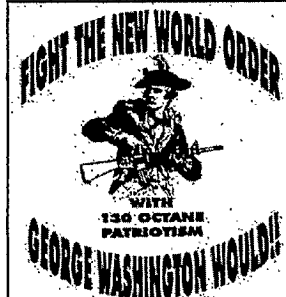


Domestic Terrorism Investigations:

DT Basic In-Service



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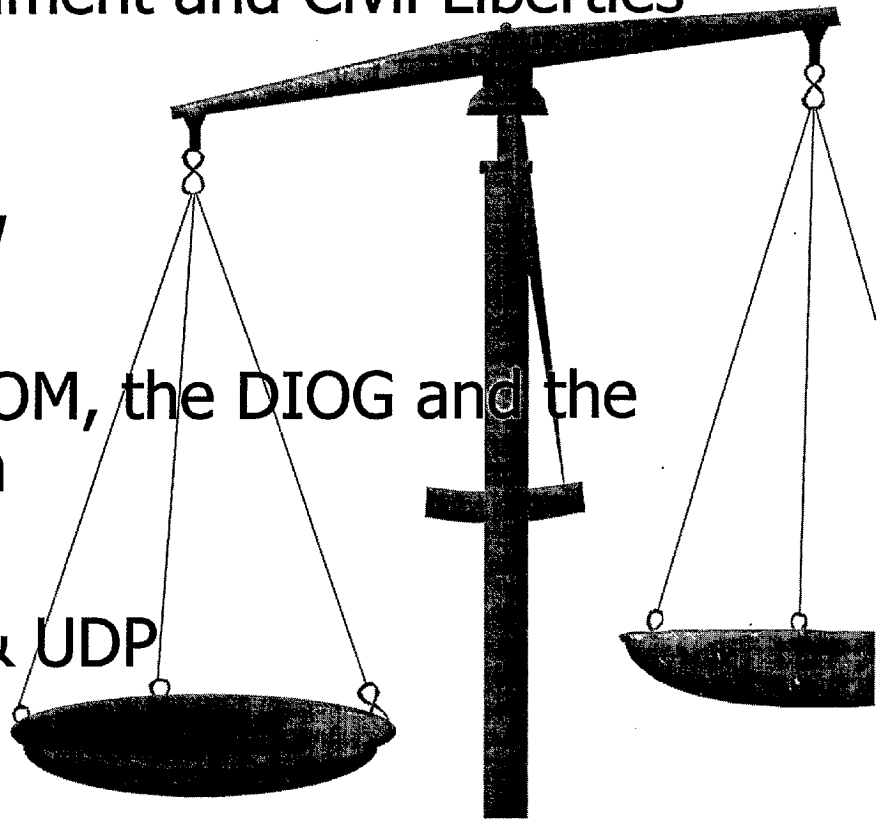
Office of the General Counsel

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 12-08-2011 BY 65179 DMH/SBS

Agenda

- First Amendment and Civil Liberties Overview
- Federal Law
- The AGG-DOM, the DIOG and the DT program
- IIRs, SIRs & UDP



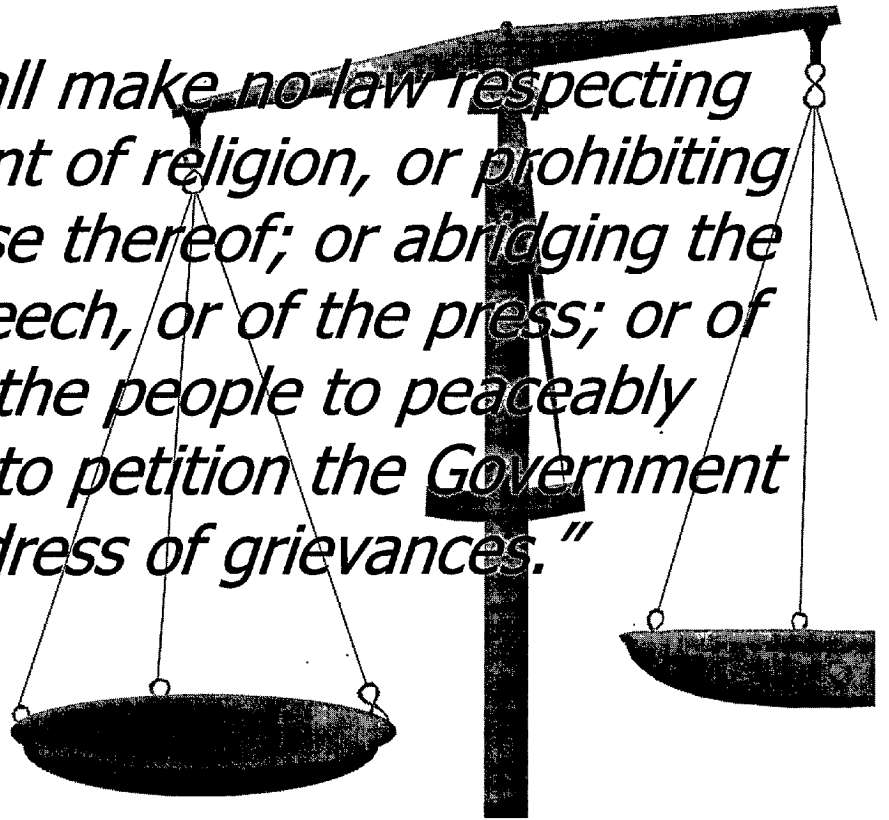
First Amendment and Civil Liberties

Overview



First Amendment

"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 of the right of the people to peaceably assemble, and to petition the Government for a redress of grievances."



First Amendment

- First Amendment protects "The Big Five":

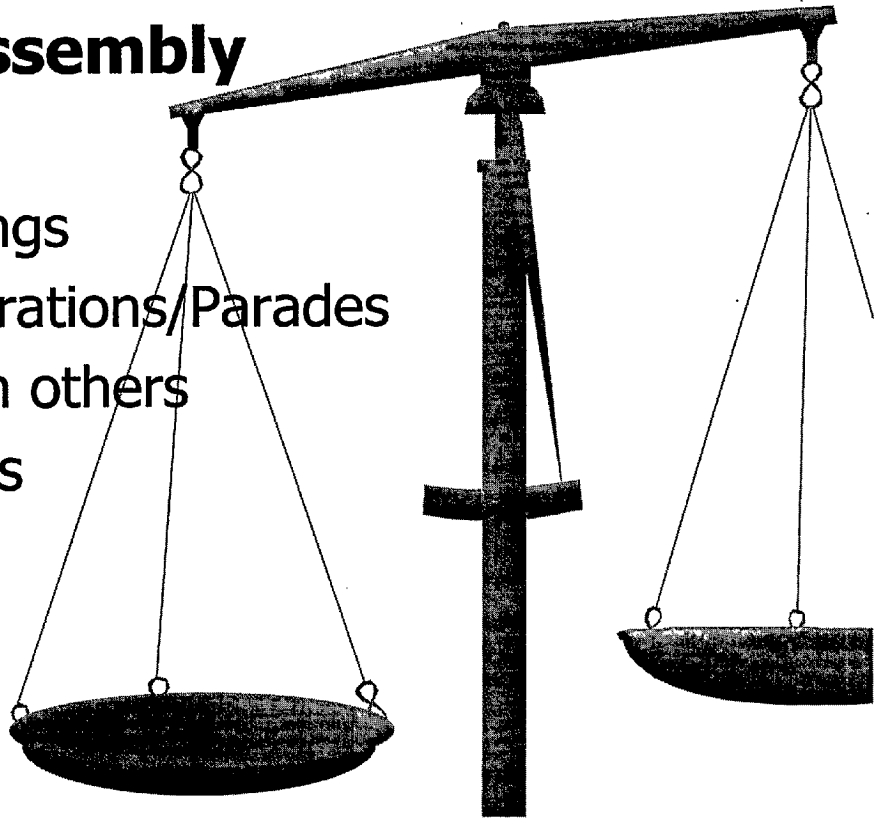
- Freedom of Religion
- Freedom of Speech
- Freedom of the Press
- Freedom of Assembly
- Freedom to Petition the Government



First Amendment

■ Freedom of Assembly

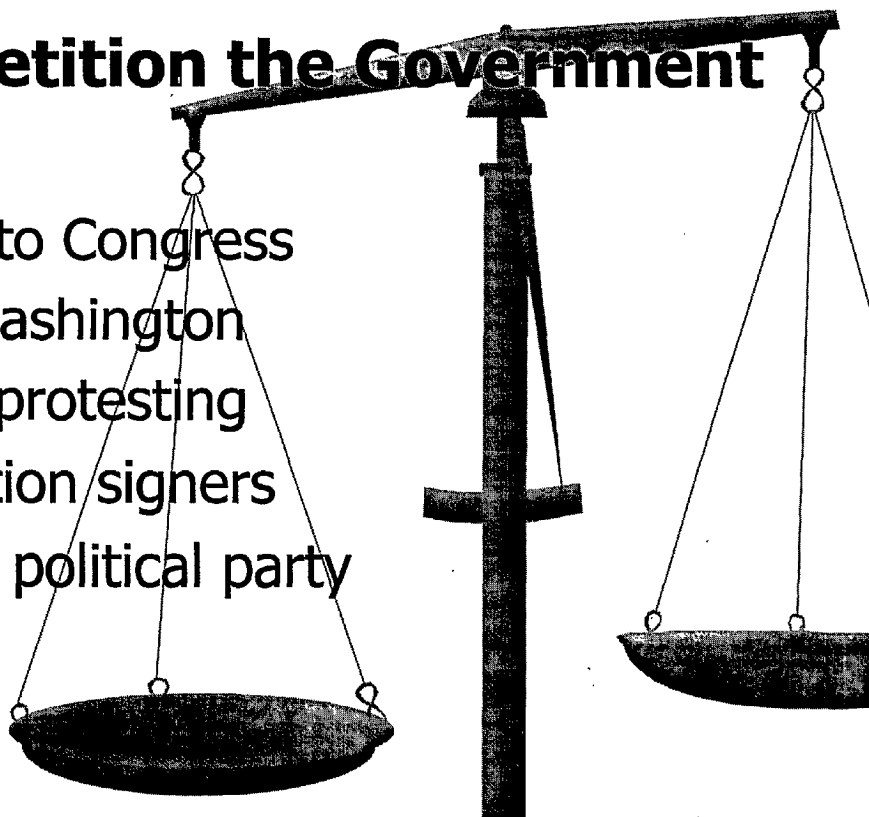
- Private Gatherings
- Public Demonstrations/Parades
- Associating with others
- Ancillary Matters
 - Recruiting
 - Fund raising
 - Marketing



First Amendment

■ Freedom to Petition the Government

- Writing letters to Congress
- Marching on Washington
- Carrying signs protesting
- Recruiting petition signers
- Forming a new political party



First Amendment

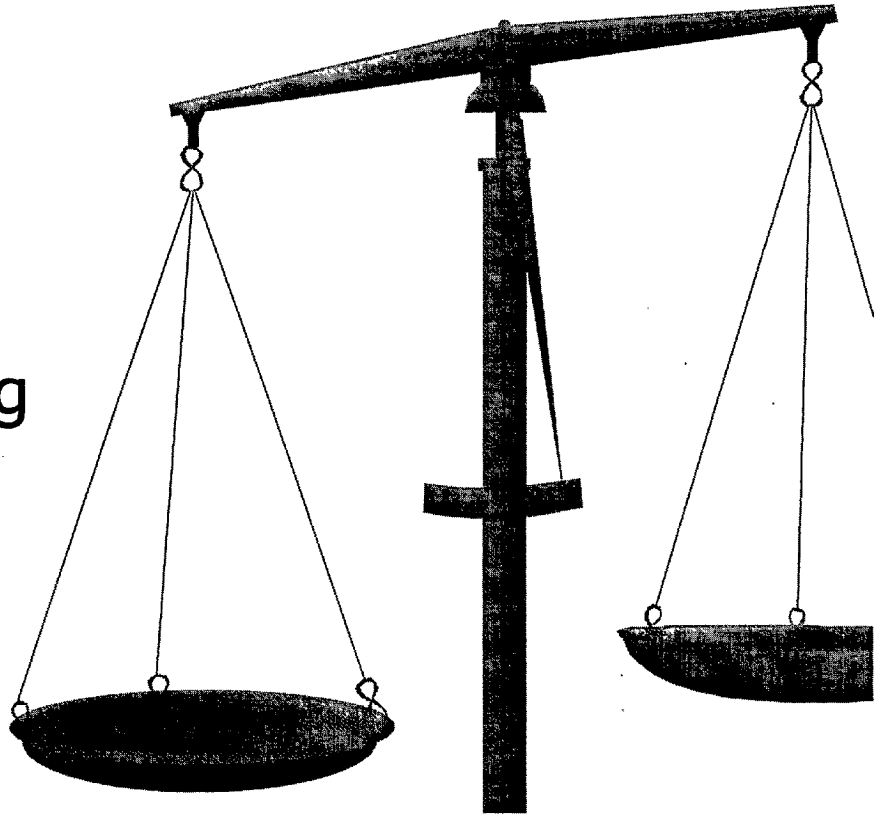
■ Speech

- Speaking at a political rally
- Carrying placards in a parade
- Internet Exchanges
- Other forms of expression-Nazi arm bands, burning the flag; bumper sticker critical of the President on a car
- Publishing a book, article, magazine



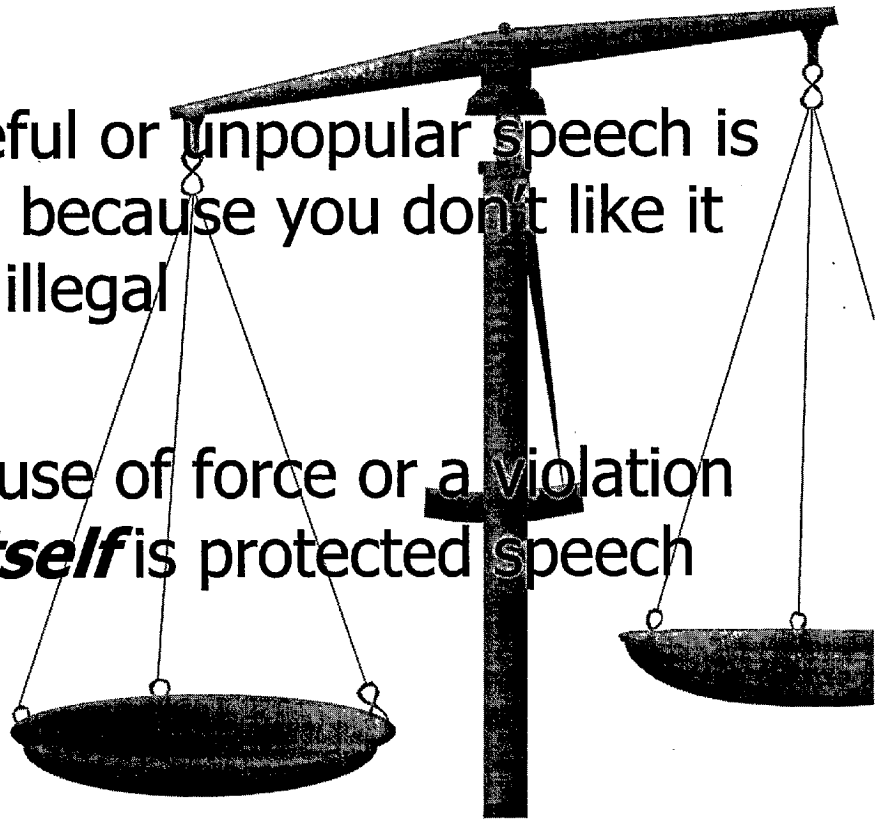
Unprotected Speech

- Fighting Words
- Obscenity
- Extortion
- Perjury
- False Advertising
- True Threats



Protected Speech

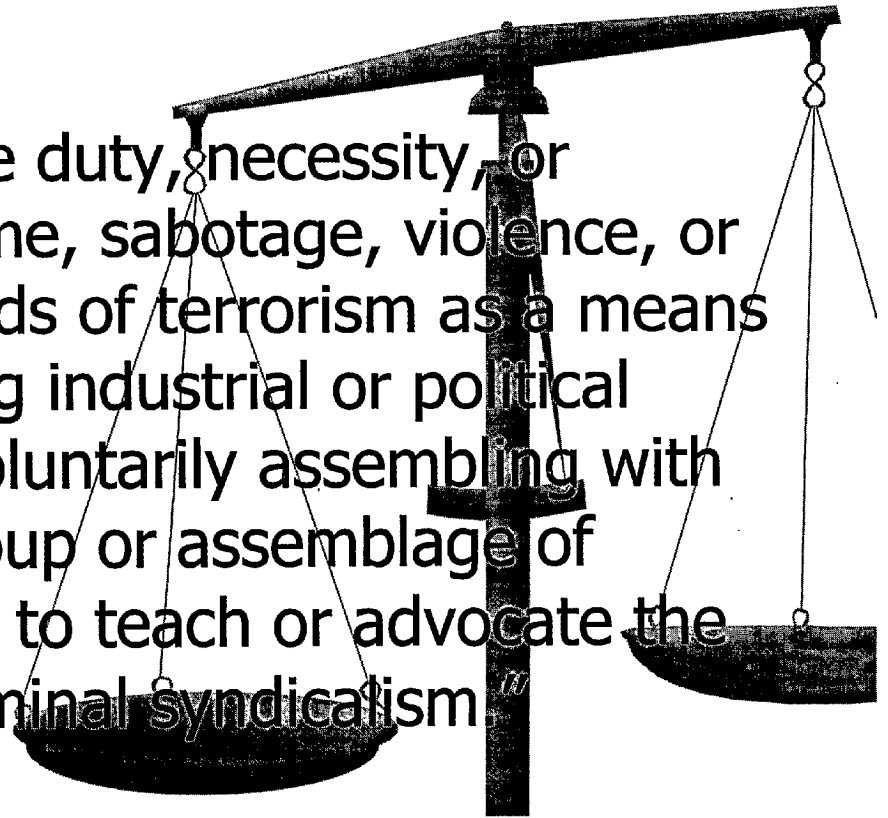
- Sometimes hateful or unpopular speech is protected – just because you don't like it doesn't make it illegal
- Advocating the use of force or a violation of the law ***by itself*** is protected speech



The Line (An Example)

Ohio statute (1969) at issue criminalized the following:

"advocating ... the duty, necessity, or propriety of crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform" and "voluntarily assembling with any society, group or assemblage of persons formed to teach or advocate the doctrines of criminal syndicalism."



The Line (An Example)

- Brandenburg v. Ohio: Speech that

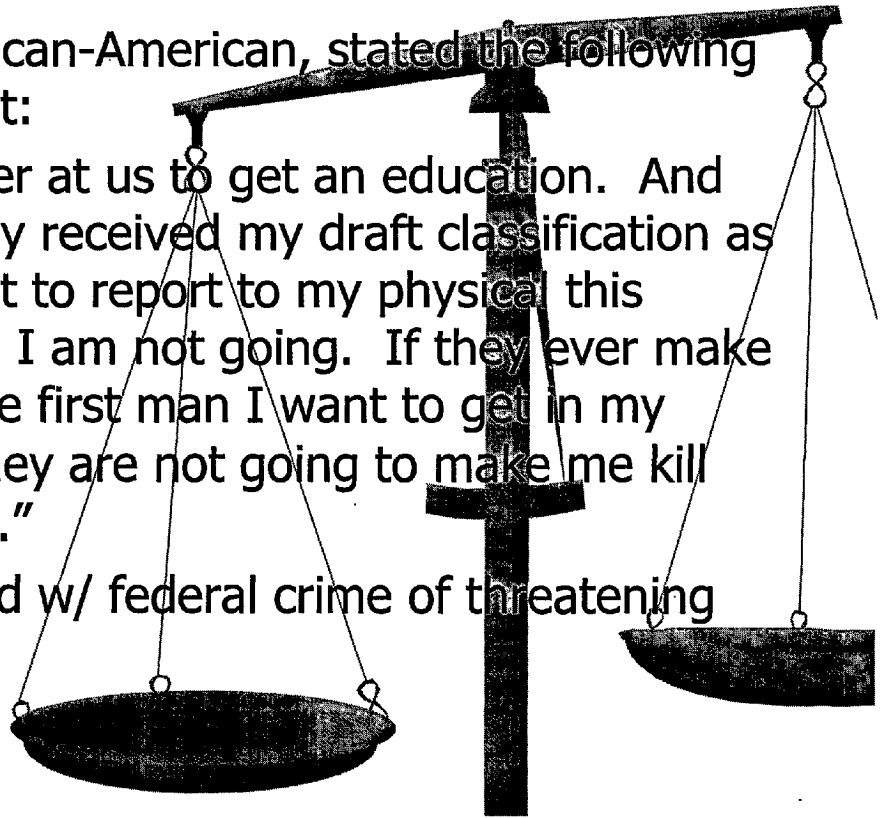
(1) intends to incite imminent lawless action and

(2) is likely to do so.



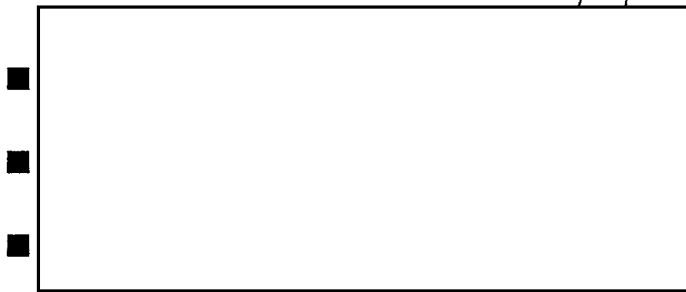
The Line (Another Example)

- Robert Watts, an African-American, stated the following at an anti-war protest:
 - "They always holler at us to get an education. And now I have already received my draft classification as 1-A and I have got to report to my physical this Monday morning. I am not going. If they ever make me carry a rifle the first man I want to get in my sights is L.B.J. They are not going to make me kill my black brothers."
- Can Watts be charged w/ federal crime of threatening the president?

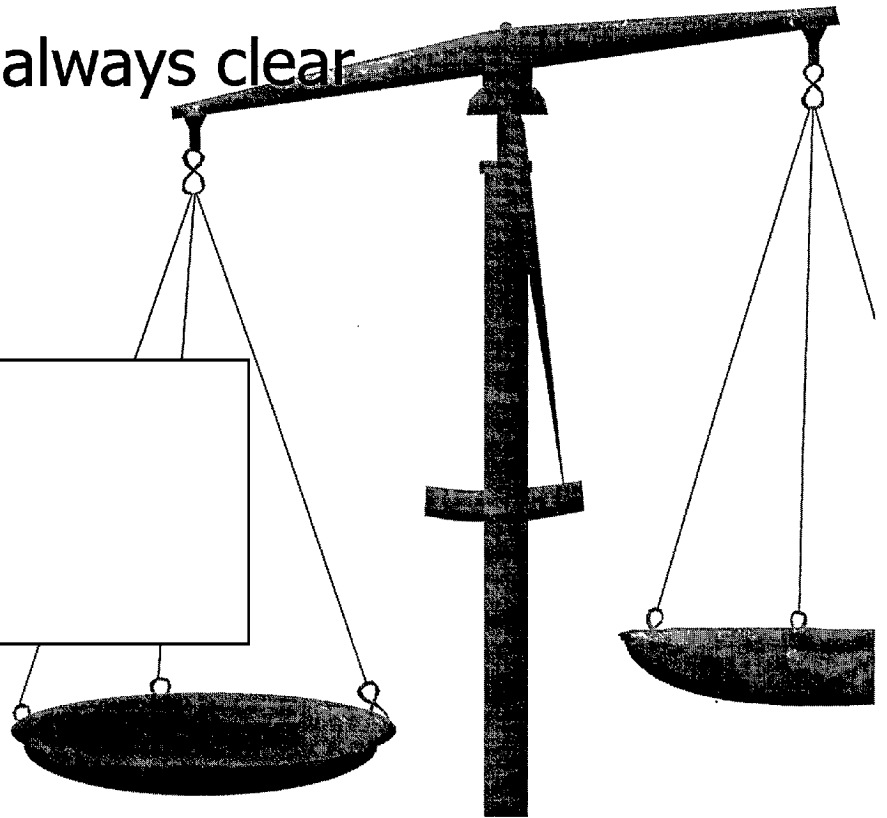


The Line

- “The Line” isn’t always clear
- Look at –



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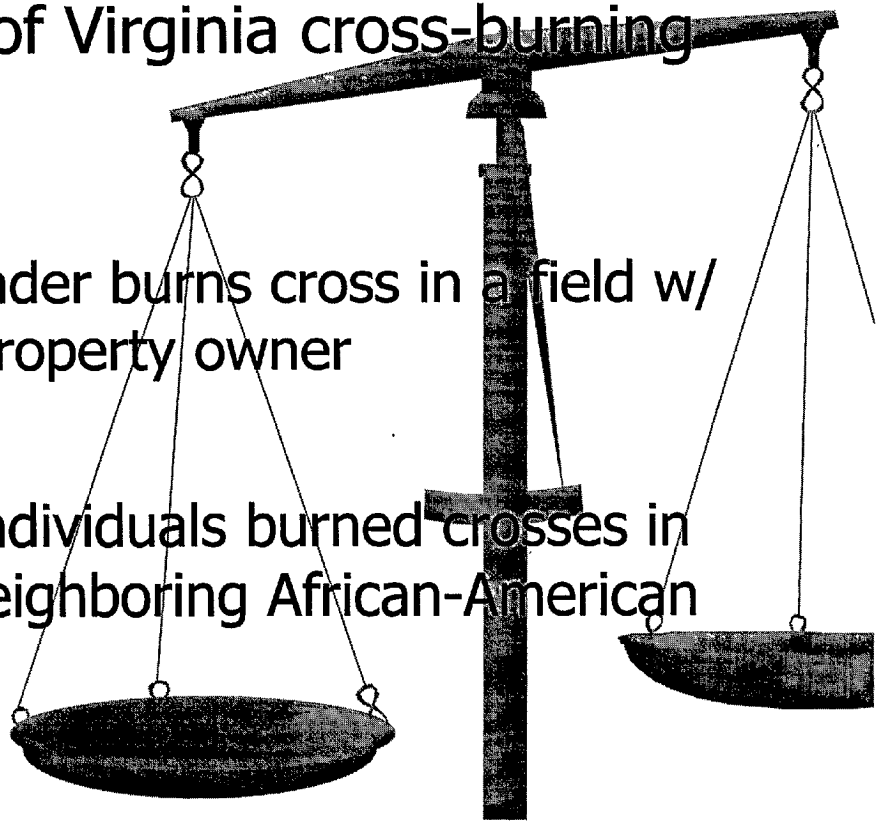


The Line (Last Example)

- Involves a pair of Virginia cross-burning cases (2003)

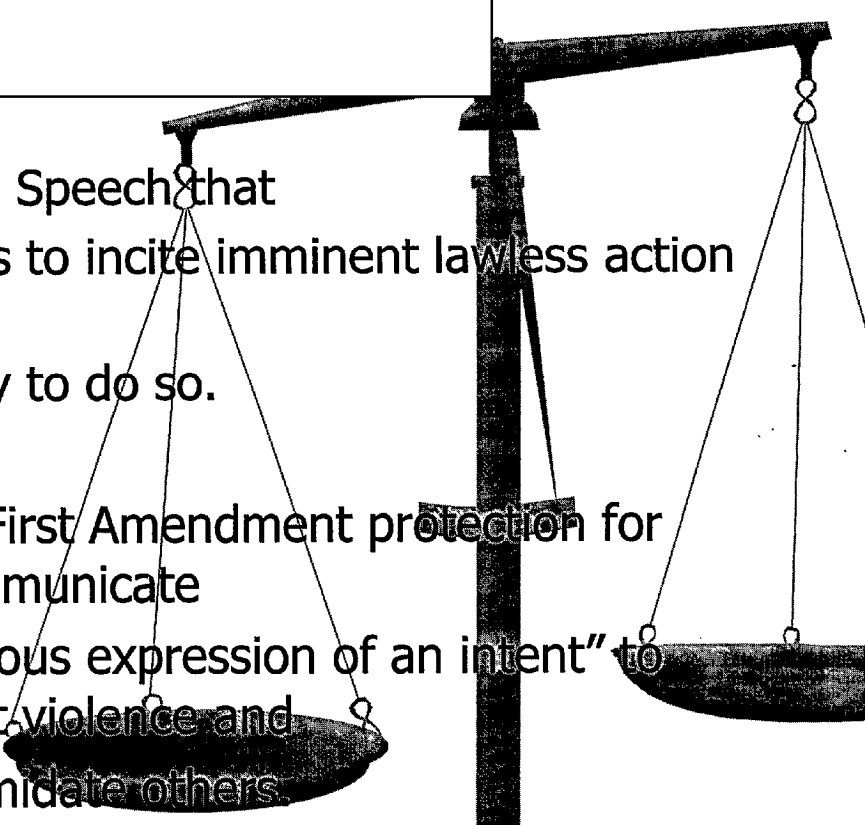
- CASE I: KKK leader burns cross in a field w/ permission of property owner

- CASE II: Two individuals burned crosses in the yard of a neighboring African-American family



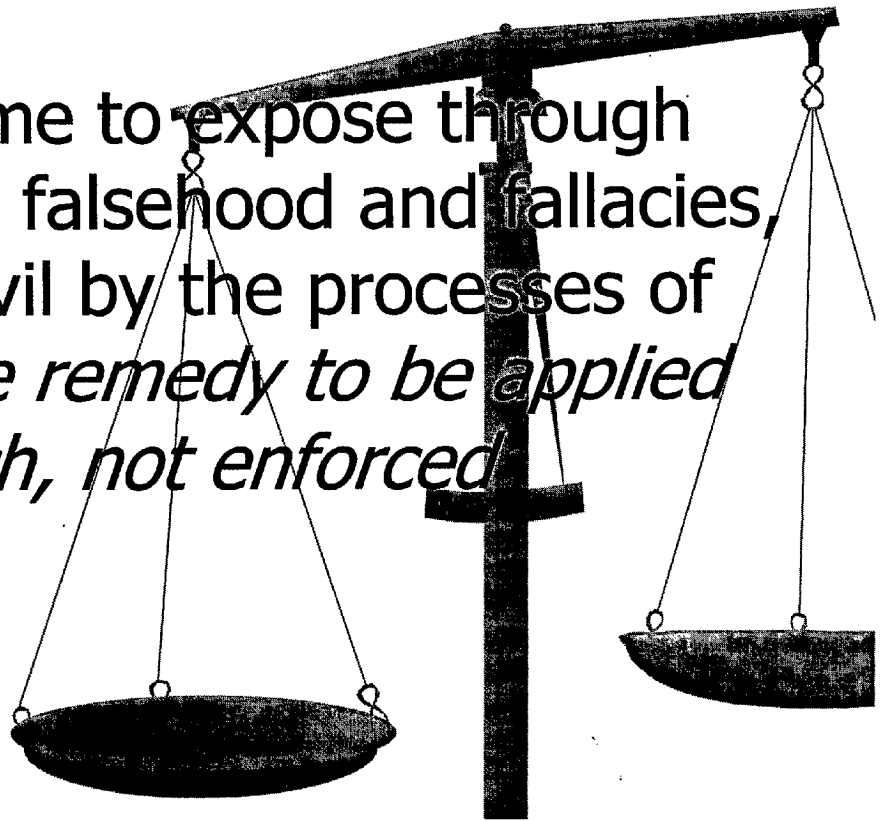
Guideposts

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- 
- Brandenburg v. Ohio: Speech that
 - (1) intends to incite imminent lawless action
 - and
 - (2) is likely to do so.
 - Virginia v. Black: no First Amendment protection for speech meant to communicate
 - (1) A "serious expression of an intent" to commit violence and
 - (2) to intimidate others.

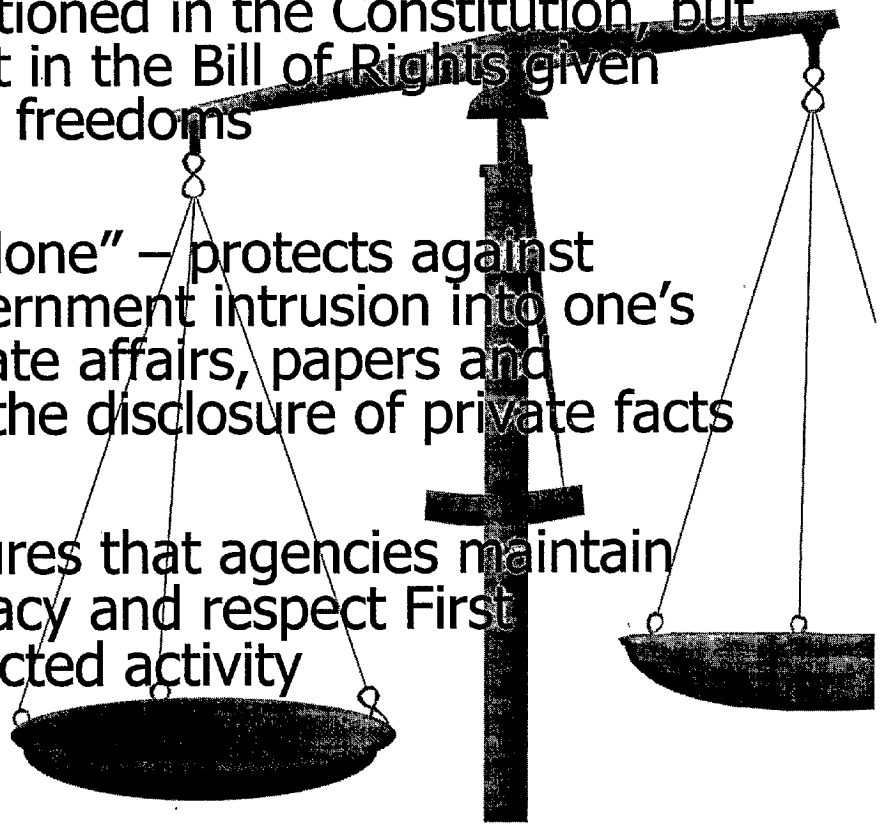
Take Away from Justice Brandeis

"If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, *the remedy to be applied is more speech, not enforced silence.*"



Defining the Right to Privacy

- Not explicitly mentioned in the Constitution, but considered implicit in the Bill of Rights given other enumerated freedoms
- “Right to be left alone” – protects against unauthorized government intrusion into one’s personal and private affairs, papers and possessions, and the disclosure of private facts
- Privacy Act – ensures that agencies maintain informational privacy and respect First Amendment protected activity

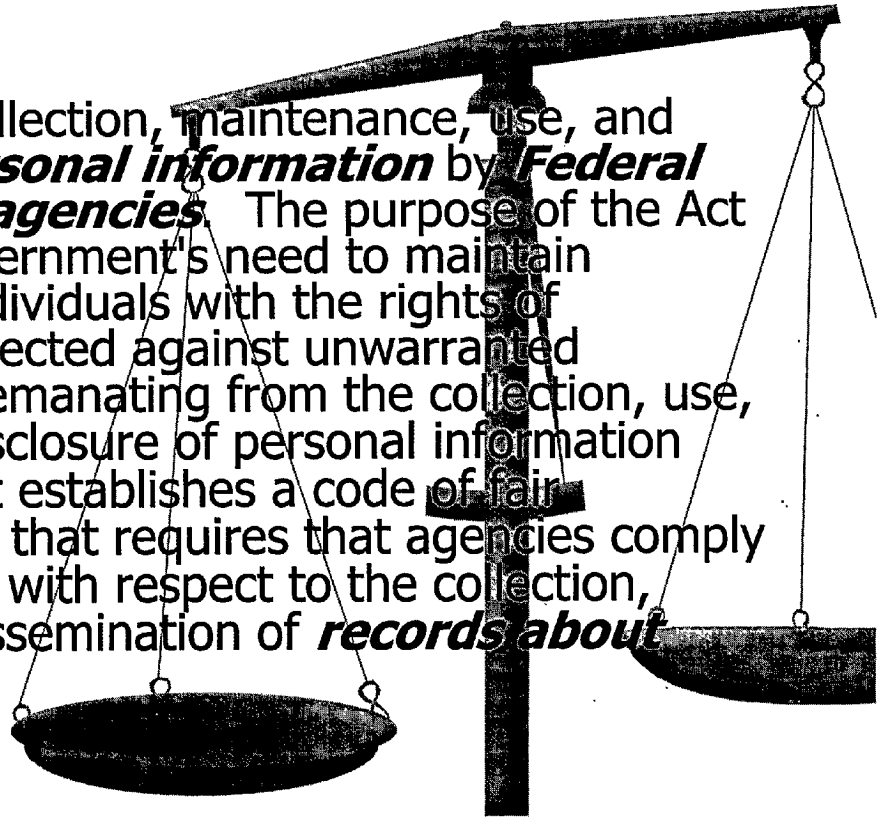


The Privacy Act of 1974

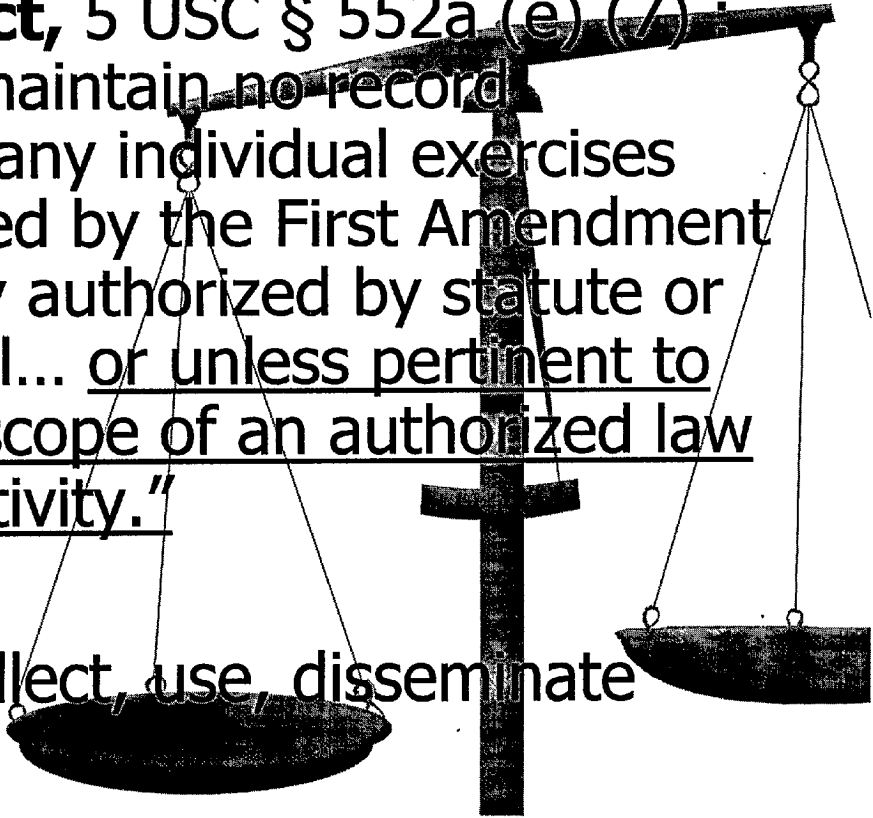
5 U.S.C. § 552a

The Act:

Regulates the collection, maintenance, use, and dissemination of ***personal information*** by ***Federal Executive Branch agencies***. The purpose of the Act is to balance the government's need to maintain information about individuals with the rights of individuals to be protected against unwarranted invasions of privacy emanating from the collection, use, maintenance, and disclosure of personal information about them. The Act establishes a code of fair information practices that requires that agencies comply with statutory norms with respect to the collection, maintenance, and dissemination of ***records about individuals***.

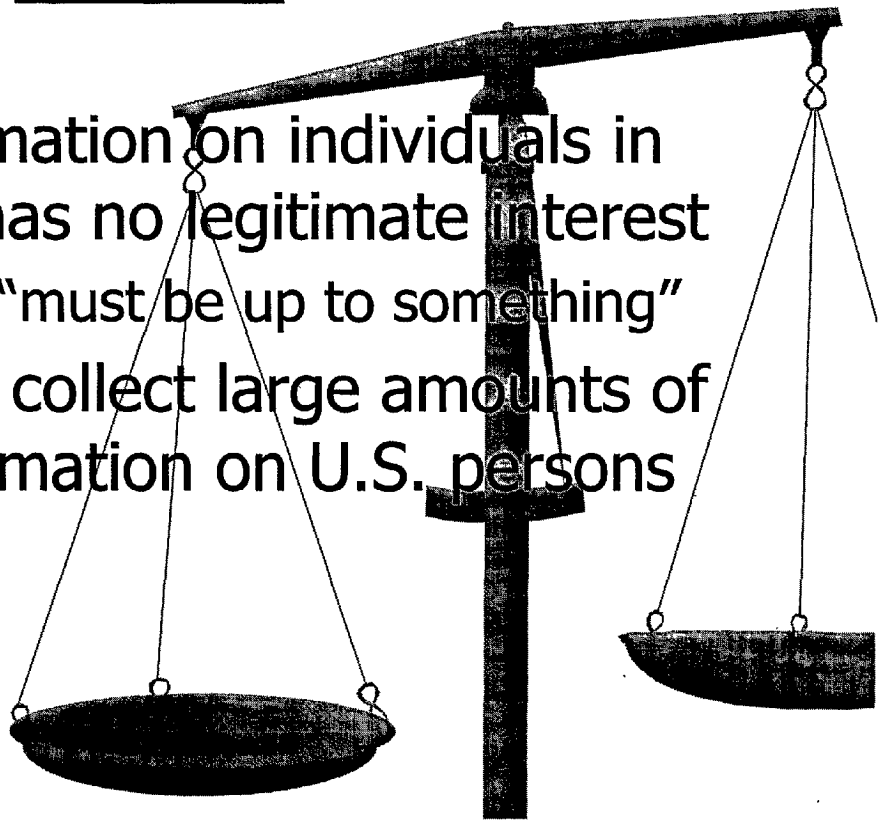


Privacy Act Considerations

- 
- **The Privacy Act, 5 USC § 552a (e) (7) :**
The FBI shall "maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual... or unless pertinent to and within the scope of an authorized law enforcement activity."
 - "maintain" = collect, use, disseminate

When can you have Privacy Act Issues?

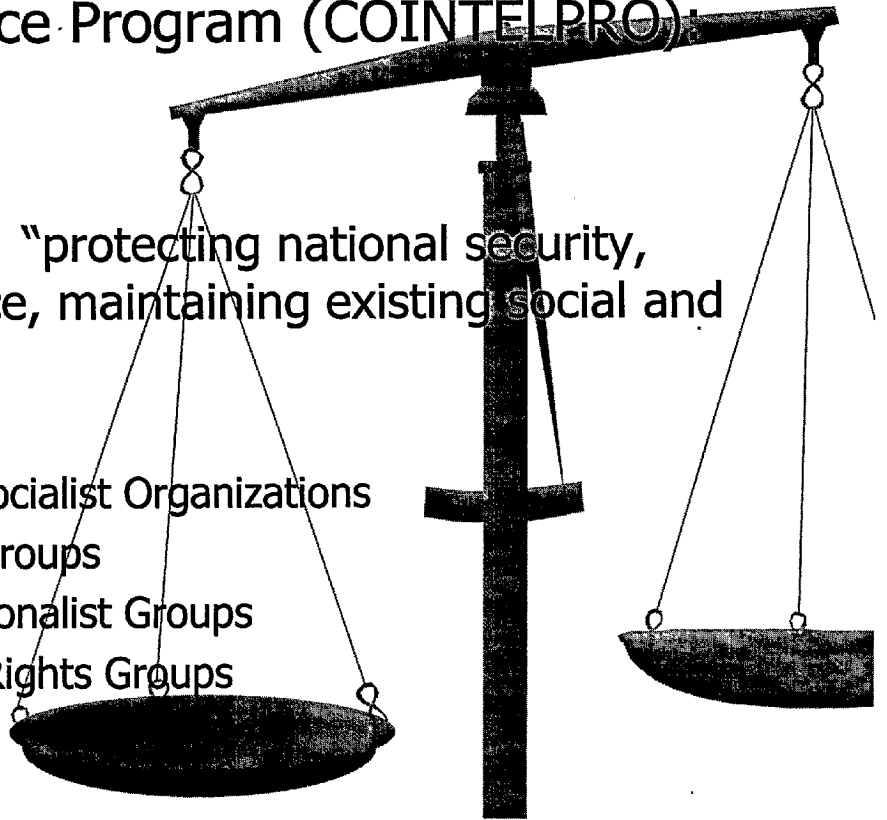
- Collecting information on individuals in whom the FBI has no legitimate interest
 - Individual who "must be up to something"
- Operations that collect large amounts of identifying information on U.S. persons
 - Surveillance



First Amendment and the Bureau

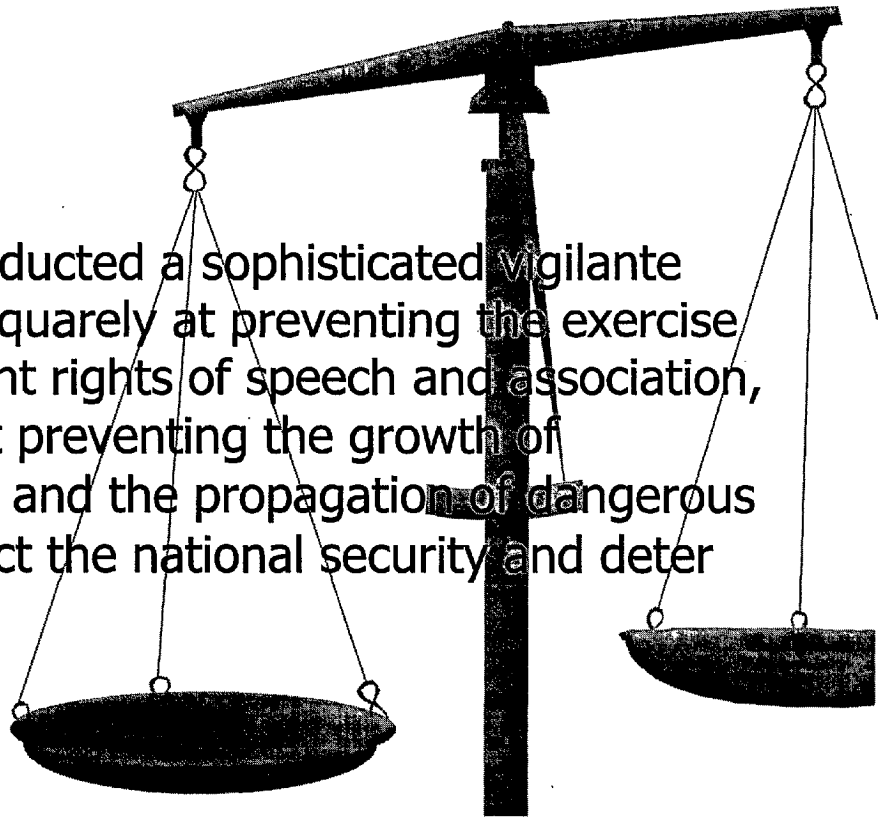
■ Counter Intelligence Program (COINTELPRO):

- 1956 to 1971
- Our stated goal -- "protecting national security, preventing violence, maintaining existing social and political order."
- Our targets:
 - Communist and Socialist Organizations
 - Women's Rights Groups
 - Militant Black Nationalist Groups
 - Non-Violent Civil Rights Groups



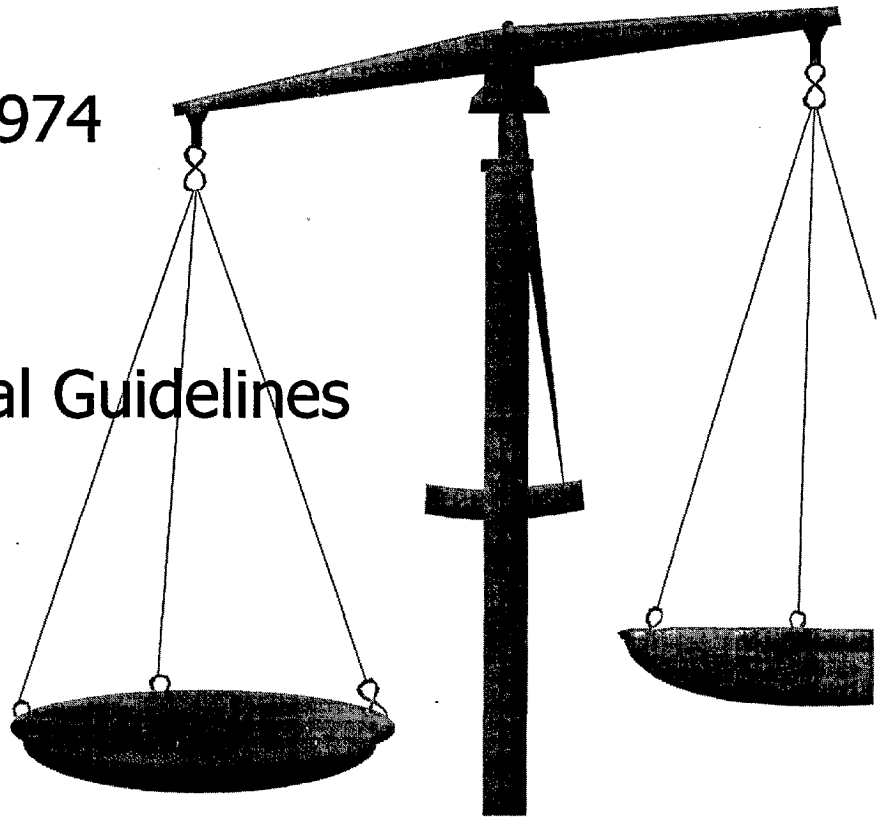
The Church Committee Investigates

- Final Report
- "...the Bureau conducted a sophisticated vigilante operation aimed squarely at preventing the exercise of First Amendment rights of speech and association, on the theory that preventing the growth of dangerous groups and the propagation of dangerous ideas would protect the national security and deter violence."



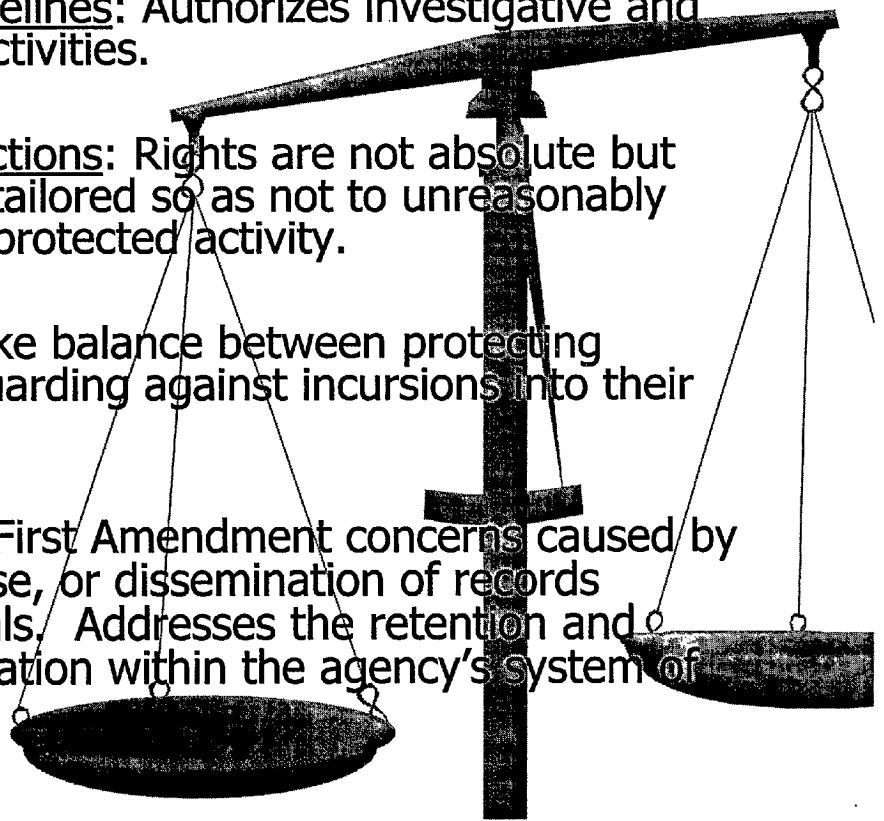
The Fallout

- Privacy Act of 1974
- Title III
- FISA
- Attorney General Guidelines
 - MIOG
 - DIOG

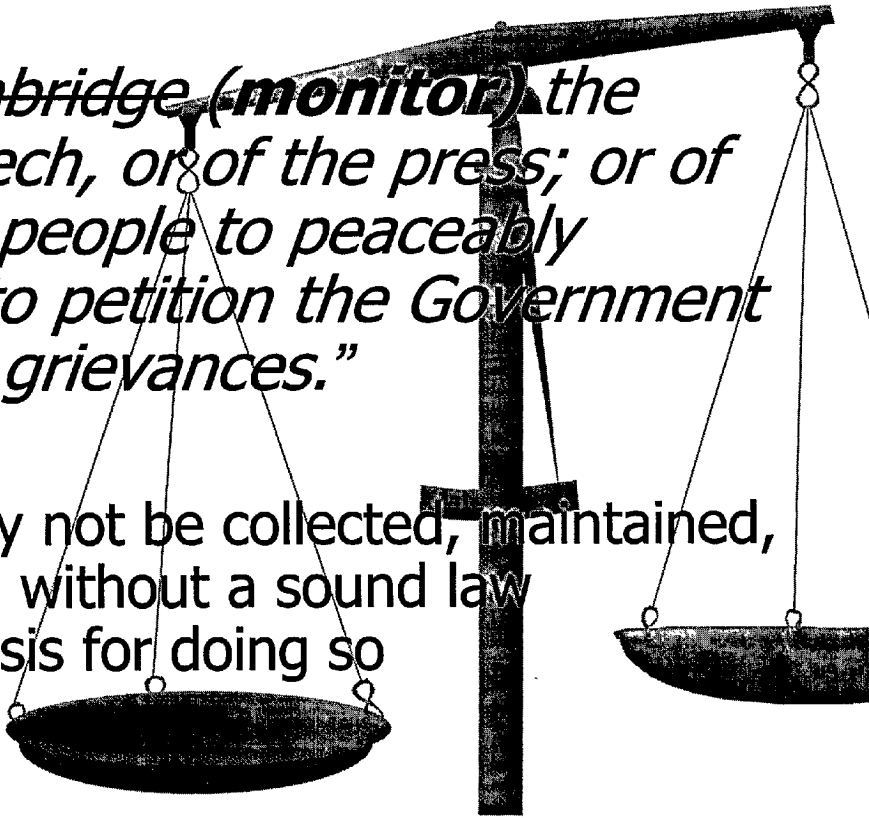


Constitution/Statutes/Guidelines In Concert

- Attorney General's Guidelines: Authorizes investigative and intelligence collection activities.
- First Amendment Protections: Rights are not absolute but investigations must be tailored so as not to unreasonably interfere with or "chill" protected activity.
- DIOG: Attempts to strike balance between protecting American public with guarding against incursions into their constitutional rights.
- Privacy Act: Addresses First Amendment concerns caused by unjustified collection, use, or dissemination of records maintained on individuals. Addresses the retention and dissemination of information within the agency's system of records.

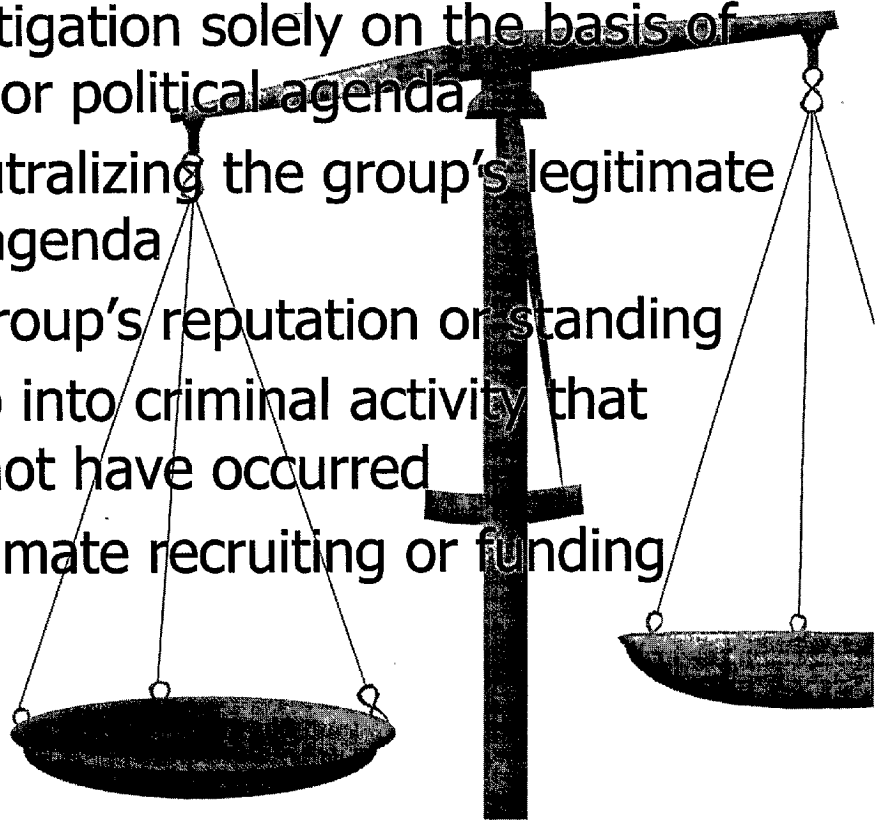


FBI has rewritten the Constitution

- 
- *FBI shall not...abridge (~~monitor~~) the freedom of speech, or of the press; or of the right of the people to peaceably assemble, and to petition the Government for a redress of grievances."*
 - Information may not be collected, maintained, or disseminated without a sound law enforcement basis for doing so

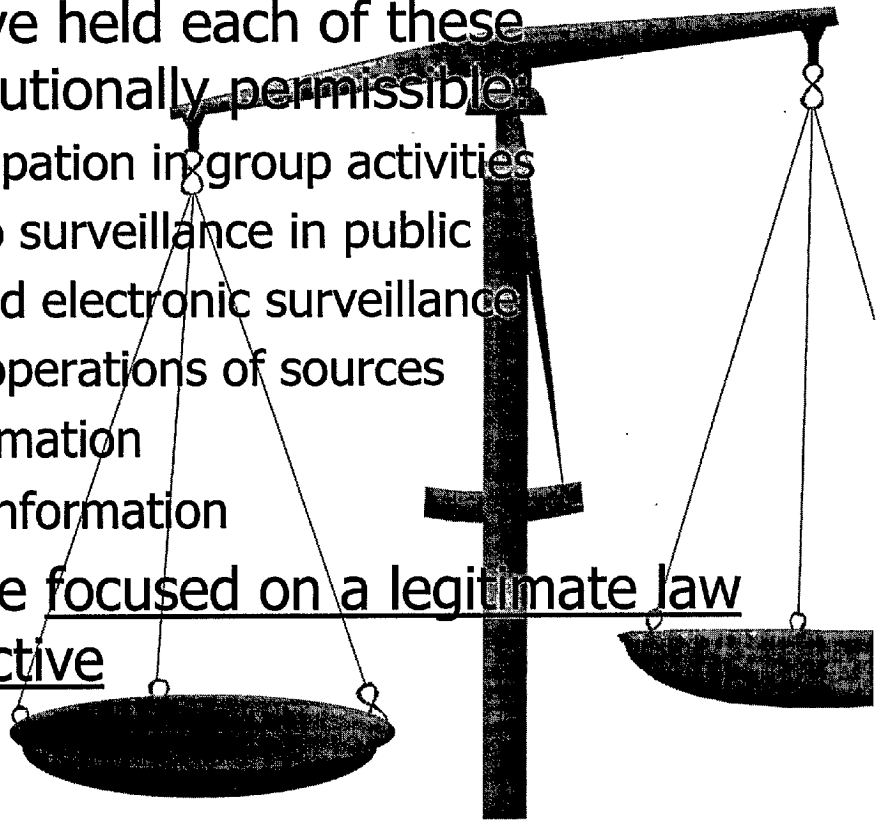
Legally Objectionable Investigative Activities

- Initiating an investigation solely on the basis of the group's social or political agenda
- Sabotaging or neutralizing the group's legitimate social or political agenda
- Disparaging the group's reputation or standing
- Leading the group into criminal activity that otherwise would not have occurred
- Undermining legitimate recruiting or funding efforts



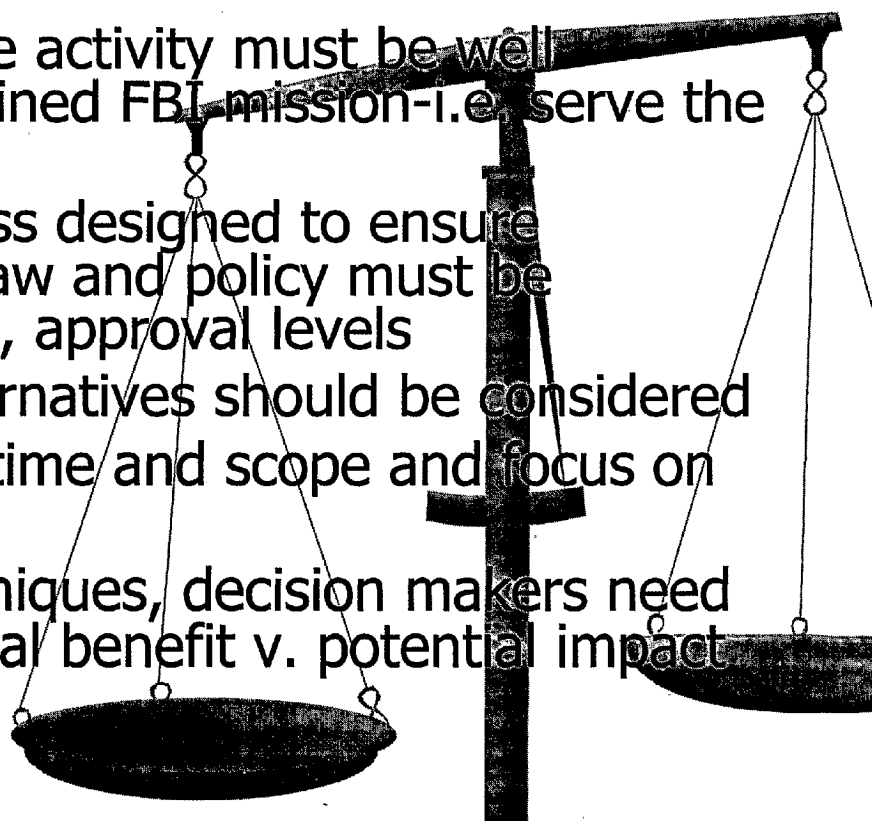
Legally Permissible Investigative Activities

- Federal courts have held each of these techniques constitutionally permissible:
 - Undercover participation in group activities
 - Physical and video surveillance in public
 - Properly authorized electronic surveillance
 - Recruitment and operations of sources
 - Collection of Information
 - Dissemination of information
- As long as they are focused on a legitimate law enforcement objective



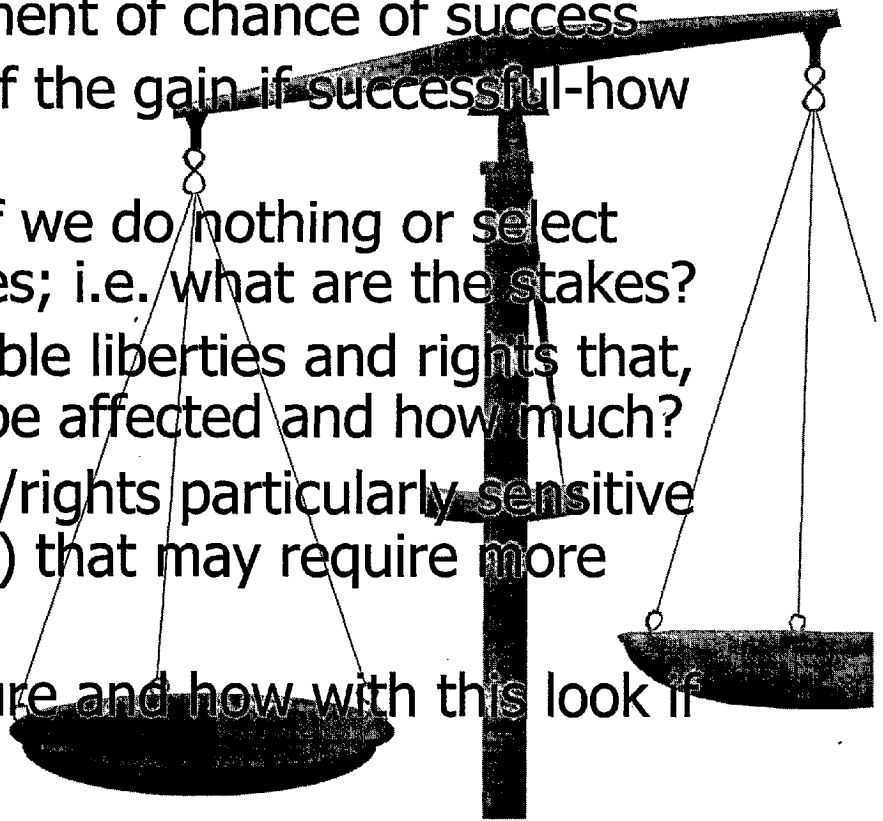
How do we protect Civil Liberties?

- Every investigative activity must be well grounded in a defined FBI mission-i.e. serve the mission objective
- Established process designed to ensure compliance with law and policy must be followed-e.g. SWs, approval levels
- Less intrusive alternatives should be considered
- Tactics limited in time and scope and focus on the objective
- For intrusive techniques, decision makers need to balance potential benefit v. potential impact



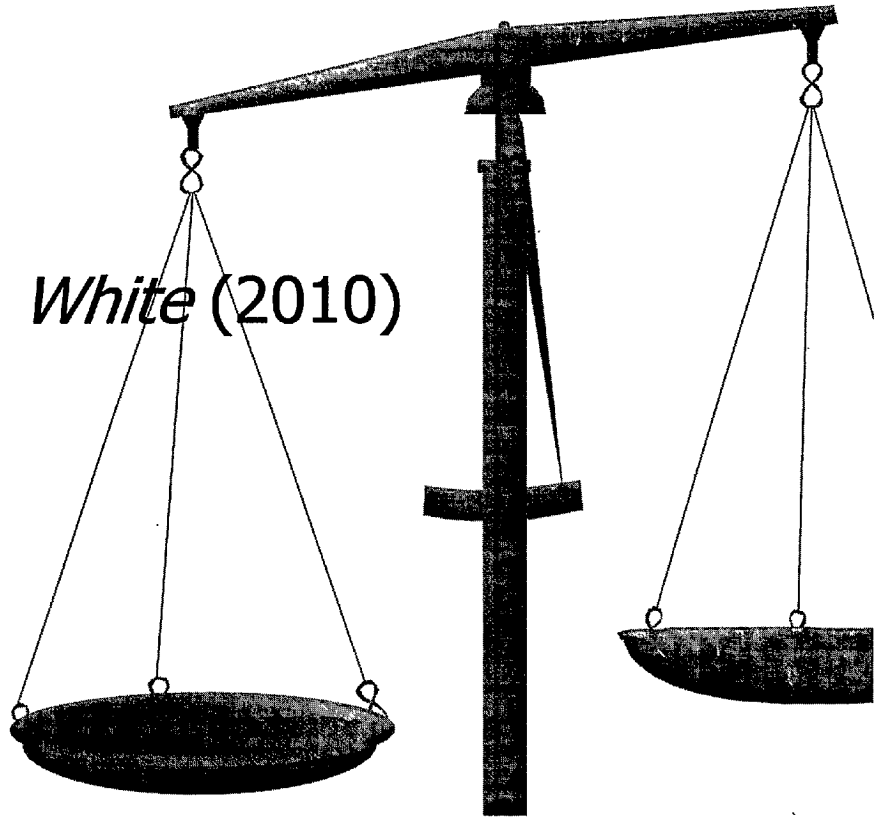
Risk Analysis: A Balancing Act

- A realistic assessment of chance of success
- The significance of the gain if successful-how mission critical?
- What do we risk if we do nothing or select weaker alternatives; i.e. what are the stakes?
- Are there identifiable liberties and rights that, realistically, may be affected and how much?
- Are these liberties/rights particularly sensitive (First Amendment) that may require more caution?
- The risk of exposure and how with this look if exposed?



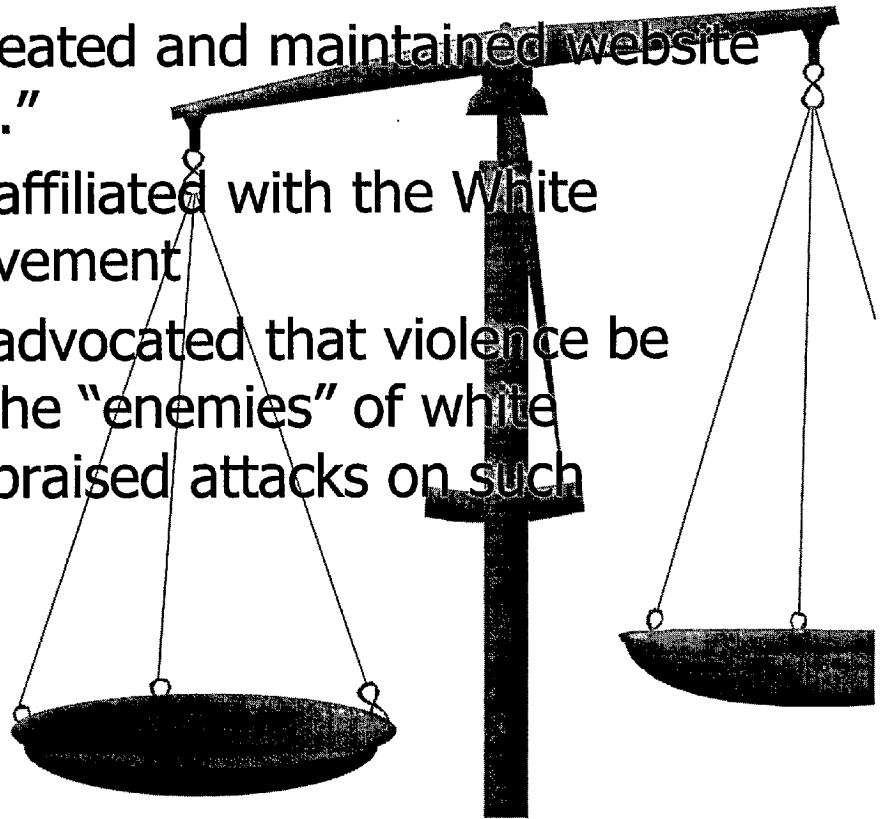
Case Study

- *United States v. White* (2010)



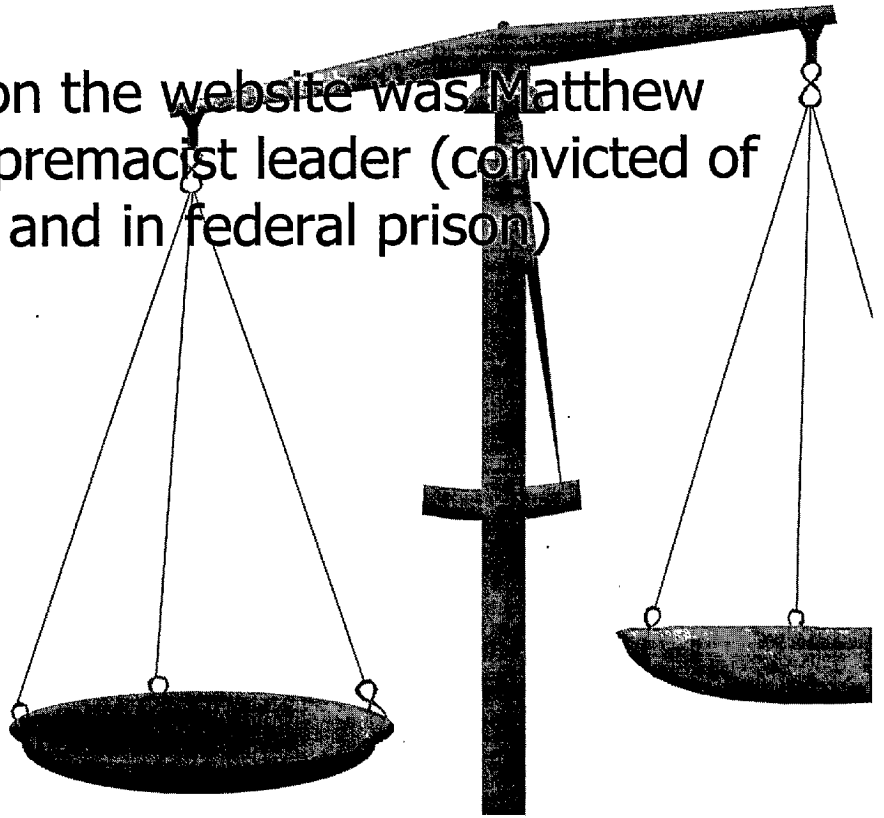
Facts of the Case

- William White created and maintained website "Overthrow.com."
- Overthrow.com affiliated with the White Supremacist movement
- White routinely advocated that violence be perpetrated on the "enemies" of white supremacy and praised attacks on such enemies



Facts of the Case

- Repeated topic on the website was Matthew Hale, a white supremacist leader (convicted of several offenses and in federal prison)
- First posting
- Second posting



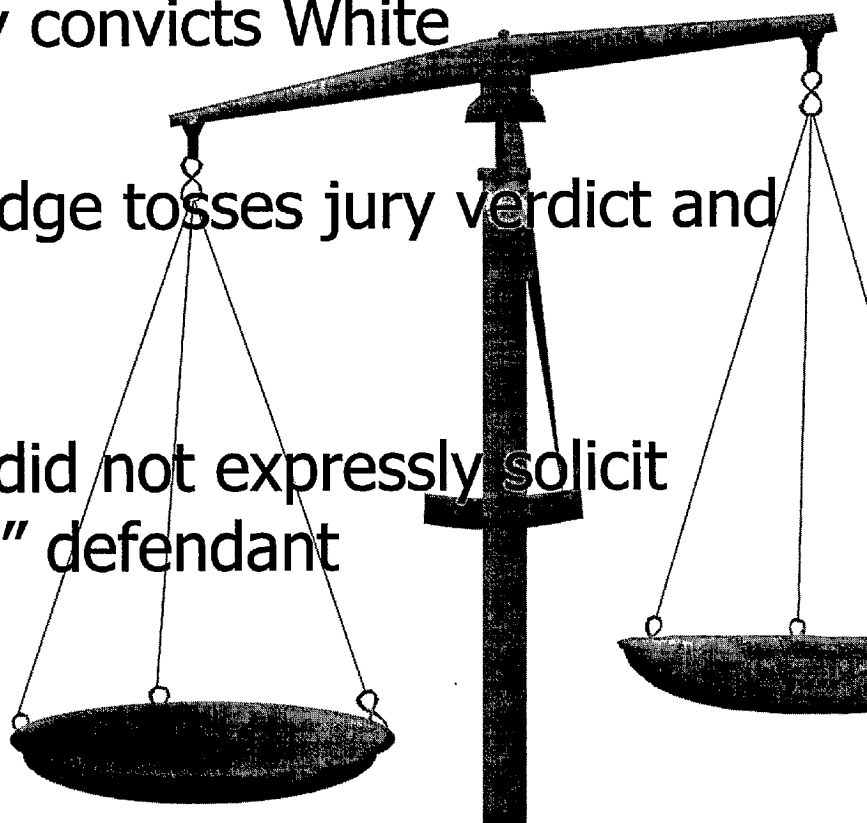
Court's Decision

- District court found that White's internet posting was protected by the First Amendment
- Seventh Circuit disagreed: court looked at White's intent on posting the information
- Case sent back to the district court for a factual determination



Court's Decision

- Anonymous jury convicts White
- District Court judge tosses jury verdict and grants acquittal
- White's words "did not expressly solicit anyone to harm" defendant



Federal Law

Domestic Terrorism



18 U.S.C. § 2331(5)

Definition of Domestic Terrorism

Activities that:

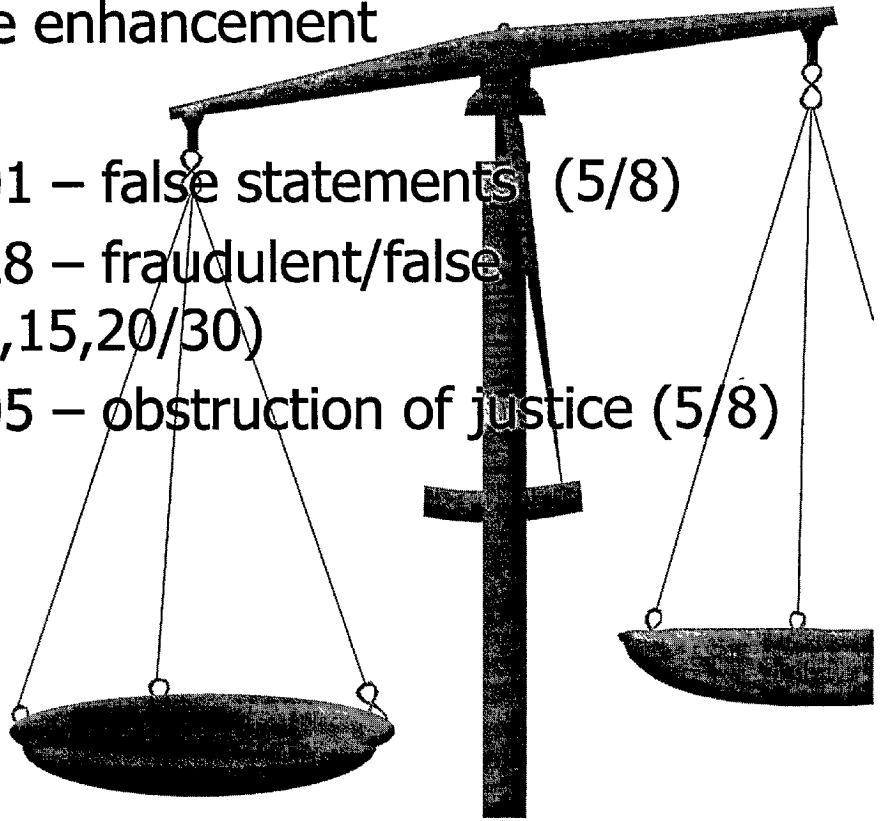
- Involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;
- Appear to be intended to
 - intimidate or coerce a civilian population;
 - influence the policy of a government by intimidation or coercion; or
 - affect the conduct of a government by mass destruction, assassination, or kidnapping; and
- Occur primarily within the territorial jurisdiction of the United States.

Violent Criminal Act + Special Intent

Use of § 2331(5)

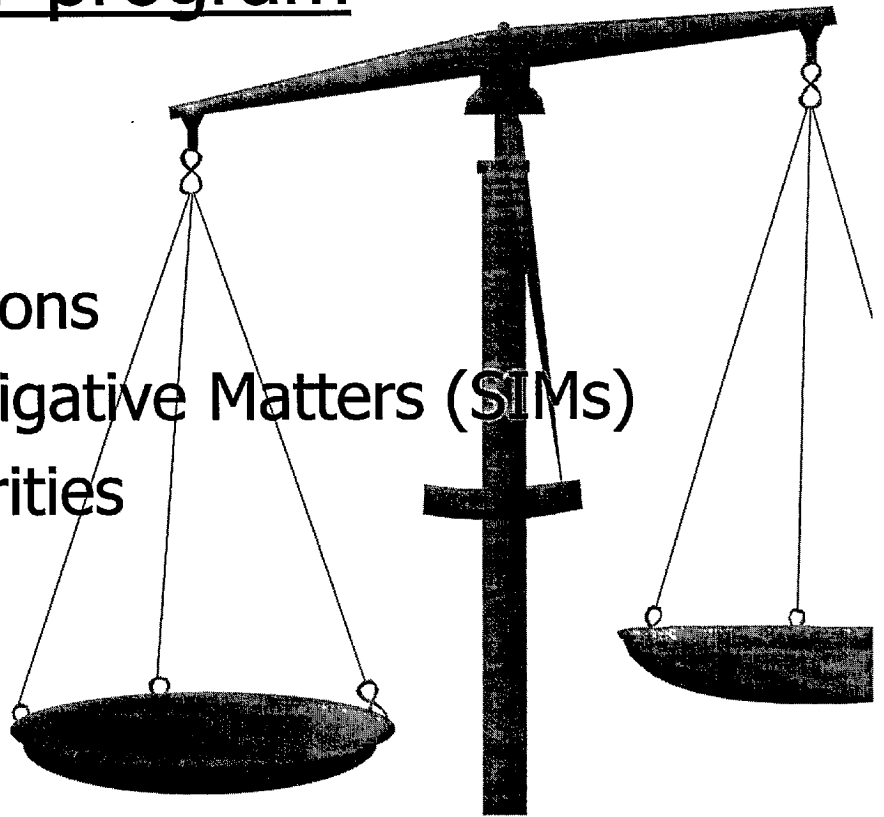
■ Statutory sentence enhancement

- 18 U.S.C. § 1001 – false statements (5/8)
- 18 U.S.C. § 1028 – fraudulent/false identification (5,15,20/30)
- 18 U.S.C. § 1505 – obstruction of justice (5/8)



The AGG-DOM, the DIOG and the DT program

- The Guidelines
- Case Classifications
- Sensitive Investigative Matters (SIMs)
- Approval Authorities



THREE PRONGS OF AN FBI DT CASE

- Advancement of political and/or social goals;
- Wholly or in part through activities that involve the use of force or violence;
- In Violation of Federal Law.

Violent Federal Criminal Act + Special Intent

Attorney General Guidelines (Terrorism) Enterprise Investigation

Group or Organization engaged in an enterprise for the purpose of:

- furthering political or social goals wholly or in part through activities that involve force or violence and a violation of federal criminal law,
- An offense described as **Domestic Terrorism - 18 U.S.C. 2331(5)** involving a violation of federal criminal law, or
- Committing any offense listed under **Federal Crime of Terrorism - 18 U.S.C. 2332b(g)(5)(B)** or 18 U.S.C. 43 (Force, Violence or Threats involving animal enterprise).

Violent Federal Criminal Act + Special Intent

Predication Requirements



Case Classification and Purpose

■ **100s** – Enterprise Investigations

■ [REDACTED]

[REDACTED]

■ **266s** – Individual / Incident Investigations

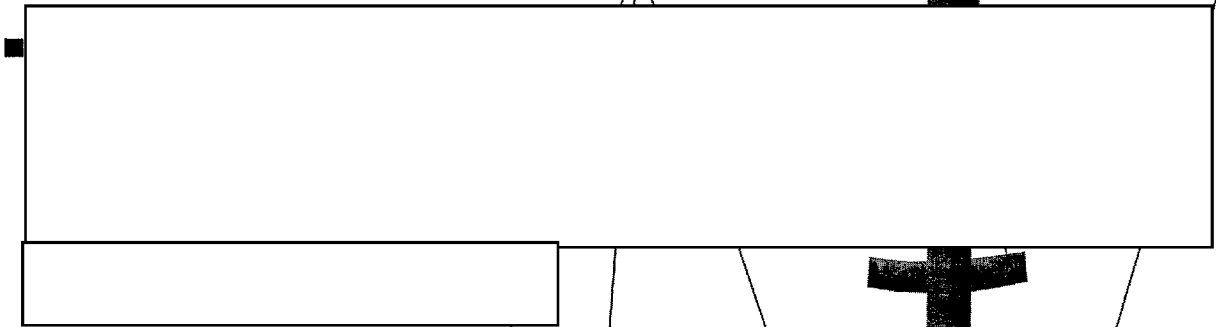
■ [REDACTED]
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Enterprise Investigation Classification (100)

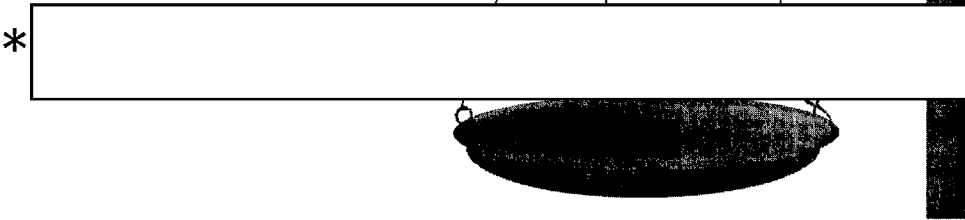
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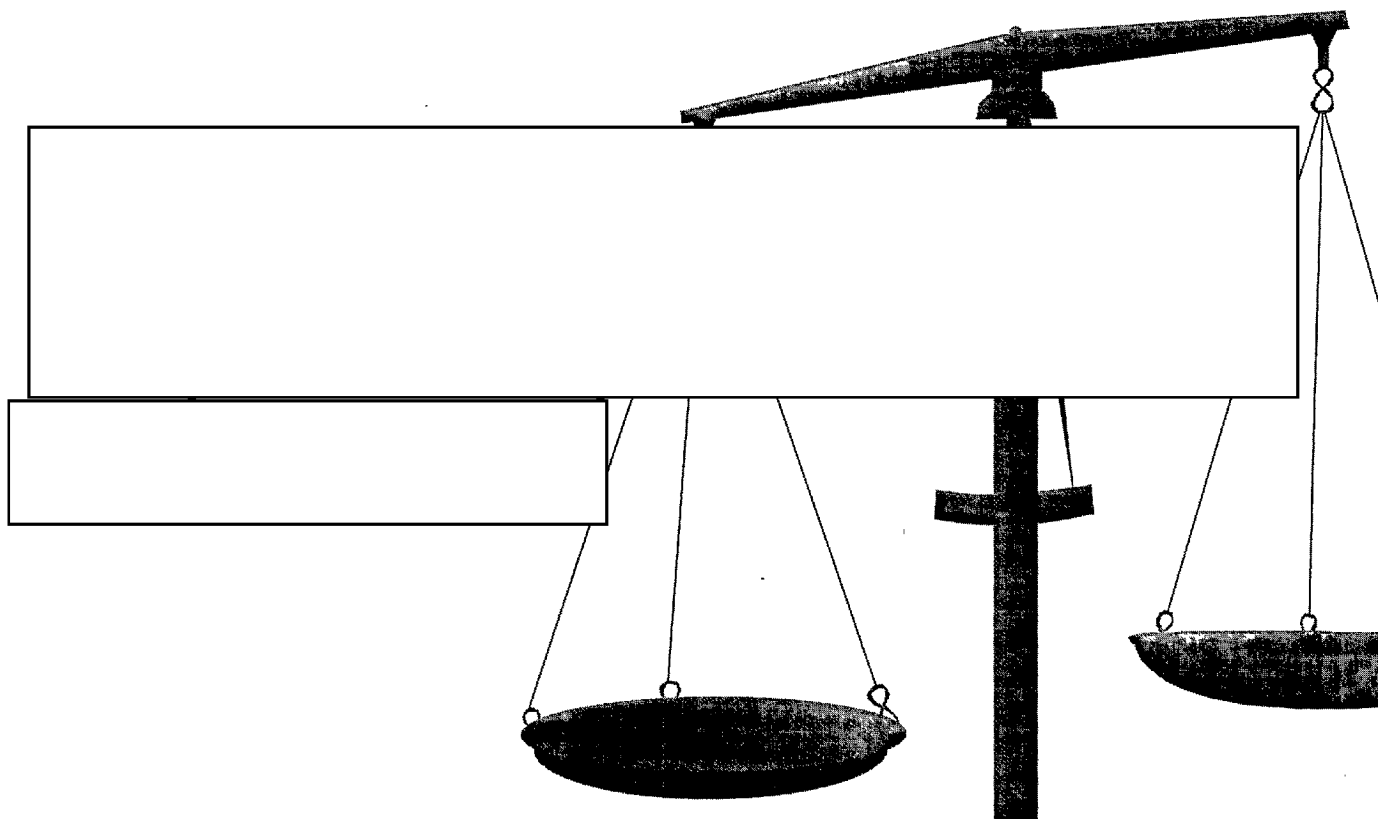


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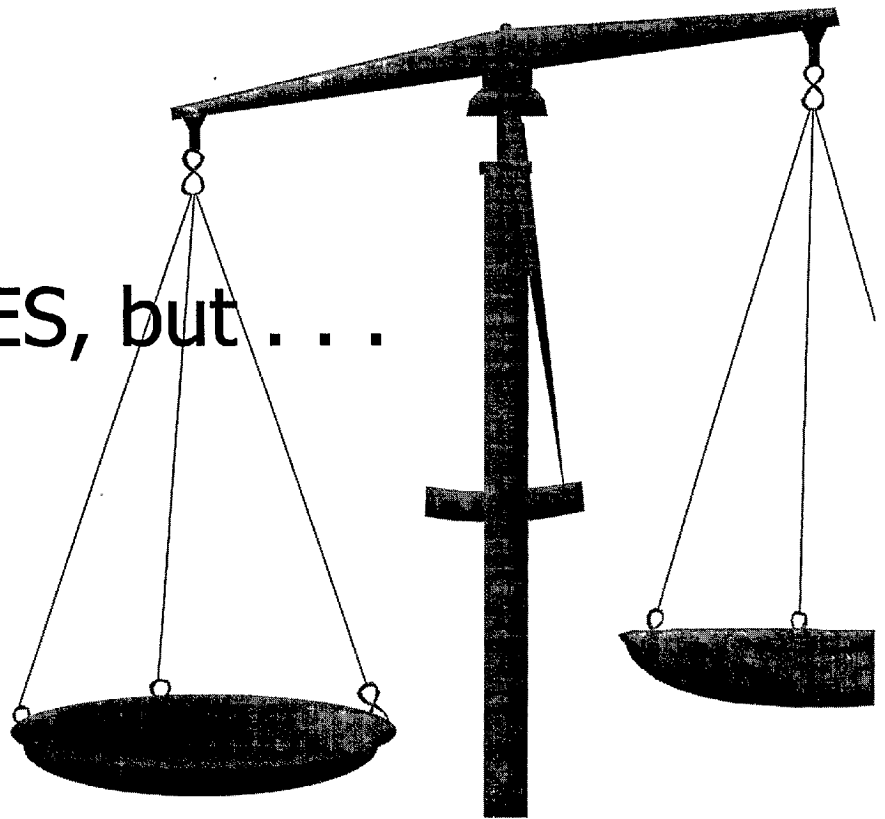
Enterprise Investigation Classification (100)

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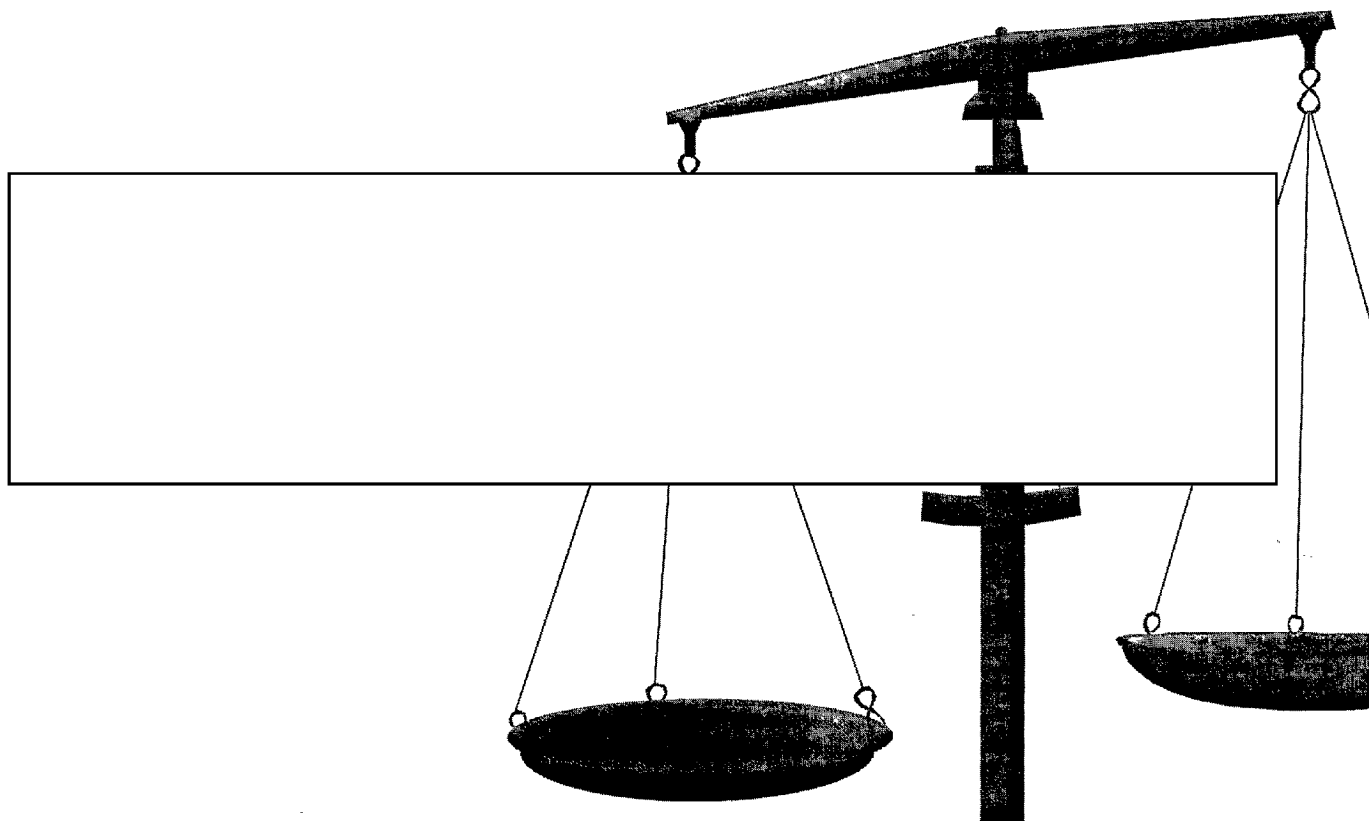


Enterprise Investigation Classification (100)

YES, but . . .

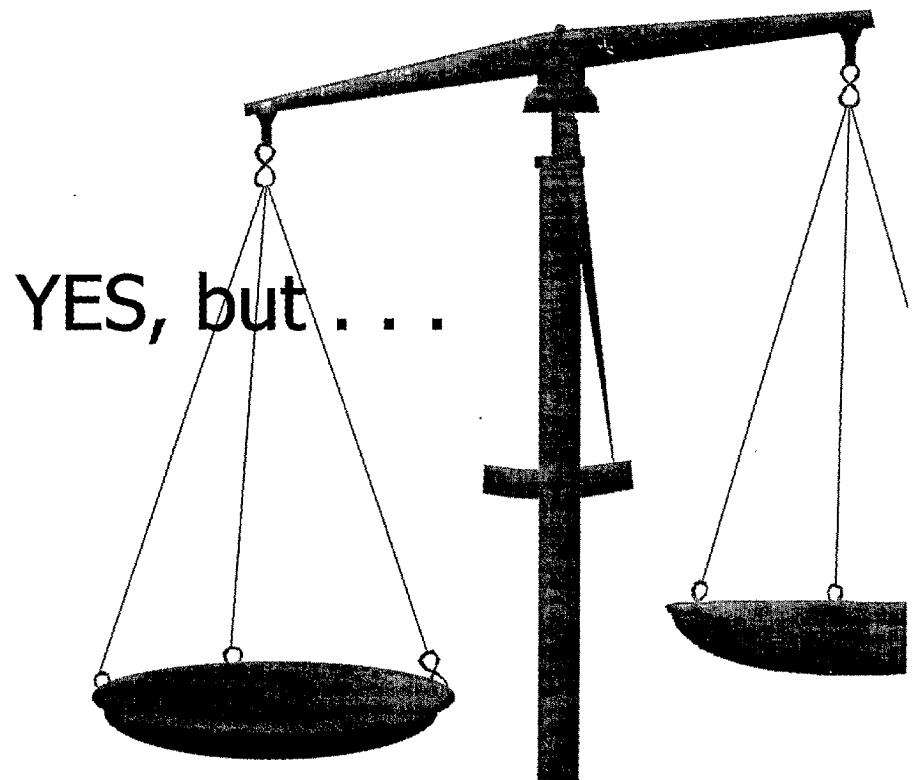


Enterprise Investigation Classification (100)



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Enterprise Investigation Classification (100)



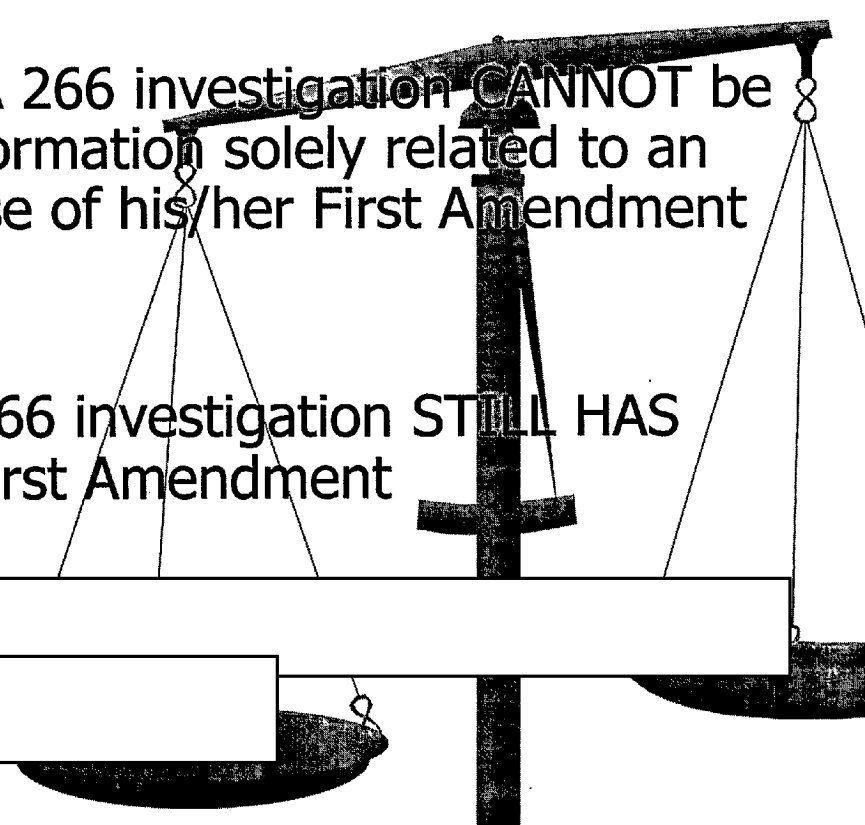
266 AOT-DT Classification

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266 AOT-DT Classification

- 
- One more time: A 266 investigation **CANNOT** be used to collect information solely related to an individual's exercise of his/her First Amendment rights
 - The subject of a 266 investigation **STILL HAS** rights under the First Amendment

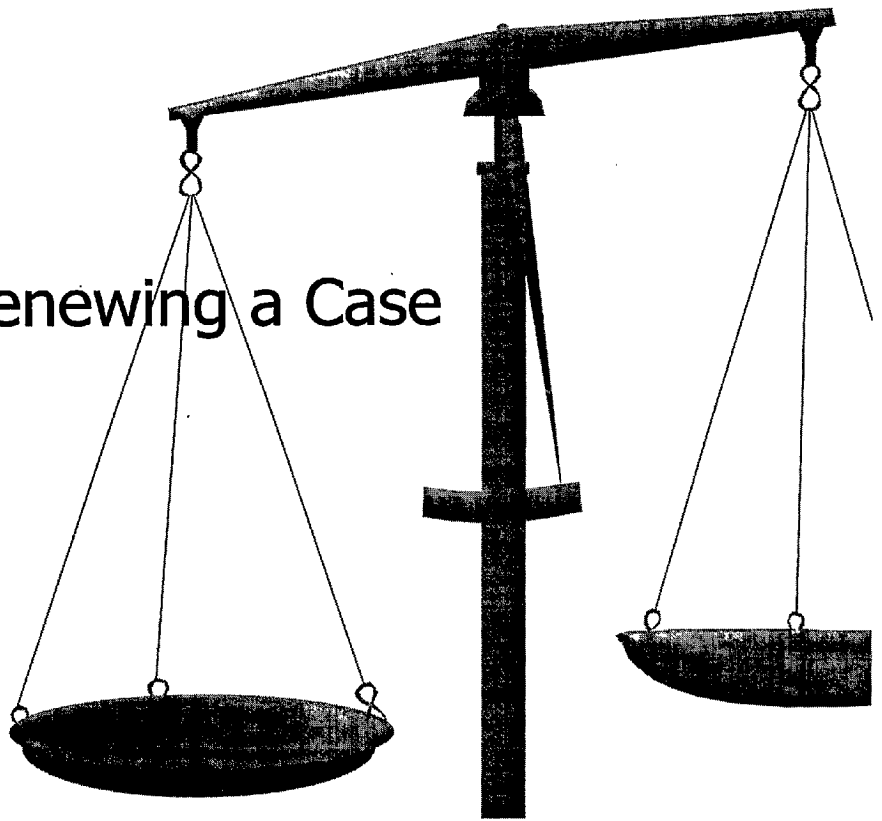
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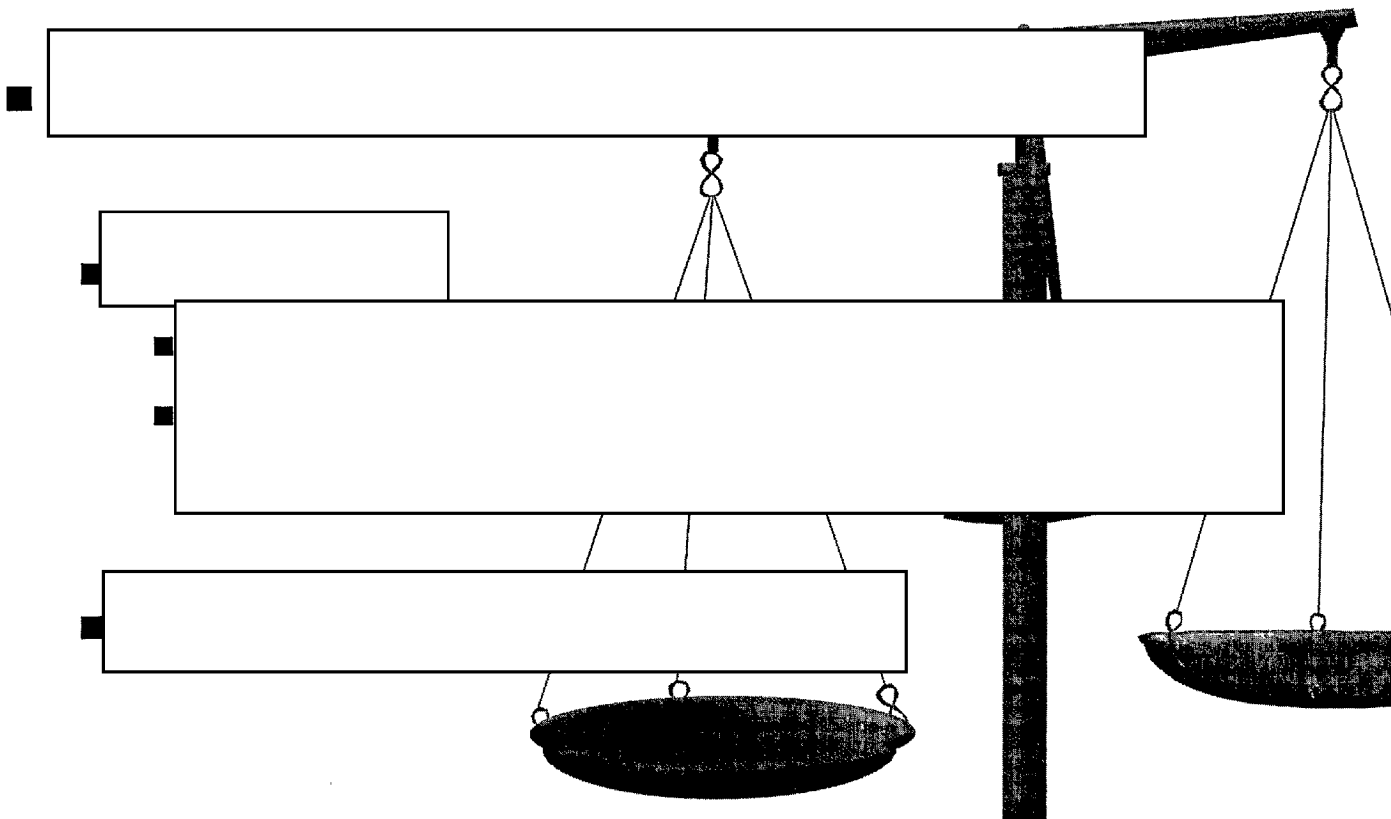
Approval Authorities

- Initiating and Renewing a Case



Initiating or Renewing an Enterprise Case

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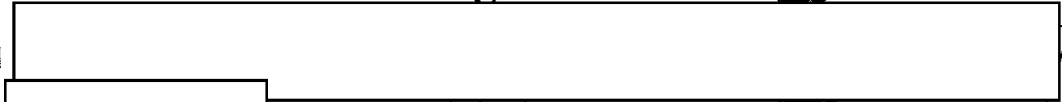
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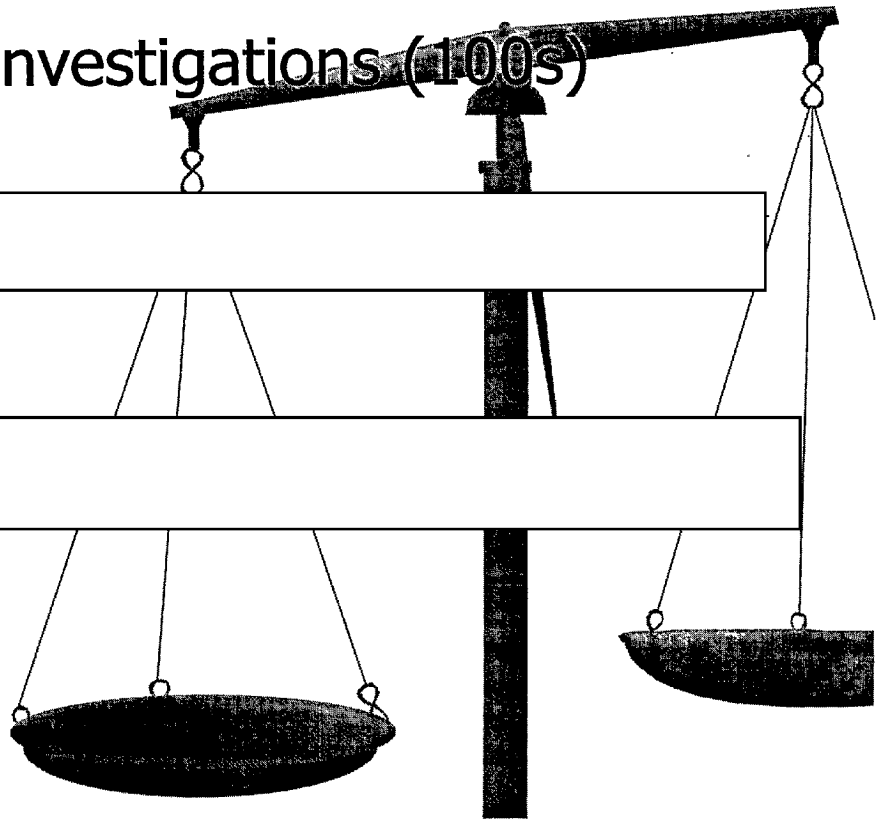
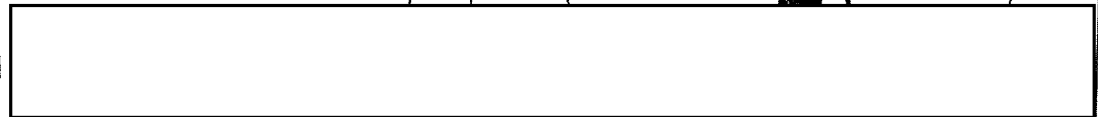
Mandatory Reviews

■ Enterprise Investigations (100s)

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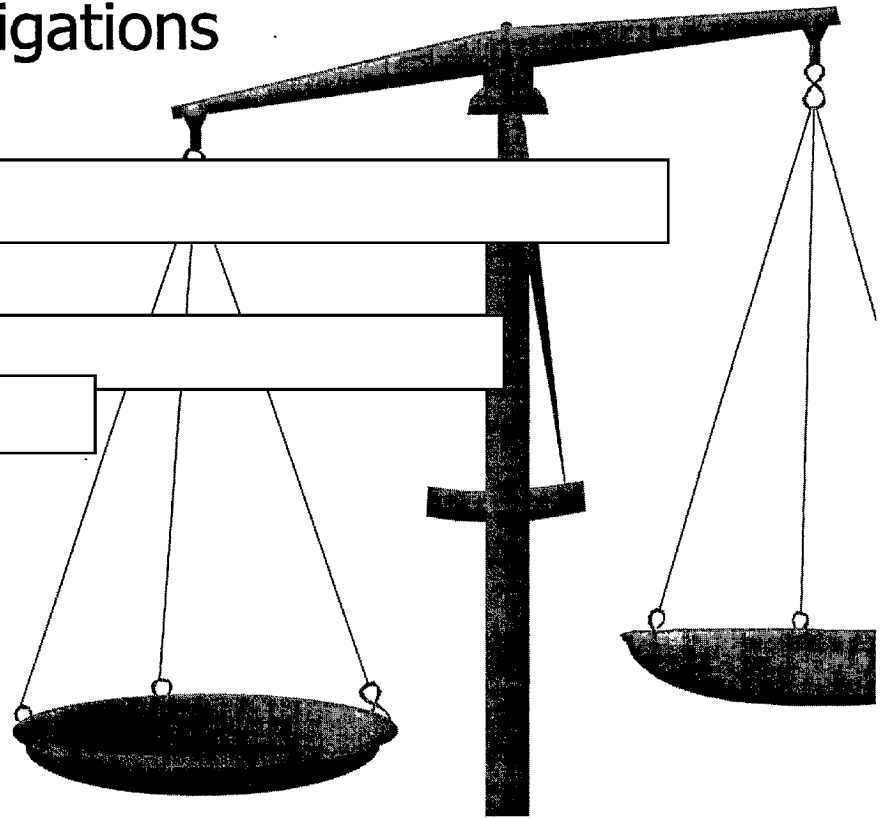


Mandatory Reviews

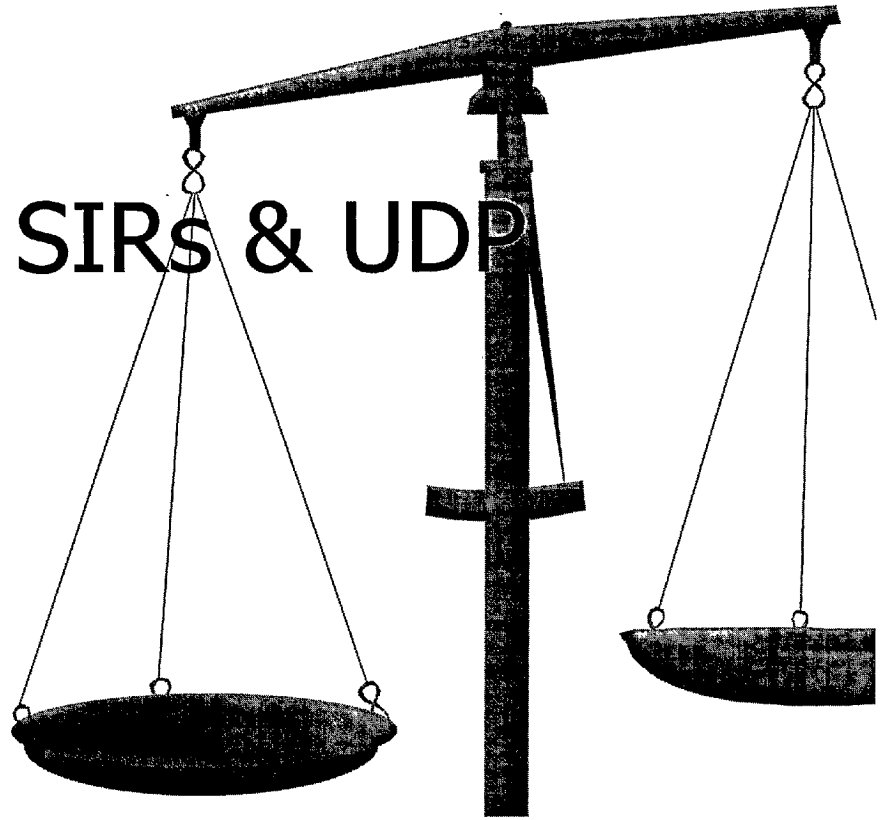
■ 266 AOT Investigations

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IIRs, SIRS & UDP



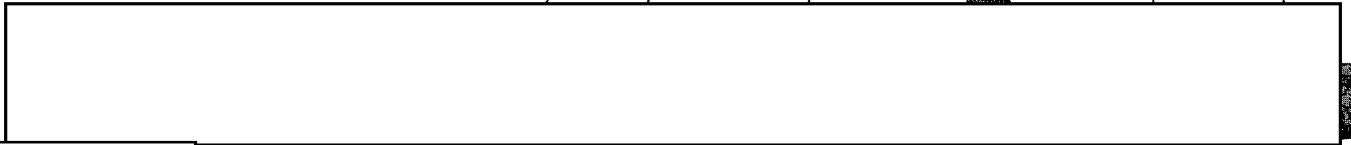
Intelligence Information Reports (IIRs)

■ Criteria for DT IIR Dissemination

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Intelligence Information Reports (IIRs)

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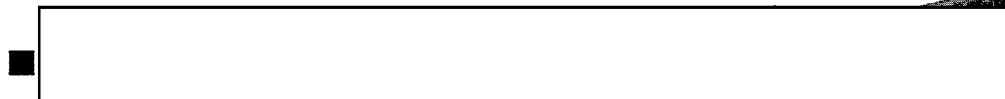
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Situational Information Reports (SIRs)

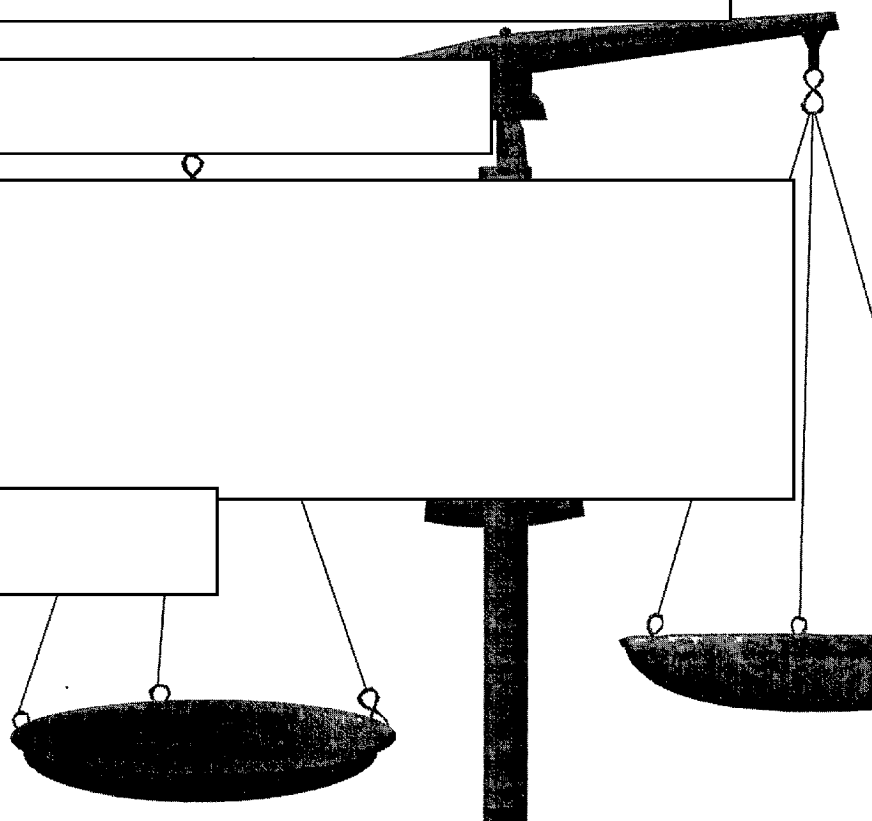
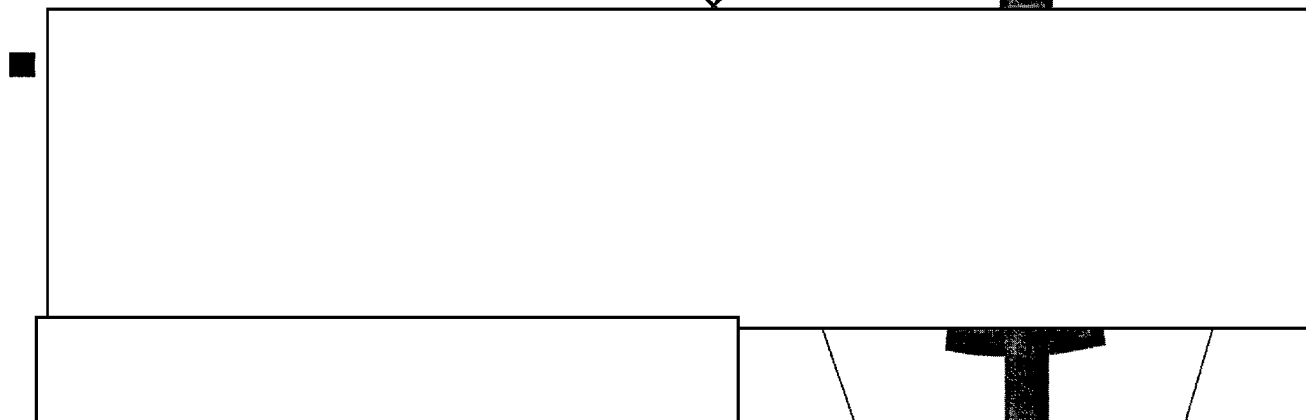
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Undisclosed Participation (UDP)

■ Policy driven by EO 12333

■ [REDACTED]

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■ [REDACTED]

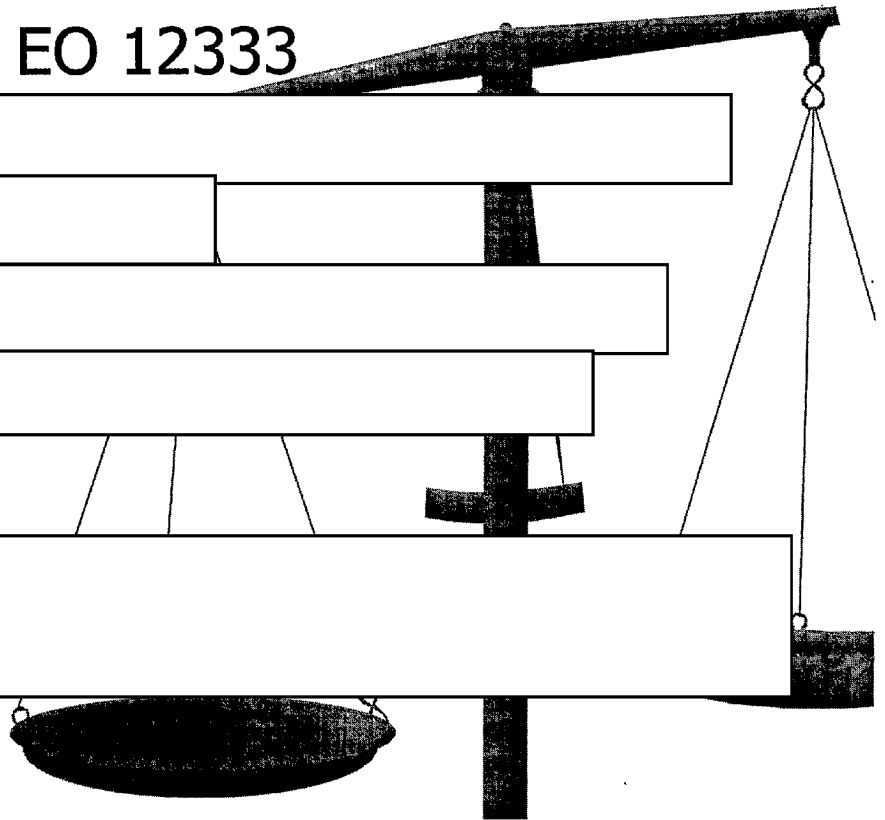
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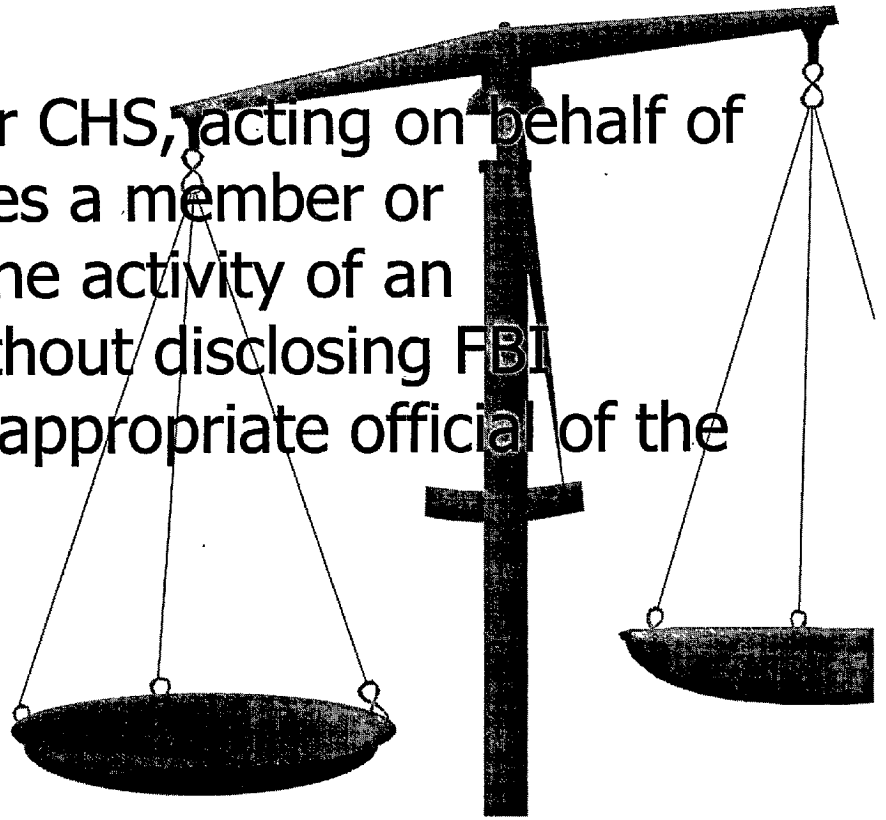
■ [REDACTED]

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What is UDP?

- FBI employee or CHS, acting on behalf of the FBI, becomes a member or participates in the activity of an organization without disclosing FBI affiliation to an appropriate official of the organization



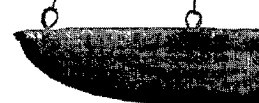
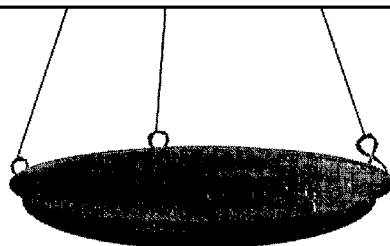
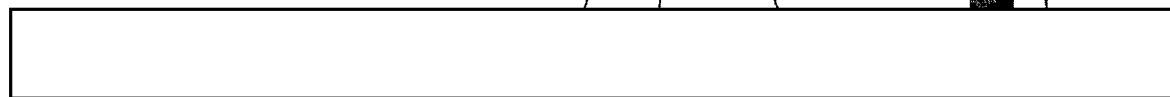
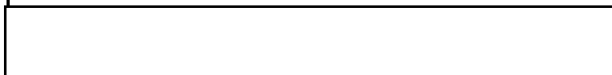
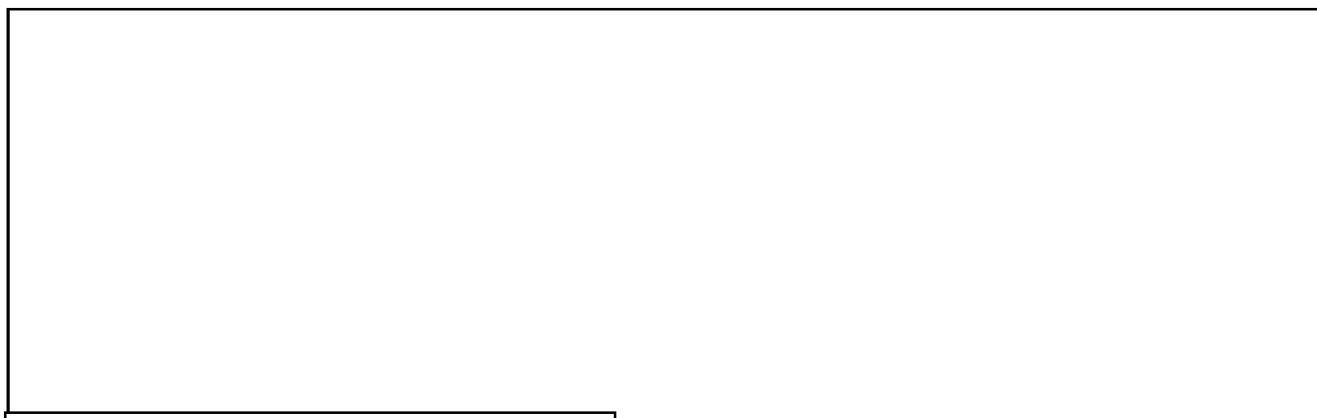
UDP Analysis

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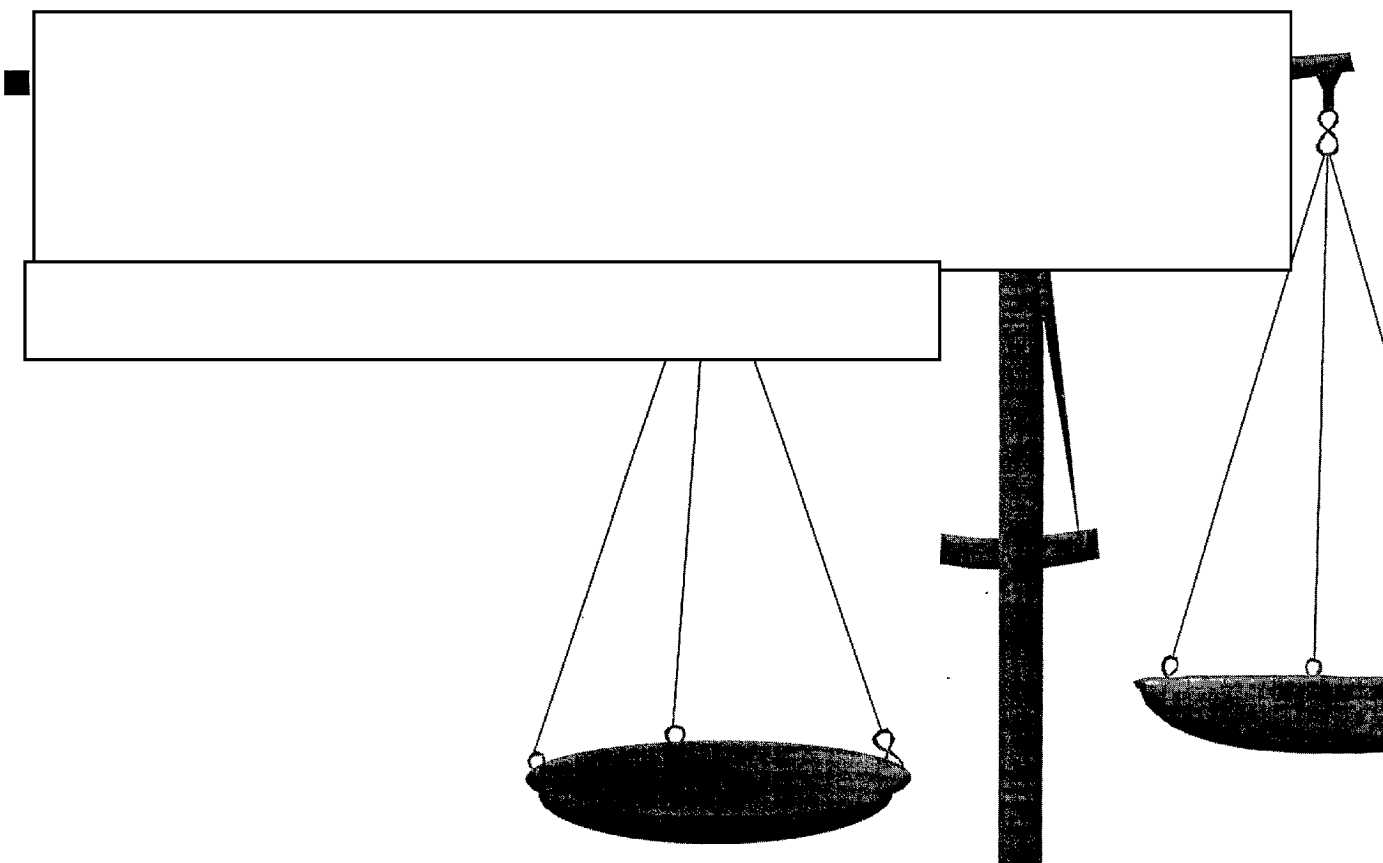
Scenario 1

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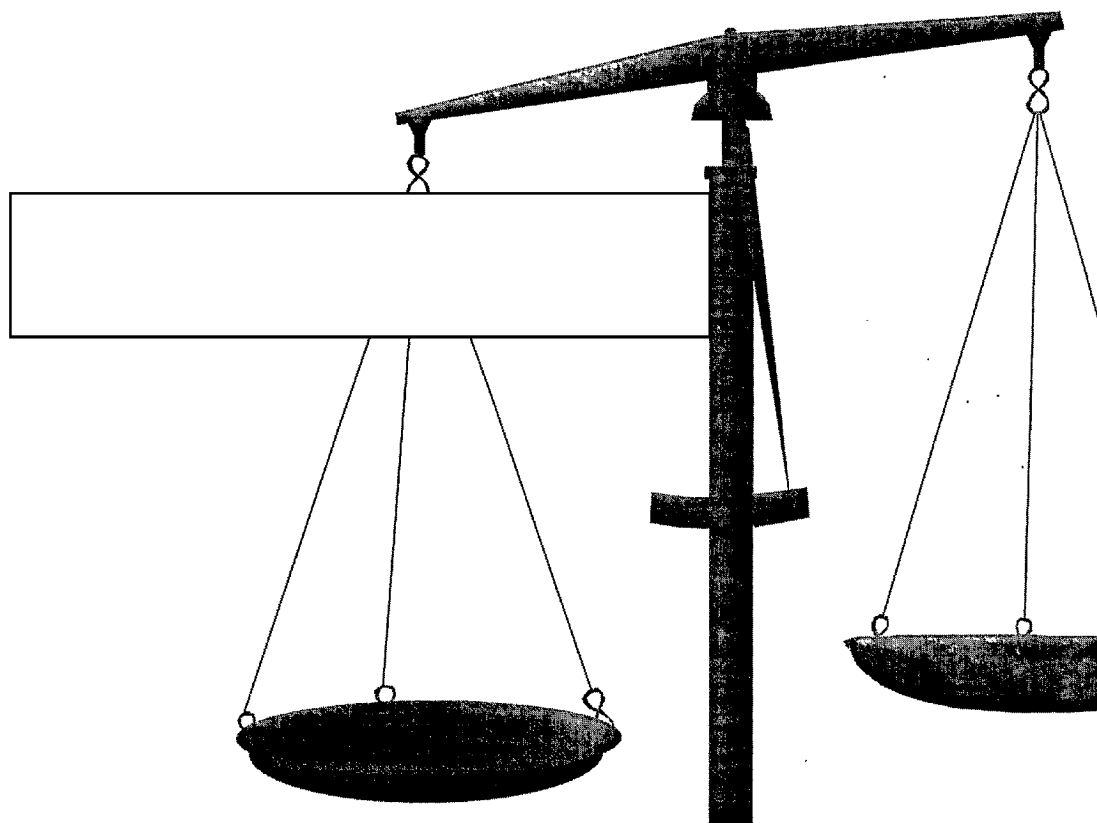
Scenario 1

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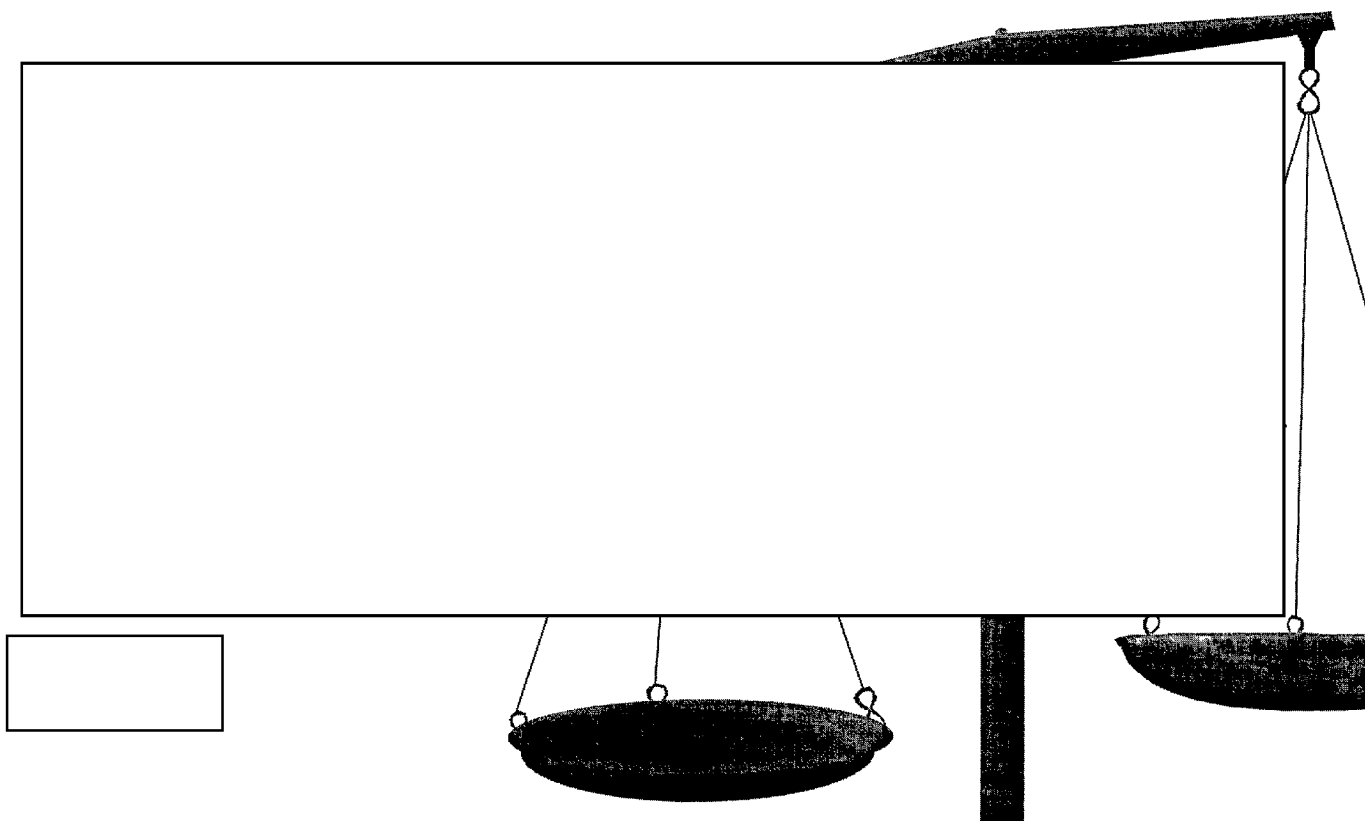
Scenario 2

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b7E



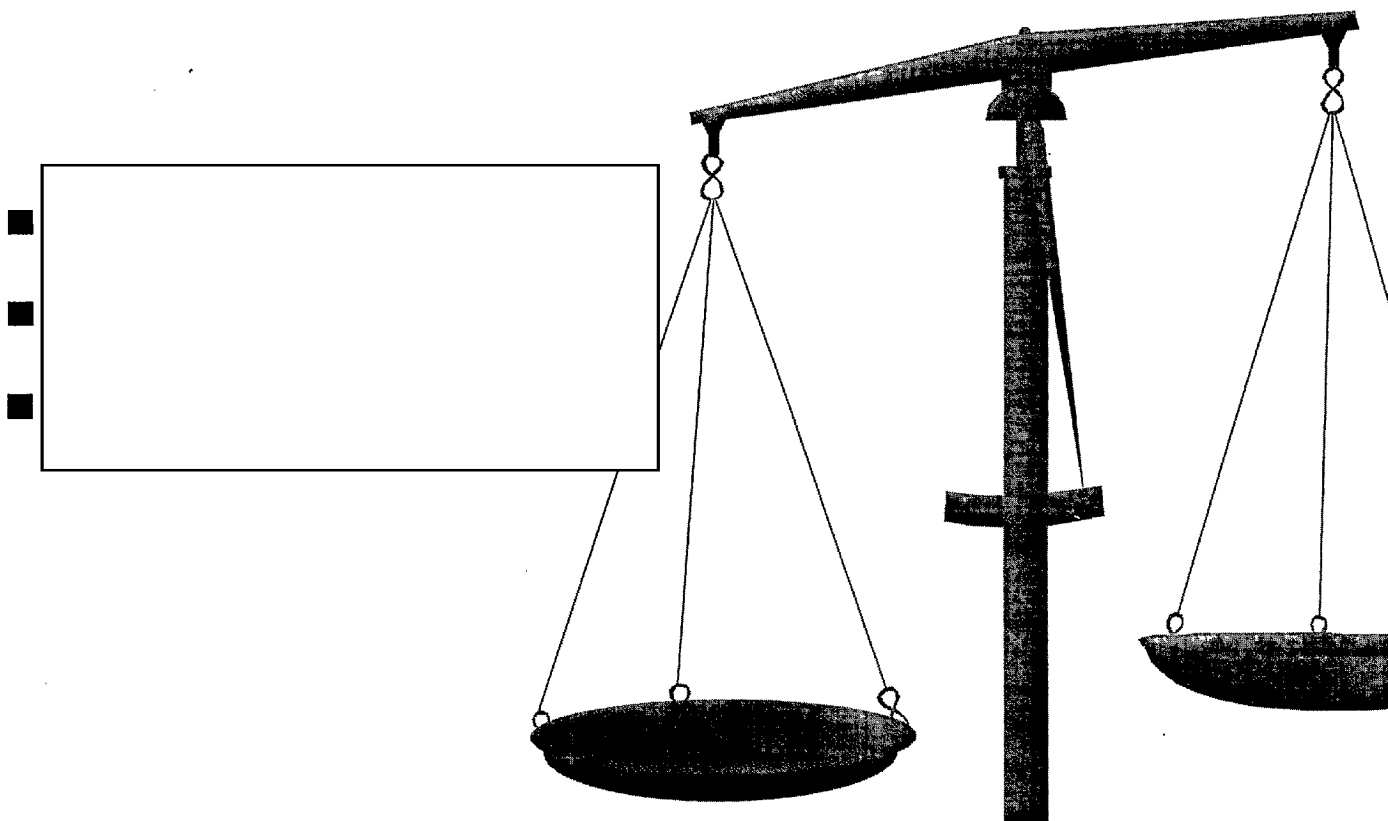
Scenario 3

b6
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b7E



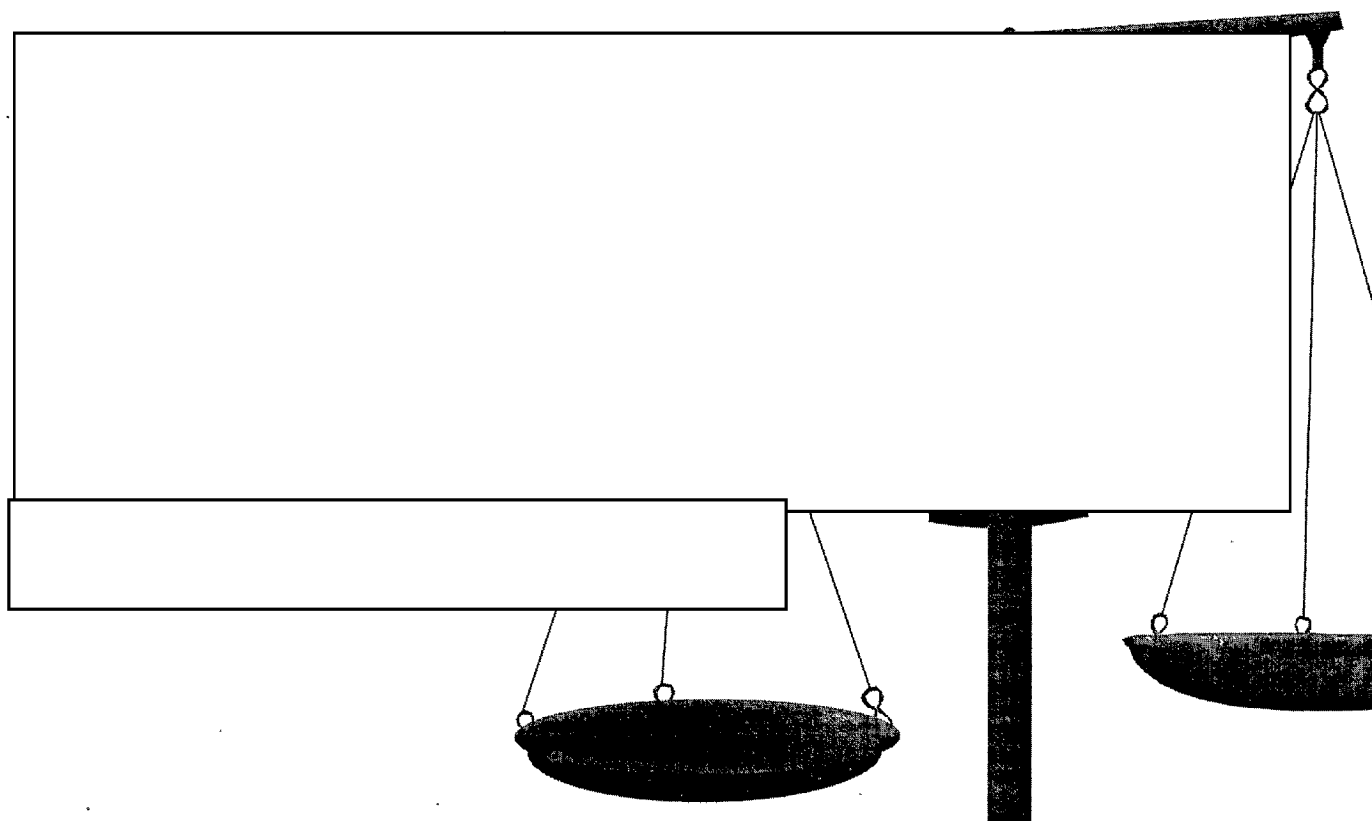
Scenario 3

b7E



Scenario 4

b7E



Scenario 4

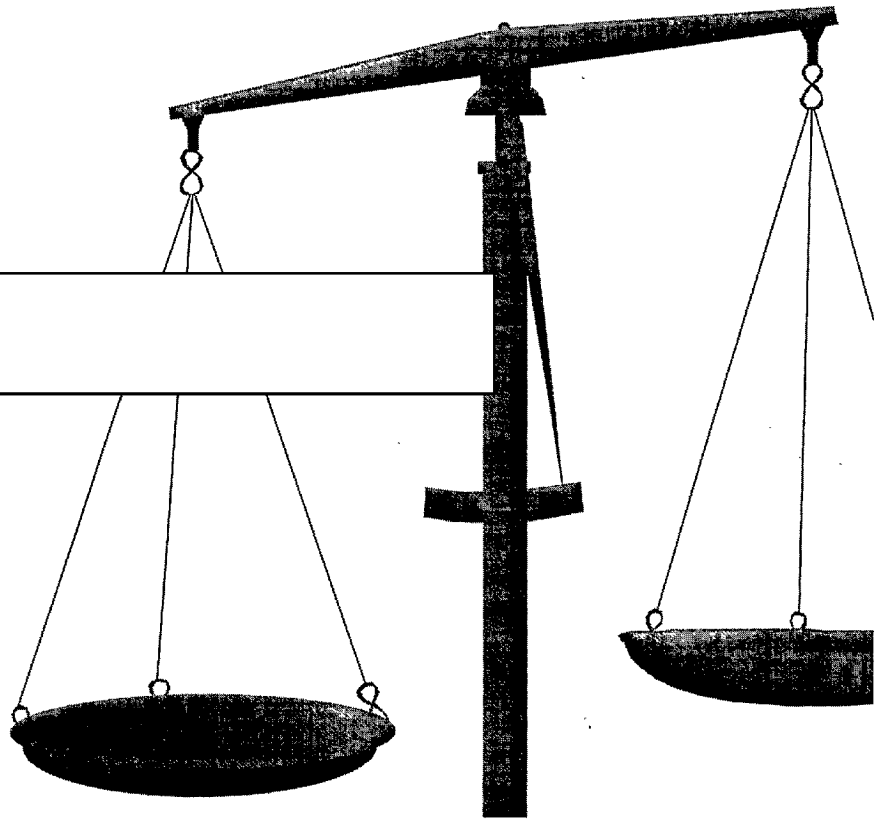
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■ Director Approval



Scenario 5

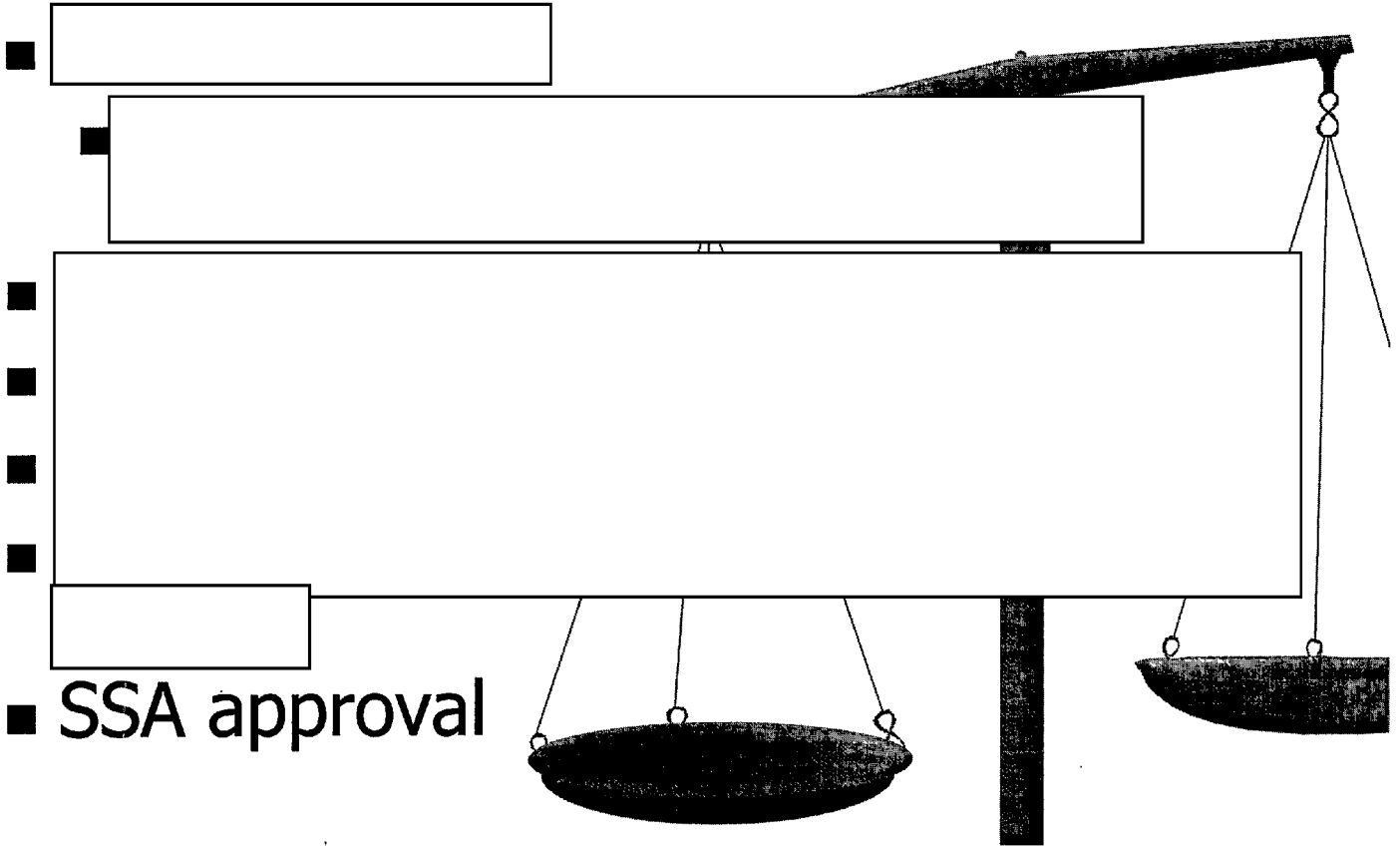
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■ Analysis?

Scenario 5

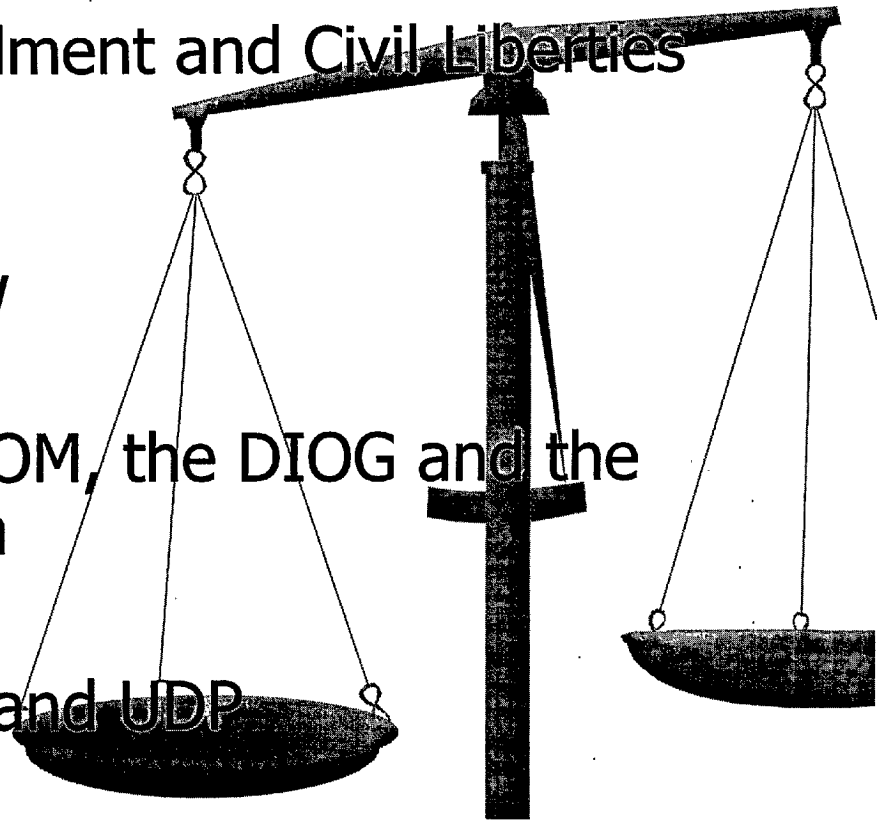
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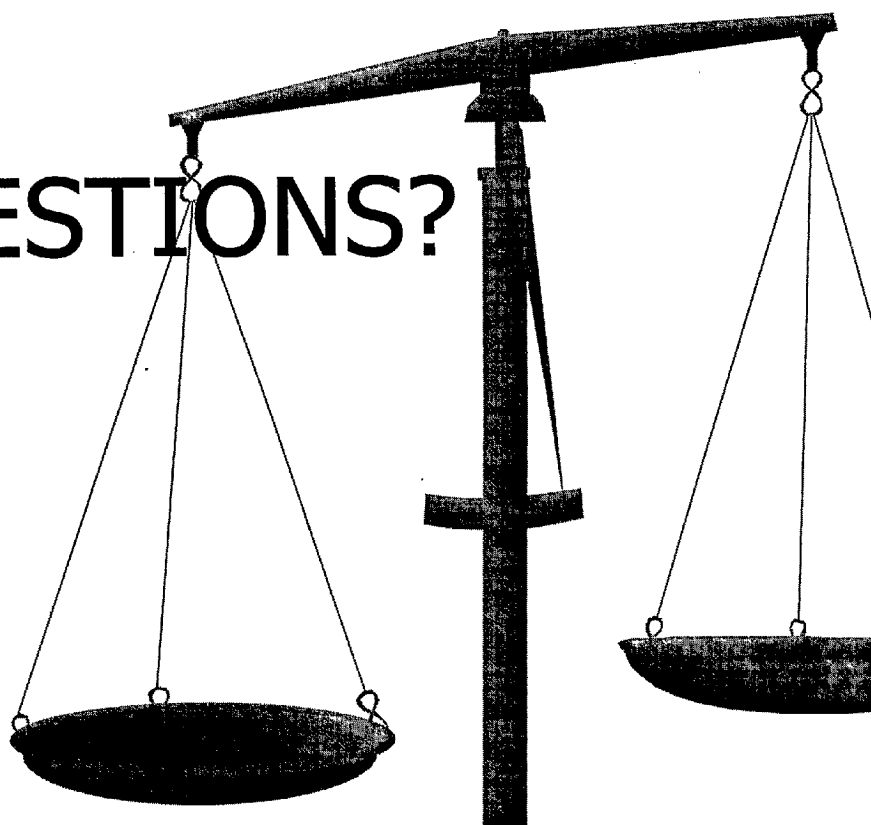


Recap

- First Amendment and Civil Liberties Overview
- Federal Law
- The AGG-DOM, the DIOG and the DT program
- IIRs, SIRs, and UDP



QUESTIONS?



Additional Legal Questions

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b7C

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b6
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~~No Duplication~~
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