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Counterintelligence
Division

Counterintelligence
Training Center



ESPIONAGE INVESTIGATIONS



ESPIONAGE



**Espionage: The act or
practice of spying or of
using spies to obtain
secret intelligence.**

(Webster's II Dictionary)

ESPIONAGE STATUTES



18 USC 794 – Espionage Statute

- 1 Transmittal
- 2 National Defense Information
- 3 To an Agent of a Foreign Power
- 4 With Intent to Injure U.S. or Aid Foreign Power

50 USC 783 -- Unauthorized Disclosure

- A "Filler" Statute
- 1 U.S. Government Employee
- 2 Who Knowingly Transmits
- 3 Classified Information
- 4 To a Foreign National



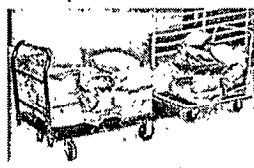
BRIAN PATRICK REGAN (NRO)



"We are here today to tell the full story of Brian Patrick Regan's betrayal of his country. We want you to see the magnitude of the damage this man was willing to inflict on his country and fellow citizens." US Attorney Paul McNulty



Former Air
Force
Intelligence
Officer;
Life in
prison



20,000 pages of classified documents
Buried in 19 locations in Virginia and Maryland

ANNA BELAN MONTES (DIA)



- Born 1957, single (never married, no children)
- Oldest of four, siblings FBI employees
- US Citizen, Puerto Rican descent
- BS University of Virginia (1979)
- MS Johns Hopkins, SAIS (1984)
- Worked at DOJ, FOIPA (1979-85)
- Hired by Defense Intelligence Agency (DIA) in 1985

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ROBERT P. HANSSSEN

(FBI)

Robert Hanssen





A 57 year old veteran FBI employee who received more than \$1.4 million in cash and jewels while spying for 17 years for the KGB/SVR. He pled guilty to 15 counts of espionage-related charges. Sentence: life



"ELLIS" Drop Site under a footbridge near Vienna, Virginia



Package dropped by Hanssen at the Ellis drop site on 2/18/01.

ROBERT P. HANSSSEN (FBI)





Package recovered at the Lewis drop site containing \$50,000 cash left by Russians for Hanssen.

FBI PRESS RELEASE - February 20, 2001

Attorney General John Ashcroft, FBI Director Louis J. Freeh and United States Attorney Helen Faison announced today that a veteran FBI counterintelligence Agent was arrested Sunday by the FBI and charged with committing espionage by providing highly classified national security information to Russia and the former Soviet Union.

At the time of the arrest at a park in Vienna, Virginia, Robert Philip Hanssen, age 55, was clandestinely placing a package containing highly classified information at a pre-arranged, or "dead drop," site for pickup by his Russian handlers. Hanssen had previously received substantial sums of money from the Russians for the information he disclosed to them.



WERE THEY BELIEVERS?



Jonathan Jay Pollard
Naval Intelligence Service officer who spied for Israel. Spied for two years 1987; sentenced to life.

Teresa Squillacote
Pentagon Attorney Spied for East Germans and Russia Sentence: 22 years Motivation: ideology

Kurt Stand Recruited Squillacote, Clark Sentenced in 1999 to 17 years in prison Convicted with wife of conspiracy to commit espionage, attempted espionage and illegally obtaining national defense information



DAVID SHELDON BOONE



(NSA)

David Sheldon Boone
Spied from 1988 to 1991 for the Soviet Union Former Army Signal Intelligence Officer Paid: \$60,000 1999: Pleading guilty to conspiracy; sentenced to 24 years, 4 months



David Boone

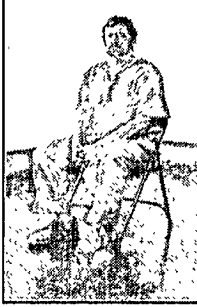


EDWIN EARL PITTS (FBI)



Earl Edwin Pitts
Spied for Russians from 1987 - 1992 Sentence: 27 years

Among the things he gave up: a list of individuals spying against the Russians for the United States



Aldrich Hazen Ames (CIA)

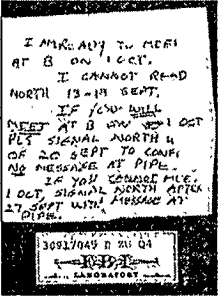


Rosario Ames
Aldrich Ames and wife CIA Veteran KGB-Soviet spy from 1985 to 1994 Paid up to \$2.5 million Sentenced to life



Aldrich Ames and wife
CIA Veteran KGB-Soviet spy from 1985 to 1994 Paid up to \$2.5 million Sentenced to life

Aldrich Ames and wife
CIA Veteran KGB-Soviet spy from 1985 to 1994 Paid up to \$2.5 million Sentenced to life



A note from Ames' trash The first evidence of espionage

The WALKER Spy Ring (USN)

FAMILY OF SPIES

John Walker
US Navy Veteran
KGB Spy - 1968-1985
Provided Crypto Information
Paid Approximately \$1 million
Sentenced to Life In Prison

Jerry Whitworth

Arthur Walker

Michael Walker

John Walker Demos a Minox B Camera

KGB Photo of Walker's Drop Site

TYPES OF SPIES

- Call in spy – Ronald Pelton
- Walk in spy - Jonathan Pollard
- Mail in spy – Robert Hanssen

- E-mail spy – Brian Regan
- Third party spy – Richard Miller

A FEW OTHER SPIES

Where are spies found?

Everywhere

-
-
-
-

A FEW OTHER SPIES

Where are spies found?

Everywhere

- Douglas Tsou

-
-
-

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ECONOMIC ESPIONAGE ACT

1. whoever knowingly acts
2. to benefit any foreign government, foreign instrumentality or foreign agent
3. By stealing, misappropriating or duplicating trade secrets without authorization, or receiving, buying, or possessing a trade secret known to be stolen or misappropriated

18 USC 1831 (1996), 15 years maximum penalty

THEFT OF TRADE SECRETS

1. Knowing intent to convert a trade secret
2. By stealing, misappropriating or duplicating without authorization, or receiving, buying, or possessing a trade secret known to be stolen or misappropriated,
3. When that trade secret is related to or included in a product produced for or place in interstate or foreign commerce
4. To economically benefit anyone other than the owner and intention and knowing that the offense will injure any owner of the trade secret.

18 USC 1832 (1996), 10 years maximum penalty

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WHY NEW LAWS?

The cost to the US, its corporations and its residents:

- * business loss
- * jobs
- * tax revenue
- * market share
- * trade balance

STATUTE SPECIFICS

- Extends the definition of “goods, wares or merchandise” to include “proprietary economic information” owned by a company
- Allows intelligence investigations when foreign intelligence services are using tradition methods to gather proprietary information, not just classified government information

FOUR PILLARS and OTHER CASES

- [redacted] and [redacted]
[redacted] and Four
Pillars Enterprises of Texas and Taiwan
- Three arrested in September 1997 and charged with stealing trade secrets
- Avery-Dennison’s estimated its damages at \$50 to 60 million.

WHY A NEW LAW?

Let’s revisit this question of why a new law, and look to the words of what is considered a friendly country?

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There is but one evil I dread, and that is, their spies – George Washington

“There is one evil I dread, and that is, their spies. I could wish, therefore, the most attentive watch be kept.”
George Washington

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OBJECTIVES

To Determine...

- Whether a crime has been committed
- What was lost...and how it was lost
- Who committed the crime

WHAT MAKES ESPIONAGE CASES SO DIFFICULT TO WORK?

Worst case scenario...

- No physical evidence
- No witnesses
- Sensitive source/technique protection
- Violation is years old
- Unsure a crime has been committed

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To make it believable to a jury
that a crime was committed
and...

That the subject is the person who
committed the crime

WHAT DO WE NEED TO PROVE?

ELEMENTS OF THE CRIME

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THE ESPIONAGE STATUTE

18 U.S.C. §794(a) or (c)

18 U.S.C. §794(a)

Espionage Statute

- Transmittal of ...
 - National Defense Information...to
 - A Foreign Power, or Agent thereof ...with
 - Intent to injure the U.S. or aid the Foreign Power
- (all elements of the statute must be met)

18 U.S.C. §794(a)

- No statute of limitations (maybe)
- Death or life imprisonment
- Criminal forfeiture provisions
- "Son of Sam" provision

*SATISFYING THE
ELEMENTS OF THE CRIME
(what we need to do!)*

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ELEMENT – FOREIGN POWER

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- Any verifiable information reflecting fully recruited status is significant
- Payments and rewards received
- Tasking (acted out)
- Activity of an intelligence operation (acted out)

Intelligence Authorization Acts

- EO 12333
- 811
- 603
- 2.5
- Third Agency Rule

Issues

- Coordinate with outside agencies...document!
- Who has the lead?
- Do not let victim agencies lead!
- Joint interviews?
- Third agency rule...document authority to disseminate
- What is written is discoverable!
- Protect Source Information!
-

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Subject Chronology

Track everything the Subject has done!

FBI Espionage/Counterintelligence Authorities	
5 U.S.C. § 1304	GOVERNMENT ORGANIZATION AND EMPLOYEES, LOYALTY INVESTIGATIONS ¹
10 U.S.C. § 431	AUTHORITY TO ENGAGE IN COMMERCIAL ACTIVITIES AS SECURITY FOR INTELLIGENCE COLLECTION ACTIVITIES ²
12 U.S.C. § 3414(a)(5)(A)	RIGHT TO FINANCIAL PRIVACY ACT (FBI MAY REQUEST A CUSTOMER'S OR ENTITY'S FINANCIAL RECORDS FROM A FINANCIAL INSTITUTION AS LONG AS SUCH RECORDS ARE SOUGHT FOR FOREIGN COUNTERINTELLIGENCE PURPOSES).
15 U.S.C. § 1681u(a) & (b)	DISCLOSURES TO THE FBI FOR COUNTERINTELLIGENCE PURPOSES UNDER THE FAIR CREDIT REPORTING ACT
18 U.S.C. § 1030(d)(1)(2)	FRAUD AND RELATED ACTIVITY IN CONNECTION WITH COMPUTERS (THE FBI HAS PRIMARY AUTHORITY TO INVESTIGATE OFFENSES UNDER SUBSECTION (A)(1) FOR ANY CASES INVOLVING ESPIONAGE OR FOREIGN COUNTERINTELLIGENCE).
18 U.S.C. § 2516	AUTHORIZATION FOR INTERCEPTION OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS (THE ATTORNEY GENERAL MAY AUTHORIZE AN APPLICATION TO A FEDERAL JUDGE, REQUESTING TO INTERCEPT WIRE OR ORAL COMMUNICATIONS BY THE FBI WHEN SUCH INTERCEPTION MAY PROVIDE OR HAS PROVIDED EVIDENCE OF A CRIME, E.G., CHAPTER 37 (ESPIONAGE); CHAPTER 90 (PROTECTION OF TRADE SECRETS); AND CHAPTER 105 (SABOTAGE)).
18 U.S.C. § 2517	AUTHORIZATION FOR INTERCEPTION OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS ³
18 U.S.C. § 2709	COUNTERINTELLIGENCE ACCESS TO TELEPHONE TOLL AND TRANSACTIONAL RECORDS
26 U.S.C. § 6103(i)(7)(B)	CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION, DISCLOSURE TO INTELLIGENCE AGENCIES (THE SECRETARY OF THE IRS MAY DISCLOSE RETURN INFORMATION [OTHER THAN TAXPAYER RETURN INFORMATION] TO FEDERAL INTELLIGENCE AGENCIES THAT ARE ENGAGED IN THE COLLECTION OR ANALYSIS OF INTELLIGENCE AND COUNTERINTELLIGENCE INFORMATION).
28 U.S.C. § 533 note	FBI INVESTIGATIONS OF ESPIONAGE BY PERSONS EMPLOYED BY OR ASSIGNED TO THE UNITED STATES DIPLOMATIC MISSIONS ABROAD (THIS PROVISION WAS ENACTED BY THE INTELLIGENCE AUTHORIZATION ACT, FISCAL YEAR 1990, TITLE VI, SECTION 603).

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FBI Espionage/Counterintelligence Authorities	
42 U.S.C. § 2165	ATOMIC ENERGY - SECURITY RESTRICTIONS, INVESTIGATIONS BY THE FBI
42 U.S.C. § 2271(b)	GENERAL PROVISIONS - CRIMINAL VIOLATIONS (THE FBI IS AUTHORIZED TO INVESTIGATE ALL ALLEGED OR SUSPECTED CRIMINAL VIOLATIONS OF CHAPTER 23, DEVELOPMENT AND CONTROL OF ATOMIC ENERGY, OF TITLE 42).
42 U.S.C. § 5197g	FEDERAL BUREAU OF INVESTIGATION (THE FBI IS AUTHORIZED TO INVESTIGATE ESPIONAGE, SABOTAGE, OR SUBVERSIVE ACTS RELATING TO CHAPTER 68, DISASTER RELIEF, SUBCHAPTER IV-B, EMERGENCY PREPAREDNESS OF TITLE 42).
42 U.S.C. § 7144b	DEPARTMENT OF ENERGY, OFFICE OF COUNTERINTELLIGENCE ⁴
50 U.S.C. § 402a(e)	COORDINATION OF COUNTERINTELLIGENCE MATTERS WITH THE FBI
50 U.S.C. § 403-5d	FOREIGN INTELLIGENCE INFORMATION ⁵
50 U.S.C. § 409b	AUTHORITY OF FBI TO AWARD PERSONAL SERVICES CONTRACTS THAT DIRECTLY SUPPORT THE INTELLIGENCE OR COUNTERINTELLIGENCE MISSIONS OF THE FBI ⁶
50 U.S.C. § 1802	AUTHORIZATION OF ELECTRONIC SURVEILLANCE WITHOUT A COURT ORDER TO ACQUIRE FOREIGN INTELLIGENCE INFORMATION
50 U.S.C. § 1806	USE OF FISA INFORMATION ACQUIRED FROM ELECTRONIC SURVEILLANCE ⁷
50 U.S.C. § 1811	AUTHORIZATION OF ELECTRONIC SURVEILLANCE WITHOUT A COURT ORDER TO ACQUIRE FOREIGN INTELLIGENCE INFORMATION DURING TIME OF WAR
50 U.S.C. § 1822	AUTHORIZATION OF PHYSICAL SEARCHES FOR FOREIGN INTELLIGENCE PURPOSES (<i>SEE ALSO</i> EXECUTIVE ORDER 12949, FOREIGN INTELLIGENCE PHYSICAL SEARCHES, FEBRUARY 9, 1995).
50 U.S.C. § 1825	USE OF FISA INFORMATION ACQUIRED FROM PHYSICAL SEARCHES ⁸
50 U.S.C. § 1829	AUTHORIZATION OF PHYSICAL SEARCHES WITHOUT A COURT ORDER TO ACQUIRE FOREIGN INTELLIGENCE INFORMATION DURING TIME OF WAR
50 U.S.C. § 1842	PEN REGISTERS AND TRAP AND TRACE DEVICES FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS
50 U.S.C. § 1843	AUTHORIZATION OF A PEN REGISTER OR TRAP AND TRACE DEVICE ON AN EMERGENCY BASIS TO GATHER FOREIGN INTELLIGENCE INFORMATION

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FBI Espionage/Counterintelligence Authorities	
50 U.S.C. § 1844	AUTHORIZATION OF A PEN REGISTER OR TRAP AND TRACE DEVICE WITHOUT A COURT ORDER TO GATHER FOREIGN INTELLIGENCE INFORMATION DURING TIME OF WAR
50 U.S.C. § 1861	ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS
50 U.S.C. § 2659	REPORT ON SECURITY VULNERABILITIES ON NATIONAL LABORATORY COMPUTERS (THE NATIONAL COUNTERINTELLIGENCE POLICY BOARD IS REQUIRED TO SUBMIT A REPORT ON THE SECURITY VULNERABILITIES OF THE COMPUTERS OF NATIONAL LABORATORIES TO THE SECRETARY OF ENERGY AND THE FBI DIRECTOR).
10 C.F.R. § 709.17	DEPARTMENT OF ENERGY, COUNTERINTELLIGENCE EVALUATION PROGRAMS ⁹
28 C.F.R. § 0.85(d)	PURSUANT TO THE PRESIDENTIAL DIRECTIVE OF SEPTEMBER 6, 1939, AS REAFFIRMED BY PRESIDENTIAL DIRECTIVES OF JANUARY 8, 1943, JULY 24, 1950, AND DECEMBER 15, 1953, THE FBI IS THE LEAD AGENCY TO INVESTIGATE ESPIONAGE, SABOTAGE, SUBVERSIVE ACTIVITIES, AND RELATED MATTERS; INCLUDING VIOLATIONS OF THE ARMS EXPORT CONTROL ACT, THE EXPORT ADMINISTRATION ACT, THE TRADING WITH THE ENEMY ACT, OR THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT PROVIDED IT RELATES TO A FOREIGN COUNTERINTELLIGENCE MATTER ¹⁰
32 C.F.R. § 154.9	AUTHORIZED PERSONNEL SECURITY INVESTIGATIVE AGENCIES ¹¹
33 C.F.R. § 6.16-1	REPORTING OF SABOTAGE AND SUBVERSIVE ACTIVITY (EVIDENCE OF SABOTAGE OR SUBVERSIVE ACTIVITY INVOLVING OR ENDANGERING ANY VESSEL, HARBOR, PORT, OR WATERFRONT FACILITY SHOULD BE REPORTED TO THE FBI).
EXECUTIVE ORDER 12333 § 1.14	UNITED STATES INTELLIGENCE ACTIVITIES, THE FBI (SETS FORTH THE FBI'S AUTHORITY FOR CONDUCTING AND COORDINATING COUNTERINTELLIGENCE ACTIVITIES) ¹²
Presidential Decision Directive - 61	U.S. DEPARTMENT OF ENERGY COUNTERINTELLIGENCE PROGRAM (STIPULATES THAT THE DIRECTOR OF THE DEPARTMENT OF ENERGY'S OFFICE OF COUNTERINTELLIGENCE WILL BE A SENIOR EXECUTIVE FROM THE FBI).

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FBI Espionage/Counterintelligence Authorities	
Director of Central Intelligence Directive 5/1	ESPIONAGE AND COUNTERINTELLIGENCE ACTIVITIES ABROAD (OUTLINES PROCEDURES FOR COORDINATING COUNTERINTELLIGENCE MATTERS WITHIN THE INTELLIGENCE COMMUNITY).
U.S. Department of Justice Attorney General Guidelines for FBI National Security Investigations and Foreign Intelligence Collection ("NSI Guidelines")	THESE GUIDELINES AUTHORIZE THE FBI TO INVESTIGATE THREATS TO THE NATIONAL SECURITY OF THE U.S., COLLECT FOREIGN INTELLIGENCE, AND PROVIDE ASSISTANCE TO OTHER FEDERAL INTELLIGENCE AGENCIES. IN ADDITION, THE NSI GUIDELINES AUTHORIZE THREE (3) LEVELS FOR THE FBI'S INVESTIGATION OF THREATS TO THE NATIONAL SECURITY OF THE U.S. : (1) THREAT ASSESSMENTS; (2) PRELIMINARY INVESTIGATIONS; AND (3) FULL INVESTIGATIONS.
The Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources	SETS POLICY FOR THE USE OF CONFIDENTIAL HUMAN SOURCES THAT ARE OPERATED BY THE FBI IN ANY OF THE FBI'S INVESTIGATIVE PROGRAMS OR OTHER AUTHORIZED INFORMATION COLLECTION ACTIVITIES, E.G., OUTLINES AUTHORIZATION OF OTHERWISE ILLEGAL ACTIVITY THAT A CONFIDENTIAL HUMAN SOURCE MAY ENGAGE IN RELATING AN INTERNATIONAL TERRORISM INVESTIGATION, NATIONAL SECURITY INVESTIGATION, OR OTHER ACTIVITIES UNDER THE NSI GUIDELINES.

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b6
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1. When an OPM investigation under this section develops information which indicates that the loyalty of the individual being investigated is questionable, OPM is required to refer the matter to the FBI for a full investigation. Additionally, when the President considers it in the national interest of the country, he may have the investigations of a group or class, required under this section, conducted by the FBI instead of OPM.

2. When the Secretary of Defense authorizes the Department of Defense ("DoD") to engage in commercial activities in order to provide security for authorized intelligence collection activities within the United States, he must coordinate such activity with the Director of the FBI.

Additionally, pursuant to DoD Directive 5240.2 § 4.3, *DoD Counterintelligence*, issued May 22, 1997, DoD counterintelligence activities shall be coordinated and conducted within the United States in accordance with the Memorandum of Agreement (MOA) and its supplement between the Attorney General and the Secretary of Defense. See "Agreement Governing the Conduct of Defense Department Counterintelligence Activities in Conjunction with the FBI," February 9, 1979; and Supplemental MOU (dated June 20, 1996) to the "Agreement Governing the Conduct of Defense Department Counterintelligence Activities in Conjunction with the FBI." See also, DoD 5240.1-R, "Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons," December 1982, Part E. 3. (stipulates that DoD collection of foreign intelligence within the United States must be coordinated with the FBI).

3. See 18 U.S.C. § 2517(6): "[a]ny investigative or law enforcement officer, . . . who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents to any other Federal law enforcement, intelligence, protective, immigration, national defense or national security official to the extent that such contents include foreign intelligence or counterintelligence or foreign intelligence information to assist the official . . . in the performance of his official duties. Title 18, U.S.C., section 2517(8) has a similar provision to disclose contents to Federal, State, local or foreign government official to the extent that the contents of the communication reveal domestic or international sabotage or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or agent of a foreign power.

4. The Director of the Office of Counterintelligence is required to inform the Secretary for the Department of Energy, the Director of Central Intelligence, and the FBI Director on a regular basis, and upon a specific request by any such official, regarding the status and effectiveness of the counterintelligence programs and activities at Department facilities.

Note that Presidential Decision Directive ("PDD") 61, *"U.S. Department of Energy Counterintelligence Program,"* stipulates that the Director of the Department of Energy's Office of Counterintelligence will be a senior executive from the FBI. Also, see "Memorandum of Understanding Between the FBI and Department of Energy Office of Counterintelligence," dated May 10, 1999 (this agreement ensures better coordination between DOE security and counterintelligence operations and FBI espionage investigation).

5. This section provides that "it shall be lawful for foreign intelligence or counterintelligence or foreign intelligence information obtained as part of a criminal investigation to be disclosed to any Federal law enforcement, intelligence, protective, immigration, national defense, or national security official in order to assist the official receiving that information in the performance of his duties." Additionally, it is "lawful for information revealing . . . domestic or international sabotage . . . or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power . . . obtained as part of a criminal investigation to be disclosed to any appropriate Federal, State, local, or foreign government official for the purpose of preventing or responding to such a threat."

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b6
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6. Note that in Executive Order 12333 § 2.7, "[a]gencies within the Intelligence Community are authorized to enter into contracts or arrangements for the provision of goods or services with private companies or institutions in the United States, and need not reveal the sponsorship of such contracts or arrangements for authorized intelligence purposes."

7. Federal officers who conduct electronic surveillance to acquire foreign intelligence information under FISA may consult with Federal law enforcement officers to coordinate efforts to investigate or protect against sabotage or international terrorism by a foreign power or agent of a foreign power; or clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

8. Federal officers who conduct physical searches to acquire foreign intelligence information under FISA may consult with Federal law enforcement officers to coordinate efforts to investigate or protect against sabotage or international terrorism by a foreign power or agent of a foreign power; or clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

9. According to § 709.17(g), for cases involving a question of loyalty to the United States, DOE's Director of the Office of Counterintelligence may refer the matter to the FBI as required by section 145d of the Atomic Energy Act of 1954 (42 U.S.C. § 2165(d)). For cases indicating that classified information is being, or may have been, disclosed in an unauthorized manner to a foreign power or an agent of a foreign power, DOE is required to refer the matter to the FBI pursuant to 50 U.S.C. § 402a(e).

10. The original Presidential authorizations for FBI investigations relating to espionage, sabotage, and subversive activities are memorialized in Socialist Workers Party v. The Attorney General of the United States, 642 F. Supp. 1357, 1375-76 (S.D. N.Y. 1986).

11. Under § 154.9(b)(2), allegations of activities covered by § 154.7(a) thru (f) [criteria for determining eligibility for a clearance under the DoD security standards include commission of any act of sabotage espionage, treason, sedition, etc.] are in the exclusive investigative domain of either the counterintelligence agencies of the Military Departments or the FBI. See "Agreement Governing the Conduct of DoD Counterintelligence Activities in Conjunction with the FBI," dated February 9, 1979. For hostage situations where there is evidence of coercion, influence or pressure by an element inimical to the interests of U.S. national security, then the case becomes a counterintelligence matter, and should be referred to the appropriate military department or the FBI for investigation. See § 154.9(d)(3).

12. This Executive Order also stipulates in the following sections:

§ 1.7(b) - *Senior Officials of the Intelligence Community*, "[i]n any case involving serious or continuing breaches of security, recommend to the Attorney General that the case be referred to the FBI for further investigation."

§ 1.8(a) - *The Central Intelligence Agency*, "[t]he collection of foreign intelligence or counterintelligence within the United States shall be coordinated with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General." See "MOU Concerning Overseas and Domestic Activities of the CIA and FBI," dated June 2005.

§ 1.8(c) - *The Central Intelligence Agency*, the CIA shall conduct counterintelligence activities within the United States in coordination with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General." See "MOU Concerning Overseas and Domestic Activities of the CIA and FBI," dated June 2005.

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b6
b7c

§ 1.11(d) - *The Department of Defense (DoD)*, the Secretary of the DoD "shall . . . conduct counterintelligence activities . . . within the United States in coordination with the FBI pursuant to procedures agreed upon by the Secretary of Defense and the Attorney General." See "Agreement Governing the Conduct of Defense Department Counterintelligence Activities in Conjunction with the FBI," February 9, 1979; and Supplemental MOU (dated June 20, 1996) to the "Agreement Governing the Conduct of Defense Department Counterintelligence Activities in Conjunction with the FBI."

§ 1.12(d) - *Intelligence Components Utilized by the Secretary of Defense*, The foreign intelligence and counterintelligence elements of the Army, Navy, Air Force, and Marine Corps:

(1) When collection of national foreign intelligence occurs within the United States, such activity must be coordinated with the FBI;

(2) When conducting counterintelligence activities within the United States, such activity must be coordinated with the FBI.

§ 2.9(a) - *Undisclosed Participation in Organizations within the United States*, "[n]o such participation may be undertaken for the purpose of influencing the activity of the organization or its members except in cases where . . . The participation is undertaken on behalf of the FBI in the course of a lawful investigation."

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DATE: 01-13-2012
CLASSIFIED BY 65179/DMH/BAW/STP/bls
REASON: 1.4 (c)
DECLASSIFY ON: 01-13-2037

Table of Contents

NFIPM – Section 20 (Espionage)

Section 20-01: Espionage Investigations

A. Preamble.....	1
B. Governing Authorities.....	2

Section 20-02: Initiating Espionage Investigations

A. Espionage Classification.....	3
B. Espionage Investigation Guidelines.....	4
C. Espionage Case Predication and Referrals.....	5
D. Threat Assessments, Preliminary Investigations and Full Investigations.....	9
Threat Assessments	9
Preliminary and Full Investigations.....	10
(S) [REDACTED].....	11-12
E. Case Opening Notification Requirements.....	12
F. Internal Investigations - Initiating and Investigating cases Involving FBI employees.....	13
(S) G. Investigations Involving DOD and the Military Counterintelligence Services.....	15
H. Unknown Subject [REDACTED] Espionage Investigations...	16
I. Uploading Policy for Espionage Cases.....	17

b1
b7E

Section 20-03: Espionage Investigation Goals and Objectives

A. Goals.....	18
B. Objectives.....	18
C. Assessing Damage.....	19

Section 20-04: Investigative Techniques

A. Attorney General (AG) Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG).....	19
B. AG Guidelines on General Crimes, Part II.....	20

Section 20-05: Interviews

A. General Policy.....	20
B. Subject Interviews.....	20
C. Non-Subject Interviews.....	22

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D. Non-disclosure Agreement when Classified Information is Disclosed.....	24
E. Interviews of Journalists or Reporters.....	24
F. Classification of FD-302s.....	24

Section 20-06: Polygraph Examinations

A. Usefulness of Polygraph Examinations in Espionage and Unauthorized Disclosure Investigations.....	24
B. Polygraphs Used in Preliminary and Full Investigations Must Comply with all FBI Policies and Procedures.....	24
C. SAC Approval for Polygraph Examinations; subsequent to FBIHQ approval obtained for interview.....	24
D. Polygraphs of U.S. Government Employees and Contractors....	25
E. Reporting Polygraph Results to FBIHQ.....	25

Section 20-07:

A. Criteria for Conducting [REDACTED].....	25
B. Levels of [REDACTED].....	25
C. [REDACTED] may be Conducted in Preliminary and Full Investigations.....	26
D. [REDACTED] should be Considered in all Full Investigations.....	26

b1
b7E

Section 20-08:

A. [REDACTED].....	26
B. FBIHQ Approval Required.....	26
C. [REDACTED] Espionage Investigations.....	26
D. Each Contact with a Subject Requires FBIHQ Approval.....	27

Section 20-09: FISA and EO 12333(2.5) Authorities

A. Permissible Only in Full Investigations.....	27
B. Laboratory Division Support for Unconsented Physical Searches Under FISA.....	27
C. Consideration of 2.5 Authority if Subject Travels Outside of the United States.....	27

Section 20-10: Mail Covers

A. Requesting Mail Covers.....	27
B. Information Derived from Mail Covers.....	27

~~SECRET~~
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- C. Usefulness of Mail Covers in Espionage Investigations..... 28
- D. Use of Sub-file "MC" to Document Mail Cover Product..... 28

Section 20-11: Reporting Requirements

- A. Compliance with All NSIG Requirements..... 28
- B. Unique Requirements for Espionage Investigations..... 28
- C. Notification of Case Opening..... 28
- D. Quarterly Status Report (QSR)..... 29
- E. QSR Format..... 30
- F. Annual Summaries of Investigation..... 31
- G. Case Closing LHM..... 31

Section 20-12: Contact with U.S. Attorneys' Offices

- A. DOJ Authorization Required for Prosecution of Espionage..... 33
- B. Dissemination of Information and Contact with a U.S. Attorney's Office in Espionage Cases..... 33
- C. Requesting DOJ Authorization for Contacting a U.S. Attorney's Office in Non-Emergency Situations..... 33
- D. Coordination with FBIHQ and DOJ in Emergency Situations... 33
- E. FBIHQ Approval Required Prior to Arrests of Diplomatic Personnel 33

Section 20-13: Extraterritorial Espionage Investigations, Liaison and Coordination Issues

- A. FBI Jurisdiction to Supervise and/or Conduct Investigations Of Violations of Espionage Laws by Persons Employed By or Assigned to U.S. Diplomatic Establishments Overseas..... 33
- B. Requirement to Comply with all FBI Policies, Procedures and Coordination Requirements for International Travel 34
- C. Authorization to Conduct Activities [REDACTED] 34
- D. Travel Authorities: [REDACTED] Country Clearance and AG Authority.....34-35
- E. Anticipating Need for International Travel and Consultation with FBIHQ..... 35
- F. Requests for Authority Extraterritorial Travel. Non-Emergency Travel should be submitted to FBIHQ at Least 45-Days Prior to Travel..... 35

~~SECRET~~

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C

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G. Requesting EC to FBIHQ for International Travel and Notification to Legat of Proposed Travel..... 35

(S)

H. [REDACTED] Country Clearance Approval Process 36

I. Setting Investigative Leads for Legats in Espionage Matters..... 36

J. Specific Instructions to Legats on Information Provided to a Foreign Liaison Service..... 36

K. FBIHQ DIDO Approval Required for Dissemination of Espionage Investigation Information to a Foreign Authority..... 36

(S)

L. [REDACTED] 37

b1
b7E

M. References to Other Policy Documents Pertaining to Dissemination [REDACTED]

(S)

[REDACTED] 37

Section 20-14: Associate [REDACTED] Cases in Espionage Matters

(S)

A. [REDACTED] 37

(S)

B. Must Meet Case Predication Standards of NSIG to Open..... 37

C. [REDACTED] 37

(S)

D. [REDACTED] 37

E. [REDACTED] ... 37

F. If a Case is Opened on an Associate or Family Member..... 38

Section 20-15: Missing Documents, Computers and Other Classified Data or Storage Media

A. Reports of Missing Items and Initial Investigative Steps..... 38

B. Use of Threat Assessment to Collect Initial Information..... 38

C. Notification to FBIHQ..... 39

D. Factors to Consider in Initiating an FBI Investigation..... 39

E. FBI is Not Responsible for Finding Missing Items..... 39

Section 20-16: Reports of Improper Storage or Possession of Classified Information and Other Security-Related Issues

A. Reports of Improper Possession or Storage of Classified Information..... 39

B. Acquisition of Initial Information..... 39

C. Notification to FBIHQ..... 39

D. Use of Threat Assessment to Collect Initial Information..... 40

E. Factors to Consider in Initiating an FBI Investigation.....	40
F. Internal Investigation by Reporting Agency.....	40
G. Goal is to Protect Classified Information and Ascertain if Criminal Prosecution Warranted.....	40
H. Reporting Agency Actions May Preclude or Hinder Prosecution of the Subject, and Need to Consult DOJ.....	40

Section 20-17: Damage Assessments

A. Definitions of Damage Assessments.....	40
B. Damage Assessments are not Conducted until all Legal Proceedings are Concluded.....	41
C. Purpose of not Conducting Damage Assessments Until All Legal Proceedings Concluded.....	41
D. Identification of Information Compromised or at Risk, or Assessment of Risk Associated with Subject's Access are Not Damage Assessments.....	41
E. Discovery of Documents that Comment on or Assess Damage....	41
F. Damage Assessments Should Not be Conducted Prematurely in Espionage Cases – Media Leak Cases are an Exception.....	41

Section 20-18: Espionage and Related Crimes

A. Bribery, Graft, and Conflicts of Interest.....	41
B. Conspiracy.....	42
C. Embezzlement and Theft.....	42
D. Espionage and Censorship.....	42
E. Fraud and False Statements.....	43
F. Protection of Trade Secrets.....	43
G. Public Officers and Employees.....	43
H. Sabotage.....	43
I. Treason, Sedition, and Subversive Activities.....	44
J. Foreign Agents and Propaganda.....	44
K. Development and Control of Atomic Energy.....	45
L. Protection of Certain National Security Information.....	45
M. Internal Security–Control of Subversive Activities.....	46
N. Registration of Certain Persons Trained in Foreign Espionage Systems; Filing Statement; Regulations.....	46
O. Rewards for Information Concerning Espionage.....	47

Section 20-19: The Espionage and Censorship Statute

- A. Elements of Title 18.Part 1.Chapter 37 (Espionage) Statutes..... 47-51
- B. Statute of Limitations..... 51
- C. Photographing and Graphic Representations Outside Military Installations..... 51
- D. Dealing with Subjects Who Take Photographs or Make Graphic Representations..... 51
- E. Contacts with AUSA When Photographs or Graphical Representations are Made..... 51

Section 20-20: The Internal Security Act of 1950-Disclosure of Classified Information to Foreign Powers and Agents of Foreign Powers

- A. Communicating Classified Information to Foreign Powers..... 51

Section 20-21: The Counterfeit Access and Computer Fraud and Abuse Act-Unauthorized Activities Respecting Computers

- A. Elements of 18 USC 1030..... 52-53

Section 20-22: The Electronic Communications Privacy Act of 1986-Unauthorized Access to Electronic Communications Services

- A. Elements of 18 USC 2701..... 54

Section 20-23: The Intelligence Authorization Act of 1990-FBI Jurisdiction Over Espionage Investigations of U.S. Diplomatic Missions Personnel Abroad

- A. Section 603 of the Act..... 54
- B. FBI May Supervise and/or Conduct the Investigation..... 54
- C. Office of Origin 54

Section 20-24: The National Security Act of 1947-FBI Jurisdiction Regarding Unauthorized Disclosures of Classified Information

- A-F. Codified elements of Section 811 of the Intelligence Authorization Act for 1995..... 55-56

Section 20-25: Alpha Designations

- 65 Alpha designations..... 57

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Section 20-11: (U) Reporting Requirements

[Redacted]

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C. (U) Notification of Case Opening:

(U) [Redacted]

[See NFIPM, Section 20-09, A.5.c., Notification Requirements. Also refer to NSIG, Part II.B.2a.]

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(U) 2. ~~(S)~~ Pursuant to NSIG, Part II.B.2.b. [Redacted]

[Redacted]

(U) D. ~~(S)~~ **Quarterly Status Report (QSR):**

(U) [Redacted]

(U) [Redacted]

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E. (U) Quarterly Status Report (QSR) Format:

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Office of Origin:

I. Basis for Investigation:

[Redacted]

II. Investigation During this Reporting Period:

[Redacted]

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III. Anticipated Investigation in the Next days:

[Redacted]

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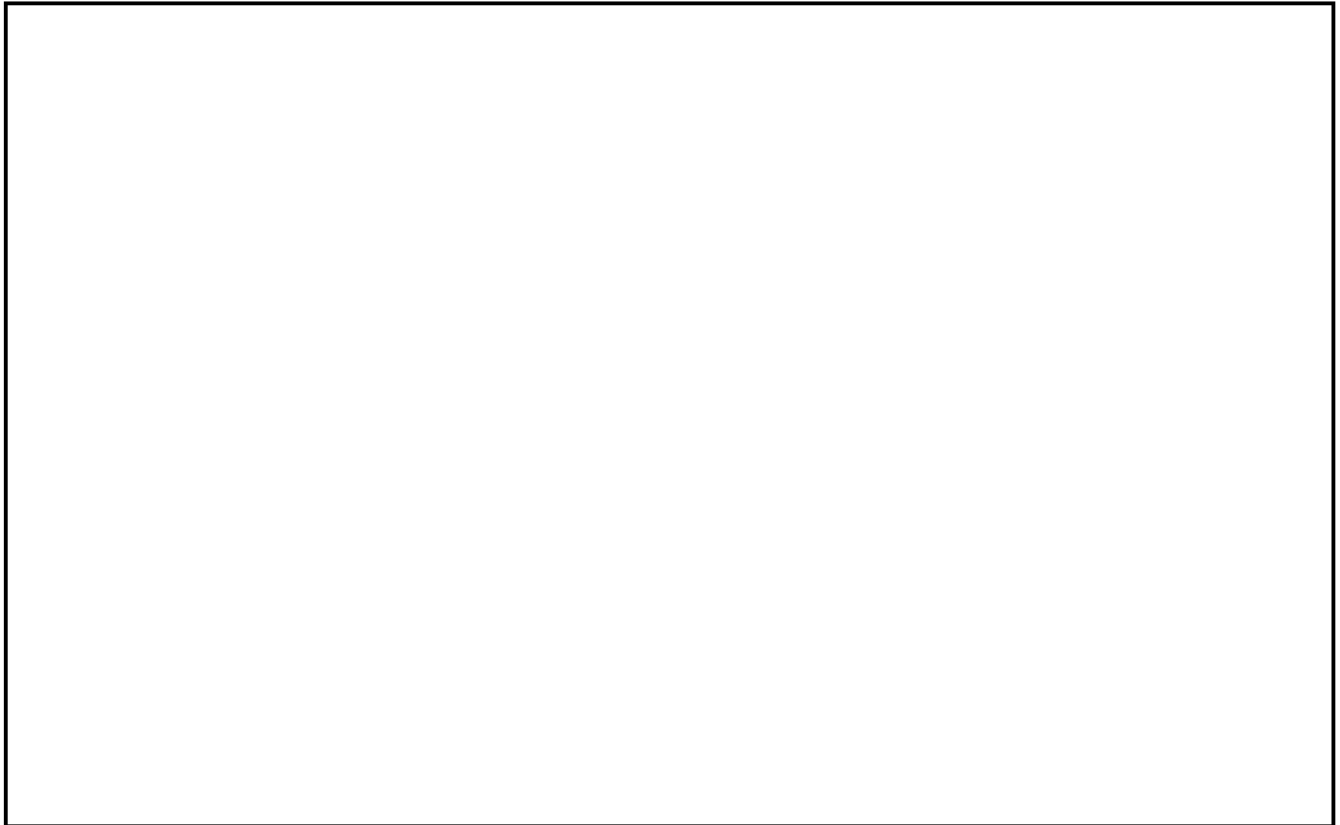
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F. (U) Annual Summaries of Investigation:



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G. (U) Case Closing LHM:



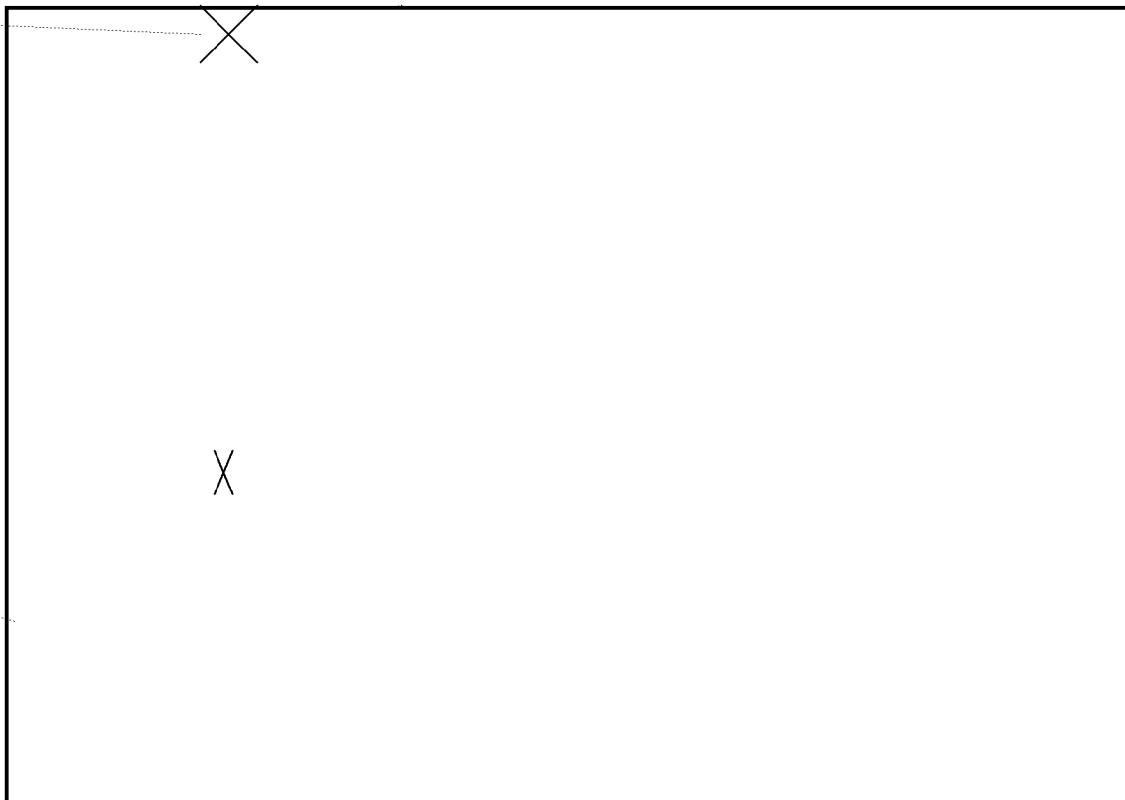
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E. (U) Case Opening Notification Requirements

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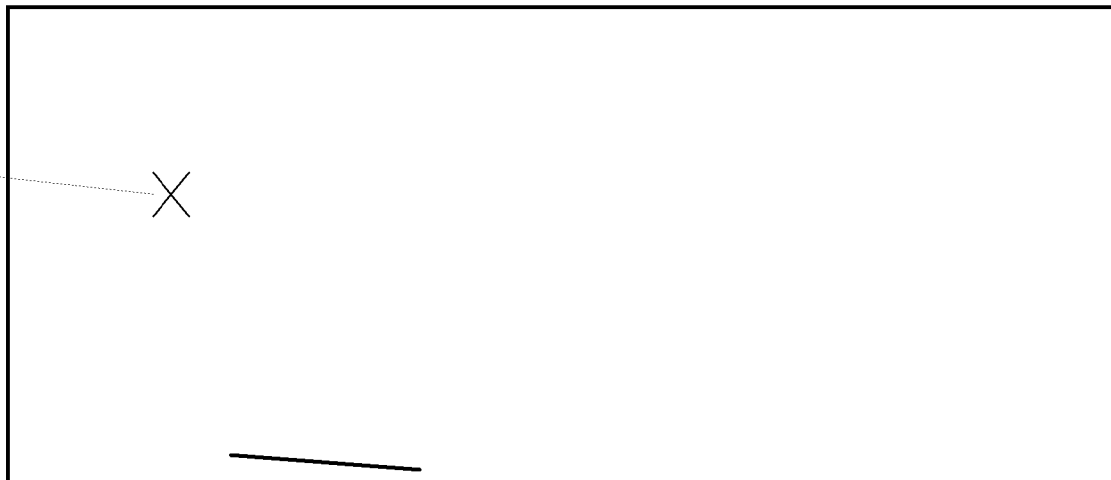
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3. (U) Titles: An espionage investigation should be titled:

Title: CODE WORD
ESPIONAGE - *NAME OF COUNTRY*
Or

Title: CODE WORD
ESPIONAGE- UNKNOWN COUNTRY

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F. (U) FBI Internal Investigations

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ESPIONAGE INVESTIGATIONS "A - Z"
--

OBJECTIVES OF THE ESPIONAGE INVESTIGATION

OBJECTIVES To Determine...The Truth

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OBJECTIVES To Determine... Whether a Crime Has Been Committed

OBJECTIVES To Determine... What Was Lost, And How It Was Lost

OBJECTIVES To Determine... Who Committed The Crime
--

OBJECTIVES Subject of the Crime... <table border="1"><tr><td> </td></tr></table>	

OBJECTIVES Subject of the Crime...(cont) <table border="1"><tr><td> </td></tr></table>	

OBJECTIVES Subject of the Crime...(cont) <table border="1"><tr><td> </td></tr></table>	

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OBJECTIVES

Subject of the Crime...(cont)

OBJECTIVES

To make it believable to a jury
that a crime was committed

and...

That the subject is the person who
committed the crime

**PHASES OF AN ESPIONAGE
INVESTIGATION**

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**PHASES OF AN ESPIONAGE
INVESTIGATION**

**PHASES OF AN ESPIONAGE
INVESTIGATION**

**PHASES OF AN ESPIONAGE
INVESTIGATION**

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**PHASES OF AN ESPIONAGE
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**PHASES OF AN ESPIONAGE
INVESTIGATION**

**PHASES OF AN ESPIONAGE
INVESTIGATION**

U.S. Supreme Court Decisions

Opper vs. U.S. (1954) ... "It is sufficient if the
corroboration supports the essential facts admitted
sufficiently to justify a jury inference of their truth."

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**PHASES OF AN ESPIONAGE
INVESTIGATION**



U.S. Supreme Court Decisions

Cash vs. U.S. (1959) ... "The required corroboration
is corroboration of the truth or trustworthiness of the
confession..."

**PHASES OF AN ESPIONAGE
INVESTIGATION**



**PHASES OF AN ESPIONAGE
INVESTIGATION**



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**PHASES OF AN ESPIONAGE
INVESTIGATION**



**PHASES OF AN ESPIONAGE
INVESTIGATION**



**PHASES OF AN ESPIONAGE
INVESTIGATION**



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**PHASES OF AN ESPIONAGE
INVESTIGATION**



**WHAT MAKES ESPIONAGE
CASES SO DIFFICULT TO
WORK?**

Worst case scenario...



**WHAT DO WE NEED
TO
PROVE?**

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ESPIONAGE...

**ELEMENTS
OF THE
CRIME**

**STATUTES GENERALLY
USED TO PROSECUTE
ESPIONAGE**

50 U.S.C. s783(b)

18 U.S.C. s794(a) or (c)

50 U.S.C. s783(b)

- ☐ Unauthorized Disclosure
- U.S. Government employee
- Who knowingly transmits
- Classified information
- To a foreign nation (or agent thereof)

50 U.S.C. s783(b)

- ☐ Unauthorized Disclosure
- Up to ten years in prison
- Maximum \$10,000 fine
- Ten year statute of limitations

18 U.S.C. s794(a)

- ☐ Espionage Statute
 - Transmittal...of
 - National defense information...to
 - An Agent of a foreign power...with
 - The Intent to injure the U.S. or aid the foreign power
- (all elements of the statute must be met)

18 U.S.C. s794(a)

- ☐ Espionage Statute
- No statute of limitations
- Death or life imprisonment
- Criminal forfeiture provisions
- "Son of Sam" provision

**SATISFYING THE
ELEMENTS OF THE CRIME**

(what do we do?)

**ELEMENTS REQUIRING
CORROBORATION**

➤
➤
➤

**KEYS TO SATISFYING THE
ELEMENTS**

Fix Guilt...

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SATISFYING THE ELEMENTS

☐ - Key Questions

Y
Y
Y
Y
Y

ELEMENT - TRANSMITTAL

☐

Y
Y
Y
Y

ELEMENTS - TRANSMITTAL

☐

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**ELEMENT - NATIONAL
DEFENSE INFORMATION**

☐

Y
Y
Y
Y

**ELEMENT - NATIONAL
DEFENSE INFORMATION**

☐ National Defense Info (NDI)...what is it?

Y
Y
Y
Y

**ELEMENT - NATIONAL
DEFENSE INFORMATION**

☐

Y
Y
Y
Y

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**ELEMENT - INJURE U.S. OR
AID FOREIGN NATION**

☐

Y
Y
Y

**ELEMENT - INJURE U.S. OR
AID FOREIGN NATION**

☐ Key Concepts

Y
Y
Y

**ELEMENT - INJURE U.S. OR
AID FOREIGN NATION**

☐ Key -

Y
Y
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**ELEMENT – INJURE U.S. OR
AID FOREIGN NATION**

☐ Key –

Y
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**ELEMENT – INJURE U.S. OR
AID FOREIGN NATION**

☐ Key –

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**ELEMENT – INJURE U.S. OR
AID FOREIGN NATION**

☐ Key –

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Demonstrating the Existence of
a

☐ Key Concepts

Y
Y
Y
Y

ESPIONAGE...

*Objectives of the Investigation
Elements of the Crime
Satisfying the Elements of the Crime*

QUESTIONS?

Intelligence Authorization Acts

- EO 12333
- 811
- 603
- 2.5
- Third Agency Rule

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Predication

Legal Issues

- Do you have PC? (Get it in writing!)
- Who has the lead?
- Coordinate with outside agencies – document!
- Do not let victim agencies lead!
- Joint interviews?
- Third agency rule – document authority to disseminate.

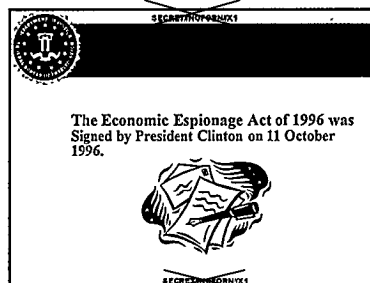
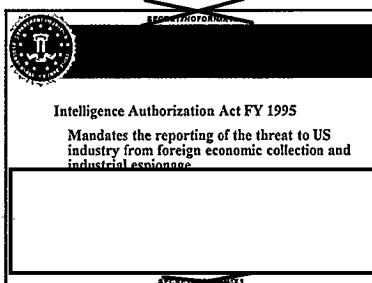
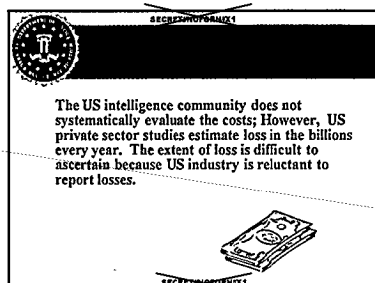
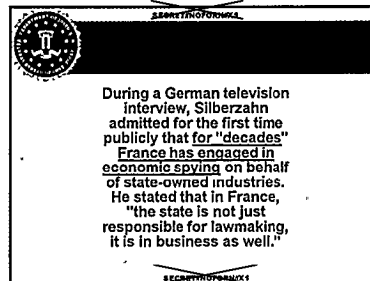
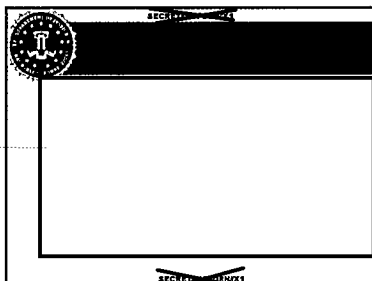
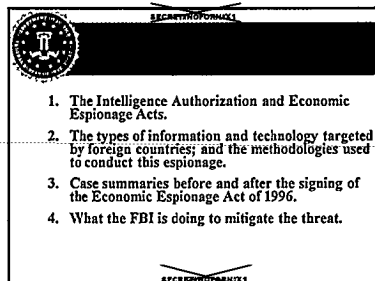
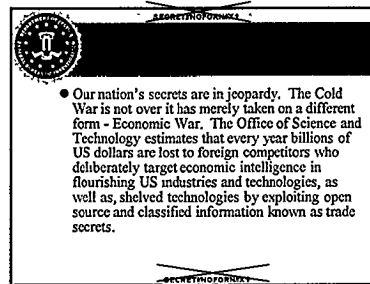
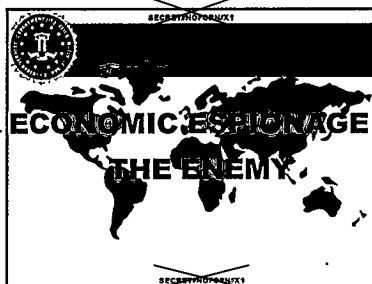
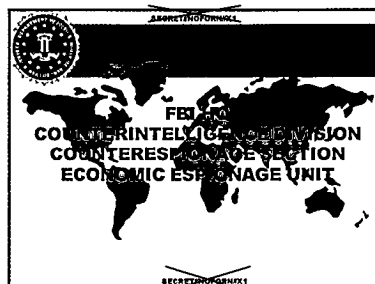
Legal Issues Continued...

- CI language versus criminal.
- Protect Source Information!
- What is written is discoverable.
- Do not collect under a PI what you need an FI to get. Don't let another agency do this.
- Minimize that which is not CI.
- Other issues ...

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1. Economic espionage
Title 18 U.S.C., Section 1831

- "Economic Espionage is (1) whoever knowingly performs targeting or acquisition of trade secrets to (2) knowingly benefit any foreign government, foreign instrumentality or foreign agent."

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2. Theft of Trade Secrets
Title 18 U.S.C., Section 1832

- Commonly referred to as Industrial Espionage.
- "Theft of trade secrets is (1) whoever knowingly performs targeting or acquisition of trade secrets or intends to convert a trade secret to (2) knowingly benefit anyone other than the owner."

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Territorial Limits:

- EEA protects against theft that occurs either (1) in the United States, or (2) outside the United States and
- (3) an act in furtherance of the offense was committed in the United States, or (4) the violator is a US person or organization.

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Criminal Penalties:

- Section 1831 - Economic Espionage
 - Foreign Beneficiary.
 - Individual fine: 15 years/\$500,000 maximum.
 - Organizational fine: \$10 million maximum
- Section 1832 - Theft of Trade Secrets
 - Regardless of Beneficiary.
 - Individual fine: 10 years/Less than \$500,000 maximum
 - Organizational fine: \$5 million maximum.

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1. Trade Secrets
2. Foreign Agent
3. Foreign Instrumentality
4. Owner

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- Financial,
- Business,
- Scientific,
- Technical,
- Economic,
- Critical Technologies,
- Proprietary Economic
- Engineering information including

- Patterns,
- Plans,
- Compilations,
- Program devices,
- Formulas,
- Designs,
- Prototypes,
- Methods,

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- Techniques,
- Processes,
- Procedures,
- Programs, or Codes; whether,
- Tangible or Intangible; and,
- Whether or How Stored,

- Compiled or Memorialized;
- Physically,
- Electronically,
- Graphically,
- Photographically or
- In writing.

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- That the OWNER has taken reasonable measures to PROTECT and
- Derives INDEPENDENT ECONOMIC VALUE from not being generally known, or readily ascertainable, by the public.

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- Foreign Agent
 - Any officer, employee, proxy, servant, delegate, or representative of a foreign government.
- Foreign Instrumentality
 - Any agency, bureau, ministry, component, institution, or association;
 - Any legal commercial or business organization, corporation, firm, or entity;
 - Substantially owned, controlled, sponsored, commanded, managed or dominated by a foreign government.

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• Owner

— (1) a person or entity in whom or in which rightful legal or (2) equitable title to or (3) license in, the trade secret is reposed.

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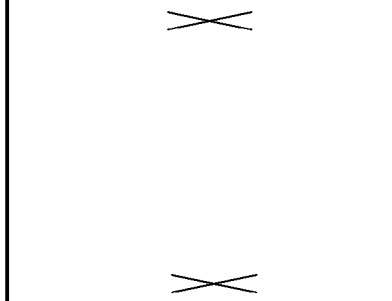
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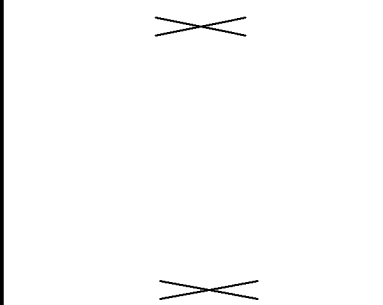


• Vast array of technologies - US proprietary and technical information, and products.



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- Requests for information through unsolicited e-mails or letters.
- Requests for open-source information or research.
- Posting questions on listserv (an e-mail based discussion group set up by topic of interest).
- Exploiting multinational conferences, business information exchanges, or joint ventures.
- None-attributable collection.

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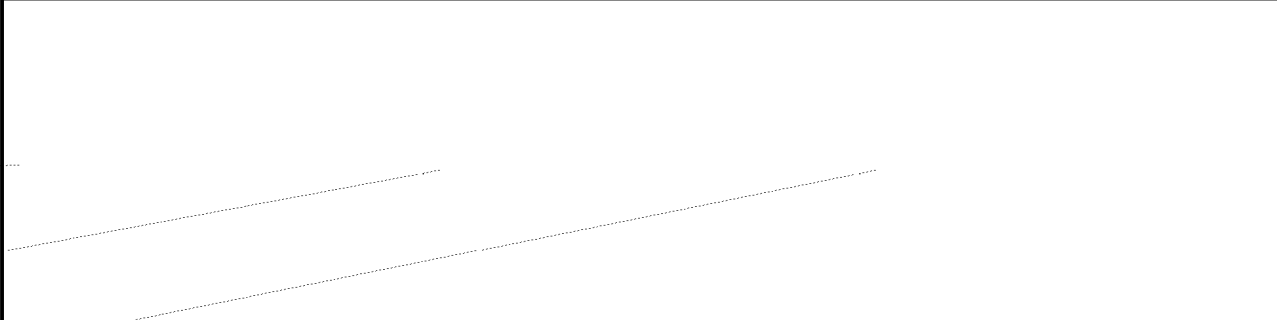
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- Steal, conceal, or carry away by fraud, artifice, or deception;
- Copy, duplicate, sketch, draw, photograph, download, upload, alter, destroy, photocopy, replicate, transmit, deliver, send, mail, communicate, or convey; and
- Receive, buy, or possess a trade secret, knowing the same to have been stolen or appropriated, obtained, or converted without authorization.

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1. Recognize there is a real threat.
2. Identify and value trade secrets.
3. Implement a definable plan for safeguarding trade secrets.
4. Physically secure and limit access to trade secrets.
5. Confine intellectual knowledge.
6. Provide ongoing security training to employees

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**Pre-Economic Espionage Act of 1996
Title 18 U.S.C.
Section 1831 and 1832**

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- Harold Worden retired from Eastman and developed his own consulting firm. Worden hired many former Eastman employees and stole considerable amounts of trade secrets and proprietary information in which he attempted to Eastman rival.
- Worden was charged with one count of Title 18 U.S.C. Section 2314 (Interstate Transportation of Stolen Property).
- Worden pled guilty and was sentenced to one-year imprisonment, three months of home confinement, three years probation, and a \$30,000 fine.

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**Post-Economic Espionage Act of 1996 Title 18 U.S.C.
Section 1831 and 1832**

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- In November 2001, the FBI arrested Fei Ye and Ming Zhong after they attempted to board a flight to China with trade secrets estimated over \$71 million from Sun Microsystems, Transmeta Corporation, Trident Microsystems, and NEC Electronics, all located in the Silicon Valley, California.
- On December 4, 2002, Ye and Zhong were indicted on ten counts of Title 18 U.S.C. Section 1831 and 1832, Title 18 U.S.C. Section 2314 Foreign Transportation of Stolen Property, Title 18 U.S.C. Section 371 Conspiracy, and Title 18 U.S.C. Section 2 Aiding and Abetting.

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- In May 2001, two Japanese researchers, Takashi Okamoto and Hiroaki Serizawa, were charged with conspiracy to commit violations of the Economic Espionage Act of 1996. They committed theft of genetic materials from the Cleveland Clinic Foundation in Cleveland, Ohio, and sent them to Japan.
- On April 21 2003, Federal District Court, Akron, Ohio, Serizawa, pled guilty to one count of perjury in return for the industrial espionage charge being dropped. Federal prosecutors are negotiating with the Japanese government for the extradition of Okamoto to the U.S.

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Supervisors: Scandal Alerts Training Coordinator

Intelligence Assistance Analyst



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The FBI must do its part to mitigate the economic espionage threat.

➤ Competitive business information collection will intensify.

➤ Private industry and the FBI will continue to face challenges of distinguishing legitimate collection activities from illegal transfer of trade secrets.

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What did she say?

QUESTIONS?

Thank you.

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Espionage

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ON 01-18-2012

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 02/28/2007

To: All Divisions

Attn: ADIC/SAC
CT Program Manager
FCI Program Manager
CYBER Program Manager
CT Program Coordinator
FCI Program Coordinator
CYBER Program Coordinator
CDC

Director's Office

Attn: Corporate Policy Office

Records Management

Attn: FBIHQ, Manuals Desk
Room 10471

From: National Security Branch

Contact: SSA [REDACTED]

Approved By: [REDACTED]

Drafted By:

Case ID #: (U) [REDACTED] (Pending)

Title: (U) PROCEDURAL AND OPERATIONAL ISSUANCES;
NATIONAL SECURITY BRANCH;
CLARIFICATION OF POLICY REGARDING DATE OF
INITIATION OF A FULL INVESTIGATION WHEN
CONVERTED FROM A PRELIMINARY INVESTIGATION

Synopsis: (U) To provide that, when a preliminary national security investigation is converted to a full national security investigation, the date of initiation of the full investigation is the conversion date, not the date that the preliminary investigation was initiated.

(U)

~~(S)~~

~~Derived From : G-3~~
~~Declassify On: 02/09/2032~~

~~SECRET~~

~~SECRET~~

To: All Divisions From: National Security Branch
Re: (U) [REDACTED] 02/28/2007

b7A

Reference: (U) 66F-HQ-A1335919 Serial 282

- (U) ~~(S)~~ Details: The referenced serial, dated 12/23/2003, provided interim policy implementing the Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG), which became effective 10/31/2003. Under a heading entitled "Preliminary and Full Investigations opened prior to 10/31/2003," this EC provided, in part: "the initiation date of a Full Investigation that was converted from a Preliminary Investigation is the date of initiation of the Preliminary Investigation (rather than the date of the conversion)."
- (U) ~~(S)~~ This particular policy statement has resulted in confusion and unintended consequences relating to preliminary investigations and full investigations opened after 10/31/2003. Specifically, confusion has arisen with regards to the required annual summary letterhead memorandums (LHMs), and potential Intelligence Oversight Board (IOB) violations for late submission of annual LHMs.
- (U) ~~(S)~~ In order to clarify this matter, for all preliminary and full national security investigations opened after 10/31/2003, when a preliminary national security investigation is converted to a full national security investigation, the date of initiation of the full investigation is the conversion date, not the date that the preliminary investigation was initiated. Accordingly, an annual summary LHM will be due one year from the conversion date.
- (U) ~~(S)~~ Since the NSIG are silent as to the initiation date of a full investigation when converted from a preliminary investigation, this determination can be set by the above policy. Please bring this clarification to the attention of all personnel working national security investigations.

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DATE: 01-18-2012
CLASSIFIED BY 65179/DMH/BAW/STP/bls
REASON: 1.4 (c)
DECLASSIFY ON: 01-18-2037

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 06/01/2007

To: All Divisions

Attn: Manuals Desk
Corporate Policy Office
ADIC
SAC
ASAC
CDC

From: General Counsel
National Security Law Policy and Training Unit
Contact: [REDACTED]

Approved By: [REDACTED]

Drafted By: [REDACTED]: bls

Case ID #: (U) [REDACTED] (Pending)
(U)

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b7C
b7A
b7E

Title: (U) COMPREHENSIVE GUIDANCE ON
[REDACTED]

Synopsis: (U) To provide comprehensive guidance on the use,
requirements, and reporting of [REDACTED]

(U) ~~Derived From : G-3~~
~~Declassify On: 03/07/2032~~

Administrative: (U) Where noted, the ECs cited in this EC are
available on the [REDACTED]

Enclosure(s): (U) [REDACTED]

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Details: (U) [REDACTED]
[REDACTED]

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~~SECRET~~

To: All Divisions From: General Counsel
Re: (U) [REDACTED] 06/01/2007

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(U) Types of Information Acquired from [REDACTED]

(U) Telephone and Electronic Communication Records

(U) Under the Electronic Communications Privacy Act, 18 U.S.C. §2709, the FBI can obtain telephone and email subscriber records, as well as toll billing records information¹ and

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To: All Divisions From: General Counsel
Re: (U) [REDACTED] 06/01/2007

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electronic communication transactional records² from telephone companies and internet service providers if the information is relevant to an international terrorism or counterintelligence investigation. [REDACTED]

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(U)

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(U)

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(U) Financial Records

(U) Under the Right to Financial Privacy Act, 12 U.S.C. §3414(a)(5)(A), the FBI can obtain the records of financial institutions³ if relevant to an international terrorism or

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³ (U) Title 31 U.S.C. § 5312(a)(2) lists those financial institutions that apply to 12 U.S.C. §3414 as: insured banks; commercial banks or trust companies; private bankers; an agency or branch of a foreign bank in the United States; credit unions; thrift institutions; brokers or dealers registered with the SEC; brokers or dealers in securities or commodities; investment bankers or investment companies; currency exchanges; issuers, redeemers or cashiers of travelers' checks, checks, money orders; operators of credit card systems; insurance companies; dealers in precious metals, stones, or jewels; pawnbrokers; loan or finance companies; travel agencies; licensed senders of money or any other person who engages as a business in the transmission of funds; telegraph companies; businesses engaged in vehicle sales, including automobile, airplane, and boat sales; persons involved in real estate closings and settlements; US Postal Service; agencies of US/state/local government carrying out any of foregoing; casinos (with certain restrictions); any businesses similar to the above list as determined by the

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To: All Divisions From: General Counsel
Re: (U) [REDACTED] 06/01/2007

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counterintelligence investigation. The statute allows the FBI to obtain any information or record "pertaining to a customer's relationship with the financial institution."⁴ Although the definition of financial institution in 12 U.S.C. §3414 is broad, as a matter of policy, the records sought from such institutions must be financial in nature. For example, NSLs should not be used to obtain medical records from an insurance company, but only those financial records the company may possess.

(U) Credit Information

(U) Under the Fair Credit Reporting Act, 15 U.S.C. §1681u(a) and (b), the FBI can obtain a list of financial institutions and consumer identifying information from a credit reporting company if relevant to a counterintelligence or international terrorism investigation. Section 1681u (a) allows the FBI to obtain from credit reporting agency records the names of all financial institutions at which an individual maintains or has maintained an account, and, pursuant to 1681(b), the person's name, address, former addresses, place of employment, and former places of employment. Note that a combination 1681u(a) and 1681u(b) NSL, with cover EC, is now available on the NSLB website. This NSL can be used when requesting both the list of financial institutions and consumer identifying information from a credit reporting company.

(U) Full Credit Reports for International Terrorism Cases

(U) The Fair Credit Reporting Act, 15 U.S.C. §1681v, authorizes the FBI to obtain a full credit report pursuant to an NSL if necessary to the conduct of an international terrorism investigation. Note, this provision does not authorize the FBI to obtain full credit reports sought for counterintelligence investigations, unless such investigation is related to international terrorism.

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⁴ (U) See 12 U.S.C. § 3401(2).

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To: All Divisions From: General Counsel
Re: (U) [REDACTED] 06/01/2007

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Standard for Issuing [REDACTED]

(U)

X

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[REDACTED]
[REDACTED] 18 U.S.C. § 2709 requires that the information be "relevant to" an authorized national security investigation, while 15 U.S.C. § 1681u of FCRA and 12 U.S.C. § 3414 of RFPFA require a certification that the information is "sought" for a national security investigation. Although in practice a similar determination is made, drafters and reviewers of NSLs should be aware of the differing language as the model NSLs contain the appropriate statutory language for each type of NSL.

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⁷ (U) Federal Rules of Evidence, Rule 401.

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To: All Divisions From: General Counsel
Re: (U) [REDACTED] 06/01/2007

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To: All Divisions From: General Counsel
Re: (U) [REDACTED] 06/01/2007

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Legal Review Required



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To: All Divisions From: General Counsel
Re: (U) [REDACTED] 06/01/2007

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Who May Approve an [REDACTED]

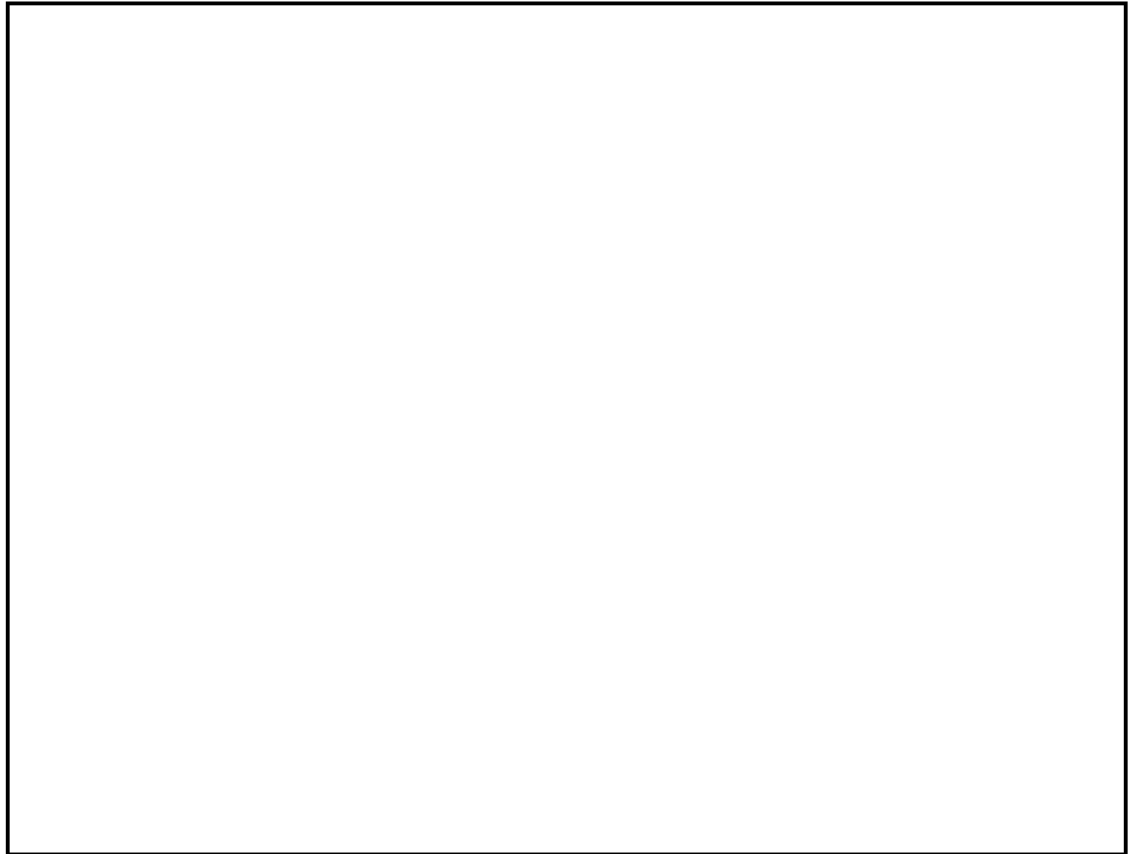
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~~SECRET~~

To: All Divisions From: General Counsel
Re: (U) [REDACTED] 06/01/2007

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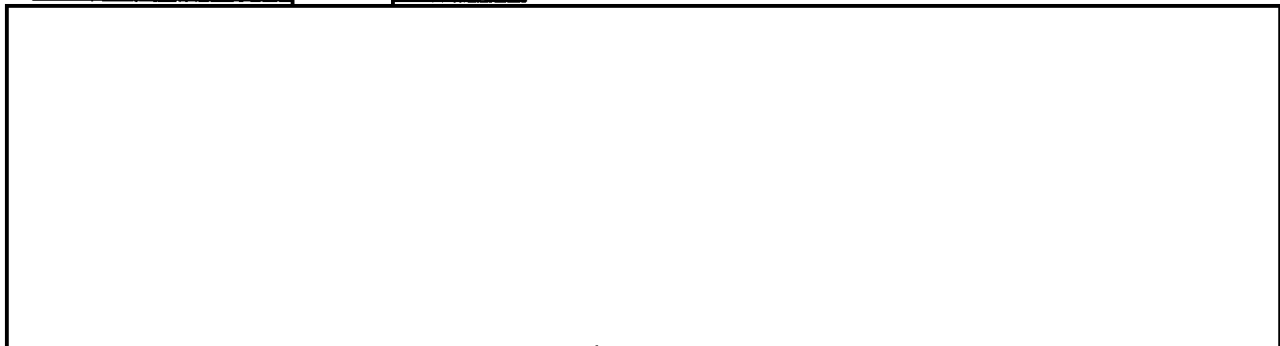
b7E

[REDACTED] Approval Process



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Models on the [REDACTED] Website



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To: All Divisions From: General Counsel
Re: (U) [REDACTED] 06/01/2007

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Cover EC

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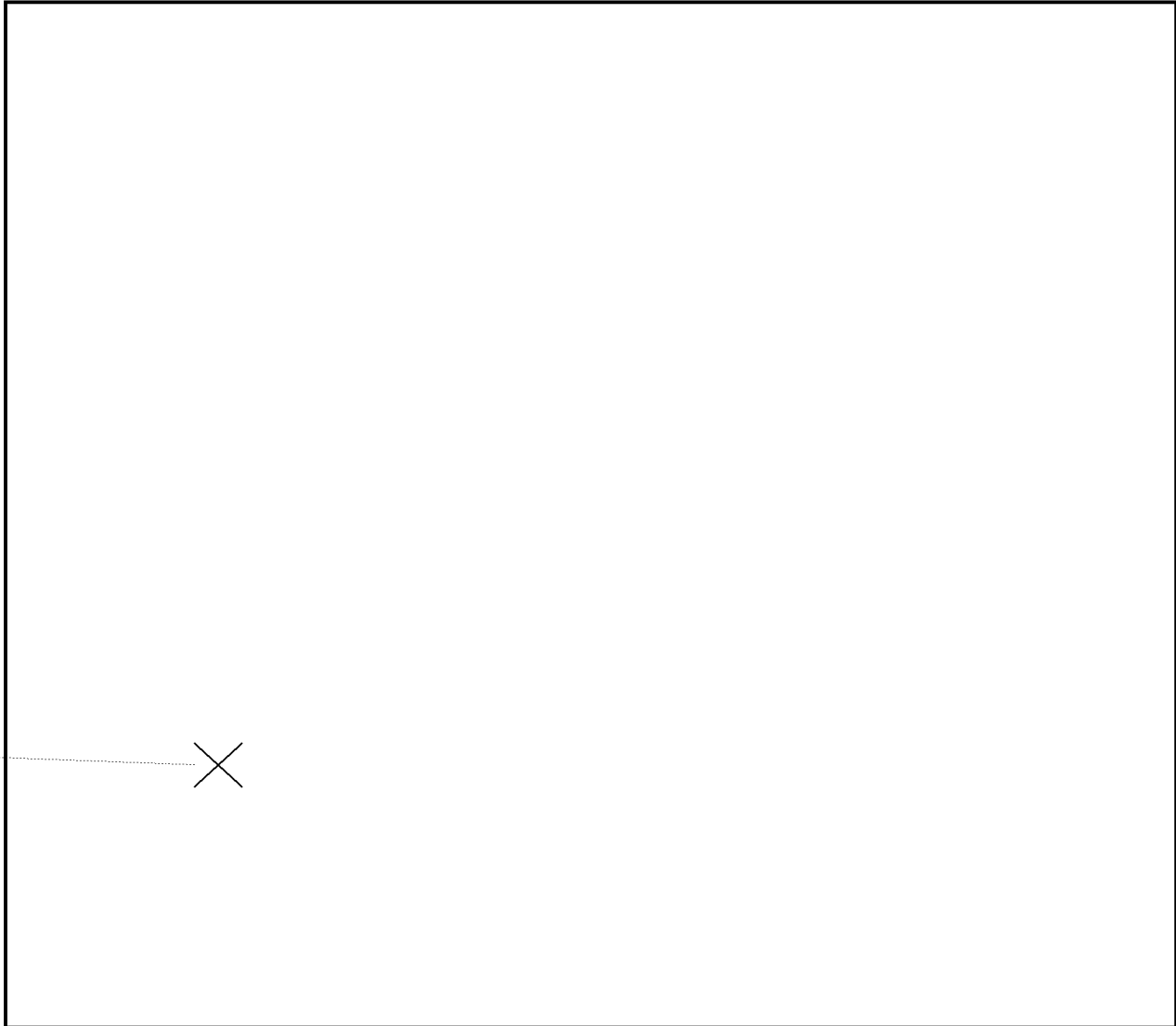
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To: All Divisions From: General Counsel
Re: (U) [REDACTED] 06/01/2007

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Need for Adequate Detail in the [REDACTED] Cover EC



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(U)

~~X~~

Investigative Case File Number



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To: All Divisions From: General Counsel
Re: (U) [REDACTED] 06/01/2007

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Non-Disclosure Certification

(U) Prior to the USA PATRIOT Improvement and
Reauthorization Act of 2005 (PATRIOT Act IRA), non-disclosure

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To: All Divisions From: General Counsel
Re: (U) [REDACTED] 06/01/2007

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[REDACTED]

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Reporting Paragraph

[REDACTED]

(U)

~~X~~

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~~SECRET~~

To: All Divisions From: General Counsel
Re: (U) [REDACTED] 06/01/2007

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[REDACTED]

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The [REDACTED]

[REDACTED]

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Recent Changes in [REDACTED] Language as a Result of the PATRIOT Act [REDACTED]

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[REDACTED]

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To: All Divisions From: General Counsel
Re: (U) 06/01/2007

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Retention of Copies



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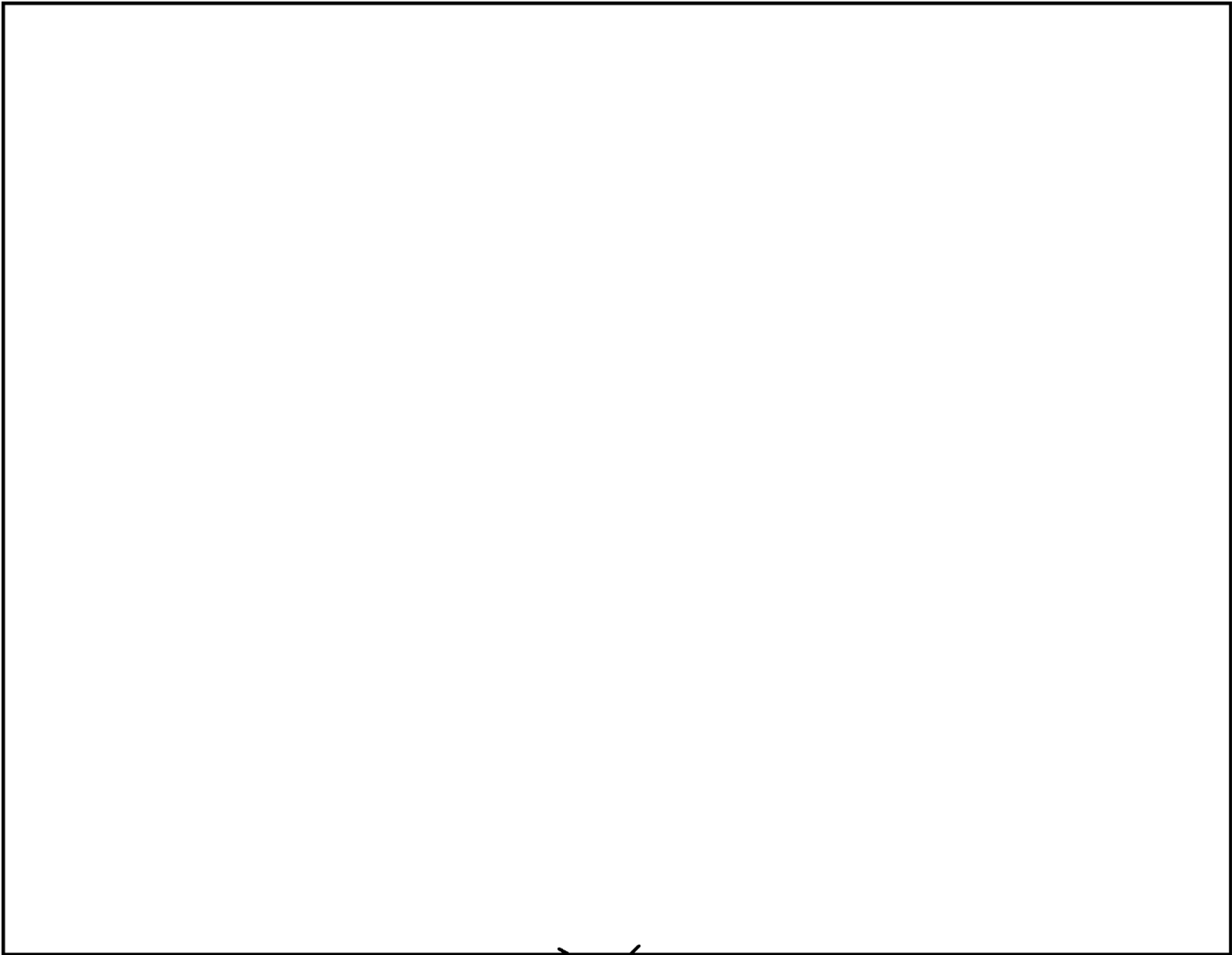
To: All Divisions From: General Counsel
Re: (U) [REDACTED] 06/01/2007

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Handling of [REDACTED] -Return Information



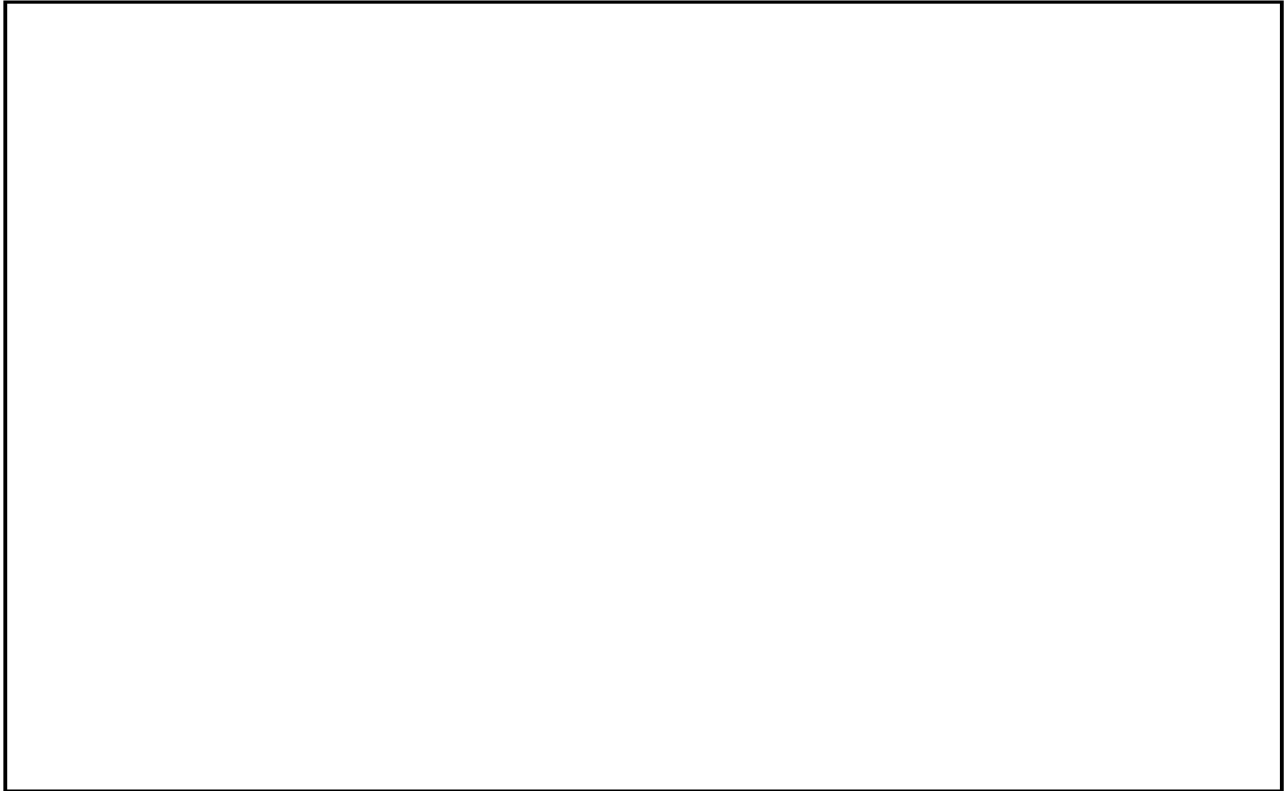
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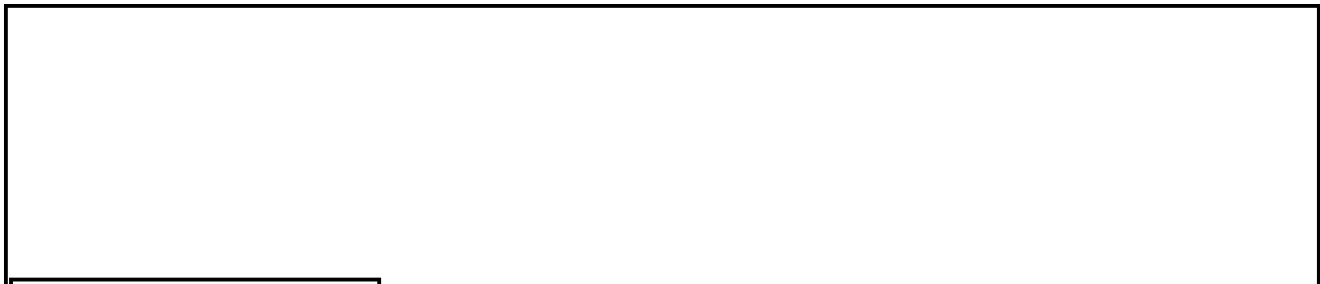
To: All Divisions From: General Counsel
Re: (U) [REDACTED] 06/01/2007

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Dissemination of [REDACTED] -Return Information



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[REDACTED] FCRA, 15 U.S.C. §1681u, the statute authorizing the collection of limited credit information, permits dissemination to other federal agencies as may be necessary for



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To: All Divisions From: General Counsel
Re: (U) [REDACTED] 06/01/2007

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the approval or conduct of a foreign counterintelligence investigation or where the information concerns a person subject to the Uniform Code of Military Justice, as may be necessary for the conduct of a joint FCI investigation. There are no special statutory rules for dissemination of full credit reports, FCRA, 15 U.S.C. §1681v.

Use of [REDACTED] Return Information

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Prohibition on Use of [REDACTED]

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~~SECRET~~

To: All Divisions From: General Counsel
Re: (U) [REDACTED] 06/01/2007

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[REDACTED]

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relating to the emergency." In these circumstances, the provider must have adequate information for a determination that an emergency exists. Compliance with requests of this nature is purely voluntary. If the provider refuses to provide the requested information, the FBI cannot compel its production under 18 U.S.C. § 2702.¹³ The information that may be obtained pursuant to 18 U.S.C. § 2702 includes both the content of communications (section (b)(8)) and customer records (section (c)(4)). See [REDACTED]

[REDACTED]

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[REDACTED] in accordance with 18 U.S.C. § 2702.

[REDACTED]

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(U) [REDACTED]

[REDACTED]

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[REDACTED] The emergency disclosure provision of 18 U.S.C. § 2702 does not apply to RFPA- or FCRA-protected information.

Classification Issues

[REDACTED]

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To: All Divisions From: General Counsel
Re: (U) [REDACTED] 06/01/2007

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Asset [REDACTED]

(S)

X

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Cases Exempted from ACS Uploading

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To: All Divisions From: General Counsel
Re: (U) [REDACTED] 06/01/2007

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Potential IOBs Regarding [REDACTED]

(S)

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(U)

Reimbursement Policy for [REDACTED] Return Information

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To: All Divisions From: General Counsel
Re: (U) [REDACTED] 06/01/2007

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Questions and Additional Information

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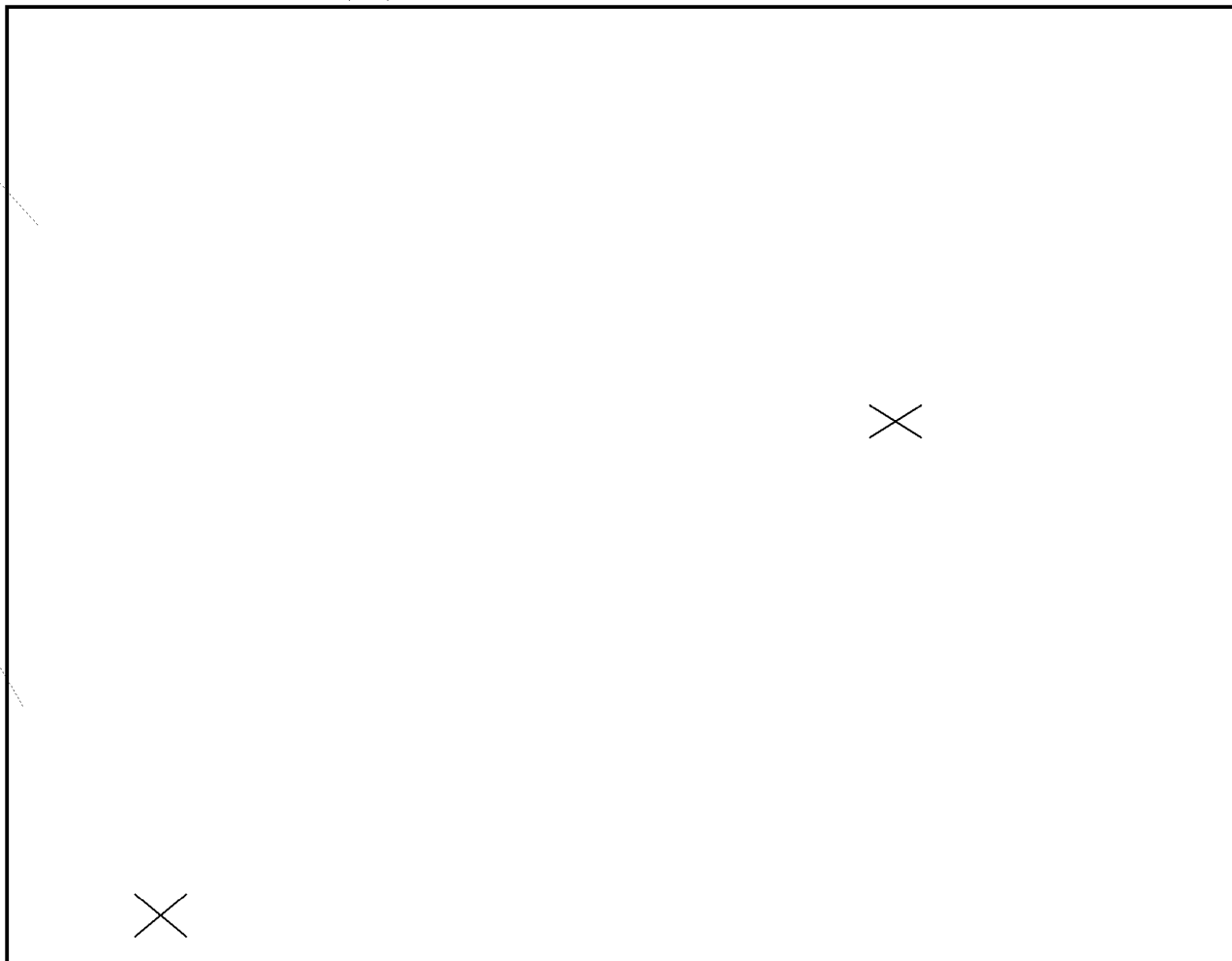
8a.

~~SECRET~~//ORCON, NOFORN//20311231

(U) ~~Means of Effecting Various Forms of
Electronic Surveillance and Physical Searches~~ (S)

These descriptions, filed March 22, 2007 under Docket Number 07-474, are the third update to the Standard Descriptions of Means of Electronic Surveillance and Manner of Physical Search originally filed with the FISA Court on June 13, 2005. The Government will incorporate by reference the most recent descriptions on file with the Court in its applications. Those descriptions will apply to searches or surveillances authorized in that application for the entire time period authorized, even if subsequent descriptions are filed during that time.

(U) ~~Electronic surveillances~~ (S)



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~~Derived from: Submission to the FISA Court filed on March 22, 2007, "IN RE CERTAIN FBI APPLICATIONS FOR ELECTRONIC SURVEILLANCE AND PHYSICAL SEARCH."~~

~~Declassify on: December 31, 2031~~

~~SECRET~~//ORCON, NOFORN//20311231

~~SECRET~~//ORCON, NOFORN//20311231

(U)

~~Searches~~ (S)

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~~Electronic surveillance in conjunction with physical search~~ (S)

(S)

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(S)



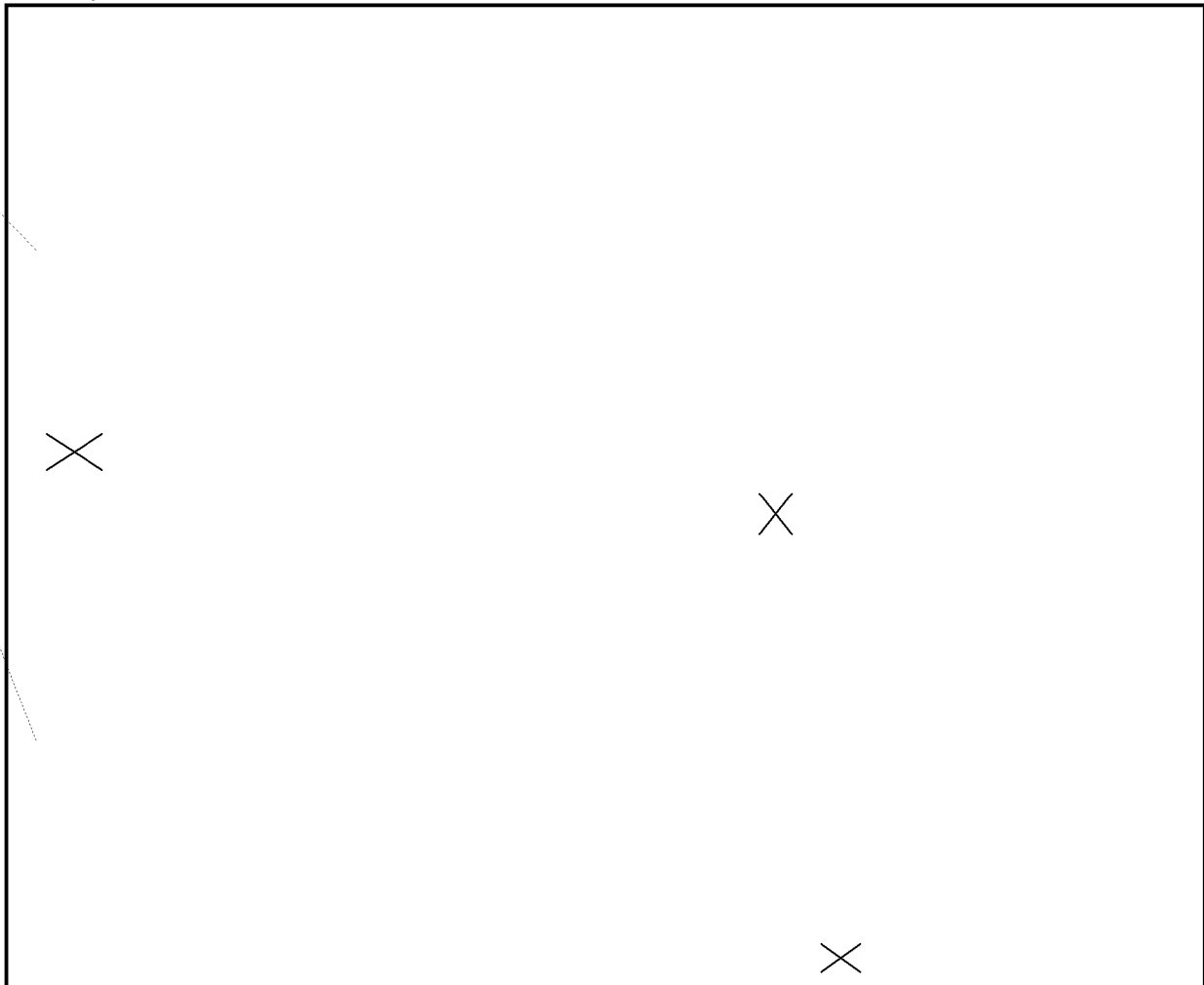
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Explanatory Information on changes made in this filing. (U)

(U)

Physical Search of Computer or Computer Network by Physical Access ~~(S)~~

(S)



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Under 50 U.S.C. § 1824(c)(2)(E) and Rule 16 of the Foreign Intelligence Surveillance Court Rules of Procedure, whenever the Government conducts a physical search it is required promptly to file a return describing the "circumstances and results" of the search.

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DATE: 01-20-2012
CLASSIFIED BY 65179/DMH/BAW/STP/bls
REASON: 1.4 (c)
DECLASSIFY ON: 01-20-2037

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

(Rev. 01-31-2003)

~~SECRET~~

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 12/18/2006

To: Counterintelligence
Counterterrorism
Cyber

Attn: AD, DAD, Section Chiefs
Attn: AD, DAD, Section Chiefs
Attn: AD, DAD, Section Chiefs

From: Office of the General Counsel
National Security Law Branch
Contact: NSLB, 202-324-3951

Approved By:

Drafted By:

:vim

Case ID #: (U)

(Pending)

Title: (U) Legal Advice and Opinions;
Foreign Intelligence Surveillance Act Matters;
Emergency and Expedited FISA Requests

Synopsis: (U)

(U)

~~Derived From : Multiple Sources
See Classification Authority Reference
Section.
Declassify On: 25X1~~

Classification Authority Reference: (U) Attorney General
Guidelines for FBI National Security Investigations and Foreign
Intelligence Collection; Internal FBI policies.

Details: (U)

(U)

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ACLURM043385

FBI042285

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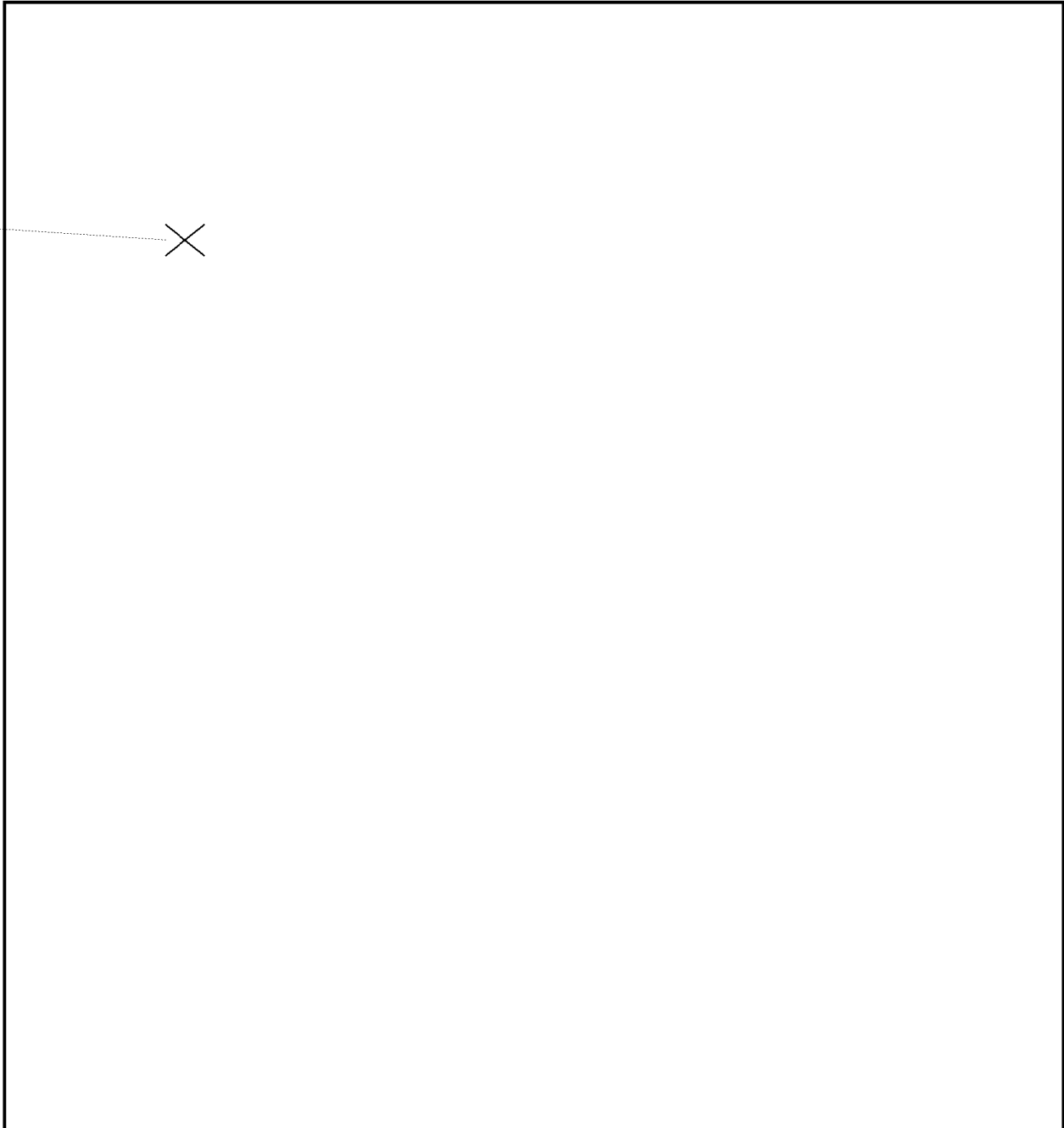
To: Counterintelligence From: Office of the General Counsel
Re: (U) [REDACTED], 12/18/2006

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(U) I. EA Process



(U)

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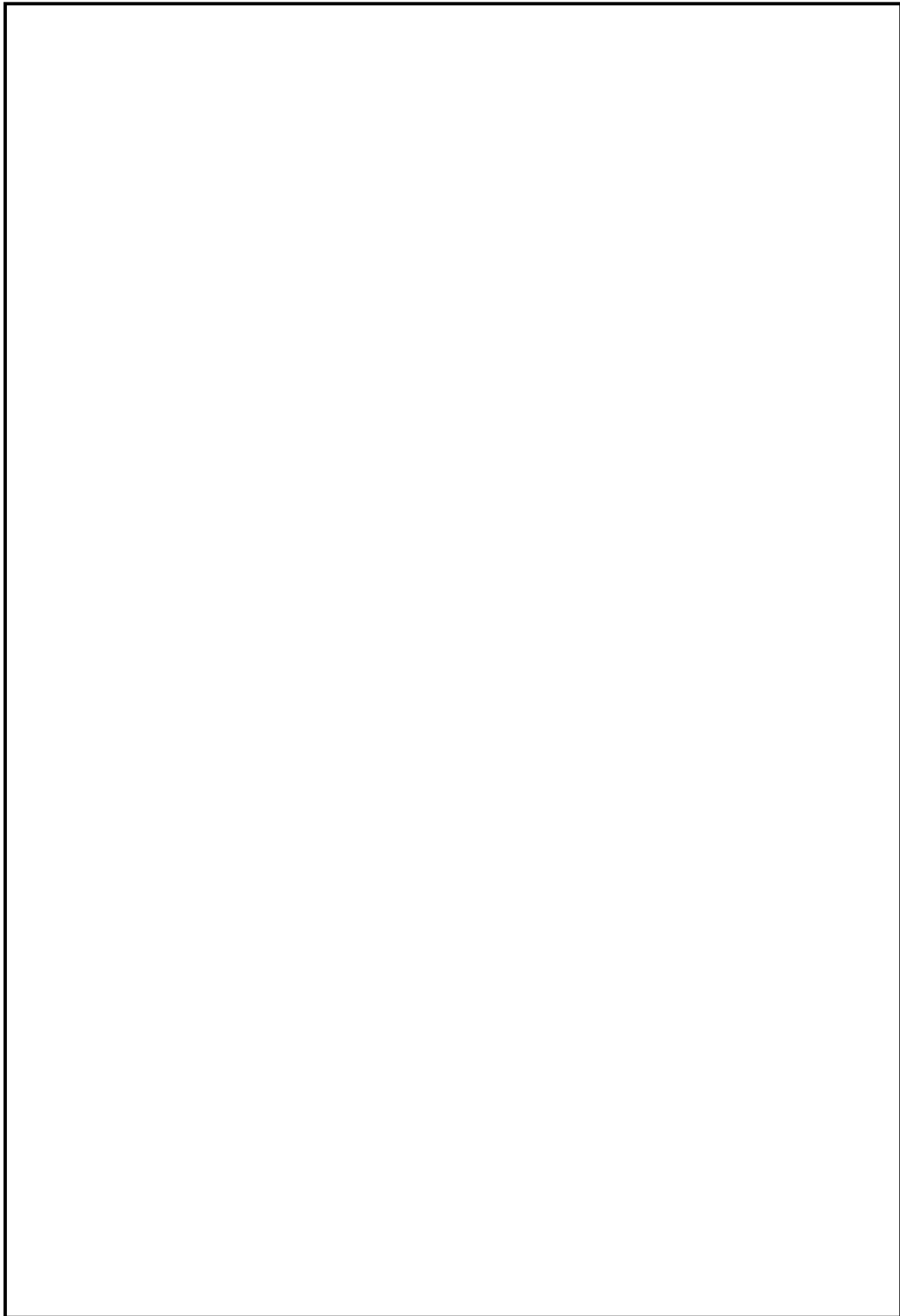
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~~SECRET~~

To: Counterintelligence From: Office of the General Counsel
Re: (U) , 12/18/2006

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~~SECRET~~

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ACLURM043387

FBI042287

~~SECRET~~

To: Counterintelligence From: Office of the General Counsel
Re: (U) [REDACTED] 12/18/2006

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~~SECRET~~

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ACLURM043388

FBI042288

~~SECRET~~

To: Counterintelligence From: Office of the General Counsel
Re: (U) [REDACTED], 12/18/2006

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⁴ (U) As of the date of this document, the contact
information is: [REDACTED]
[REDACTED]
[REDACTED]

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~~SECRET~~

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~~SECRET~~

To: Counterintelligence From: Office of the General Counsel
Re: (U) [REDACTED], 12/18/2006

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(U)

II. Expedite Process

(U)

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(U)

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~~SECRET~~

To: Counterintelligence From: Office of the General Counsel
Re: (U) [REDACTED] 12/18/2006

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(U)

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(U)

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(U)

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~~SECRET~~

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ACLURM043391

FBI042291

~~SECRET~~

To: Counterintelligence From: Office of the General Counsel
Re: (U) [REDACTED], 12/18/2006

b7A

~~LEAD(s)-:~~

Set Lead 1: (Action)

ALL RECEIVING OFFICES

(U) Distribute and comply with this guidance as appropriate.

cc: [REDACTED]

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♦♦

~~SECRET~~

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ACLURM043392

FBI042292

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PROBABLE CAUSE & FISA - SUMMARY

Probable Cause = Fair Probability

The Supreme Court described probable cause as a practical, nontechnical concept which deals with probabilities -- not hard certainties -- is derived from the totality of the circumstances in a factual situation. Probable cause is less demanding than the evidentiary standards of: - beyond a reasonable doubt, - preponderance of the evidence - or prima facie case -- **all that is required to establish probable cause is a "Fair Probability" that the asserted contention is true.** See, Illinois v. Gates, 462 U.S. 213 (1983),

Foreign Power - FISA Requirement A Foreign Power is usually:

- a foreign government, component or entity thereof

or

- a **group** engaged in **international terrorism** or activities in preparation thereof -

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**FBI INVESTIGATIONS OF ESPIONAGE BY PERSONS EMPLOYED BY OR
ASSIGNED TO UNITED STATES DIPLOMATIC MISSIONS ABROAD
PL 101-193,
30 November 1989**

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 01-20-2012 BY 65179/DMH/BAW/STP/bls

Title VI Sec. 603, Subject to the authority of the Attorney General, the FBI shall supervise the conduct of all investigations of violations of the espionage laws of the United States by persons employed by or assigned to United States diplomatic missions abroad. All departments and agencies shall report immediately to the FBI any information concerning such a violation. All departments and agencies shall provide appropriate assistance to the FBI in the conduct of such investigations. Nothing in this provision shall be construed as establishing a defense to any criminal, civil, or administrative action.

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ACLUIRM043406

FBI042306

~~SECRET~~

DATE: 01-20-2012
CLASSIFIED BY 65179/DMH/BAW/STP/bls
REASON: 1.4 (c)
DECLASSIFY ON: 01-20-2037

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

b6
b7C

ESPIONAGE

"Counterintelligence people are the most
paranoid (people) in the world"

Author [redacted]

ESPIONAGE

- Historical Perspective
 - 1917 - Espionage statute passed
 - 1917 - 1946
 - 1947 - 1956
 - 1957 - 1976
 - December, 1976 [Edwin Moore case]
 - 1976 - 2004
 - 1985 - "The Year of the Spy"

THE NATURE OF ESPIONAGE

- | | |
|-----------------------------|--------------------------|
| ■ Conventional Crime | ■ Espionage |
| • Affected parties | • Affected parties |
| • Affected area | • Affected area |
| • Eyewitnesses | • Eyewitnesses |
| • Forensic evidence | • Forensic evidence |
| • Collection of evidence | • Collection of evidence |
| • Perpetrator | • Perpetrator |
| • Arrest | • Arrest |
| • Prosecution | • Prosecution |
| • Witnesses | • Witnesses |
| • Evidence | • Evidence |

ESPIONAGE - Sources

- [redacted] (Bell)
- Defectors (Mitrokhin)
- Foreign personnel (Pitts)
- "Civilian" reports (Walker)
- FBI CI Investigations (Cook)
- Section 811 referrals
- Failed polygraphs - onboard / applicant
- 5-year reinvestigations
- Self-reported (Nesbitt)

THE STATUTES

- 18 U.S.C. 794 (a)
 - Elements of the crime :
 - Whoever,
 - ...with intent to injure the United States or to provide an advantage to the foreign power
 - transmits or attempts to transmit
 - to a foreign power, or agent thereof
 - Information relating to the national defense.

THE STATUTES

- 18 U.S.C. 794 (a)
 - Penalty - Life Imprisonment or death
 - Statute of Limitations - NONE
 - Forfeiture Provision (added 8/27/86)
 - In 18 U.S.C. 793, forfeiture includes only the "fruits" of the crime.
 - In 18 U.S.C. 794, forfeiture includes ANY property used or intended to be used to facilitate the crime.
 - "Son of Sam" Provision for 794 (a)
 - relies on Forfeiture Provision

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THE STATUTES

- 50 U.S.C. 783 (b)
 - Elements of the crime :
 - It shall be unlawful for any officer or employee of the United States...to:
 - communicate in any manner
 - to any person (who is) an agent or representative of a foreign government
 - any information of a kind which shall have been classified by the President
 - as affecting the security of the United States

THE STATUTES

- 50 U.S.C. 783 (b)
 - Penalty - 10 years and/or
 - \$10,000 fine
 - Statute of Limitations - 10 years
 - No Forfeiture Provision
 - No "Son of Sam" Provision

18 USC 794 vs. 50 USC 783

- | | |
|--------------------------|--|
| ■ 18 USC 794 (a) | ■ 50 USC 783 (b) |
| • Prove | • Prove |
| • Intent | • USG employee |
| • Injure US | • Or within 2 yrs |
| • Advantage to for, per | • Delivers classified |
| • Transmit | • Foreign power |
| • Attempt to transmit | • NO need to prove intent |
| • Foreign power | • NO need to address level of classification |
| • Agent thereof | • Weak penalty phase |
| • National defense info | • Easy to prosecute |
| • Secret level preferred | |
| • Strong penalty phase | |
| • "Platinum Platter" | |

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ESPIONAGE :

The Rest of the Story

- Intelligence Authorization Act of 1990,
 - Section 603
 - "...the FBI shall supervise the conduct of violations of the espionage laws of the United States by persons employed by or assigned to United States diplomatic missions abroad."
- Enacted based on the Clayton Lonetree case (1987)

ESPIONAGE:

THE REST OF THE STORY

- Intelligence Authorization Act of 1995
 - Section 811 (c)
 - "...the head of each department or agency ... shall ensure that ... the (FBI) is advised immediately of any information, regardless of its origin ..."
 - "...the (FBI) is consulted with respect to all subsequent actions which may be undertaken ... to determine the source of such loss or compromise ..."
 - "... the (FBI) is given complete and timely access to the employees and records ..."
- Enacted based on the Aldrich Ames case (1994)

ESPIONAGE - PROSECUTIONS

- DoJ COUNTERESPIONAGE SECTION (CES)
 - Makes determination on prosecutive status
 - Will assign CES attorney to serve as lead attorney
 - Will coordinate with National Security AUSAs in local US Attorney offices
- [redacted] of CES has stated he will NOT lose an espionage investigation because:
 - Losing a case will set a PRECEDENT.
 - The psychological aspects of allowing a person to "get away" with the crime will encourage others to attempt it.

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Deleted Page(s)	Page(s)
1	b7E
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