U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 20, 2002

The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On July 26 and August 26, the Department submitted written responses to questions posed by the Committee in your letter of June 13, 2002 on USA PATRIOT Act implementation, co-signed by Congressman John Conyers. The Department was subsequently contacted by staff of the Judiciary Committee seeking additional information on a number of the responses. Enclosed please find responses to those follow-up questions.

Additionally, part of the answer to follow-up question number 11 requires the submission of classified information. As such, the information will be provided to the Committee under separate cover.

Thank you for this opportunity to provide additional information to the Committee on implementation of the USA PATRIOT Act. If we can be of further assistance on this, or any other matter, please do not hesitate to contact this office.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

Enclosure

cc: The Honorable John Conyers, Jr.
Ranking Minority Member

3. Follow-up Question: Under what authority was grand jury information shared prior to PATRIOT? What is the precise meaning/significance of the last sentence of the answer in 3(a)?

Answer: Prior to the PATRIOT Act, grand jury information was shared under Rule 6(e)(3)(A)(ii) which provides that disclosure of "matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made to such government personnel (including personnel of a state or subdivision of a state) as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney's duty to enforce criminal law." In the context of the 9/11 investigation, grand jury information was shared with members of numerous JTTFs around the country who participated in the PENTBOMB investigation as well as the representatives of the various agencies stationed at SIOC. The reason for this is that it is often necessary to disclose grand jury information to those involved in an investigation in order to take necessary follow-up steps to advance the investigation. Among other practical difficulties, however, Rule 6(e)(3)(A)(ii) requires the government attorney to provide the Court in each district with a list of every individual investigator who receives grand jury information from that district. In the context of the 9/11 investigation and other terrorism investigations that are national and international in scope and may involve literally thousands of investigators and dozens of grand juries, this requirement was onerous and a diversion of resources from investigative activity. Section 203 of the PATRIOT Act alleviates many of these practical difficulties.

3(c). Follow-up Question: How many separate grand juries were used?

Answer: Thirty-nine separate grand juries were used.

4. Follow-up Question: What do the notices look like? Please go back and determine the exact time periods requested.

Answer: Notices to the courts supervising the pertinent grand juries are in the form of pleadings filed with the court under seal (as required by Rule 6(e)(3)). The precise requirements of the notice and the time frame in which it was filed vary, depending on the practice in the particular district and the circumstances of the particular grand jury investigation. Attached is a redacted exemplar notice. The courts supervising the grand juries are responsible for supervising the filing of notices and for disciplining any failure to file such notices.

9. Follow-up Question: Any more specifics about the anecdotes provided on the use of section 212?

Answer: High School officials canceled classes, and bomb-sniffing dogs swept through their school, after an anonymous person, claiming to be a student, posted a death threat to

an Internet message board in which he singled out a faculty member and several students to die by bomb and gun. The owner and operator of the Internet message board initially resisted disclosing to federal law enforcement officials the evidence on his computer that could lead to the identification of the threat maker because he had been told that he would be liable if he volunteered anything to the government. Once he understood that the USA PATRIOT Act had created a new emergency provision allowing the voluntary release of information to the government in cases of possible death or serious bodily injury under 18 U.S.C. § 2702(b)(6)(C) and (c)(4), he voluntarily disclosed information that led to the timely arrest of a student at the high school. Faced with this evidence, the student confessed to making the threats. At the time the owner of the message board finally volunteered the information, he disclosed that he had been worried for the safety of the students and teachers at the high school for several days and stated his relief that he could help because of the change in the law.

10. Follow-up Question: Can the practices referred to ensure that pen\traps are not made solely for 1st Amendment activities be made public or otherwise provided to the Committee?

Answer: A great deal of care is given to ensure that an order authorizing the installation and use of a pen register or trap and trace device is not sought solely on the basis of activities protected by the First Amendment. In each case in which an order is sought from the Foreign Intelligence Surveillance Court, the attorney for the government conducts a review of the factual basis underlying the investigation and the request for pen/trap authority. The Attorney General or his designee, the Counsel for Intelligence Policy (the head of Office of Intelligence Policy and Review), personally approves the filing of every application with the Court. A brief statement of facts in each case is then presented to the Court, along with the Government's certification, signed by the individual applicant, that the order is not being sought solely for activities protected by the First Amendment.

11. Follow-up Question: Can the practices used to ensure that applications for orders for the production of tangible things are not made solely for 1st Amendment activities be made public or otherwise provided to the Committee?

Answer: A great deal of care is given to ensure that an order authorizing the production of tangible things is not sought solely on the basis of activities protected by the First Amendment. In each case in which an order is sought from the Foreign Intelligence Surveillance Court, the attorney for the government conducts a review of the factual basis underlying the investigation and the request for section 215 authority. The Director of the FBI or his designee at a rank no lower than Assistant Special Agent in Charge personally approves the filing of every application with the Court. A brief statement of facts in the case is then presented to the Court, along with the Government's certification, signed by the individual applicant, that the order is not being sought solely for activities protected

by the First Amendment.

Follow-up Question: When will the semi-annual report which covers the period of time up until June 30, 2002, and discusses the use of Section 215, be ready? Is it possible for that information to be provided to the Committee at this time?

Answer: The next semi-annual report covering sections 1861-1862 of FISA (access to business records), as amended by section 215 of the USA PATRIOT Act, will be submitted, as a classified report, to the Intelligence and Judiciary committees at the same time that all of our other semi-annual reports will be submitted. Although not required by statute, the Department's practice is to submit the reports covering January 1 - June 30 of a given year, by the end of December of that year. Accordingly, we anticipate providing this semi-annual report regarding business records covering the period January 1, 2002 through June 30, 2002 by December 31, 2002.

The Department is able at this time to provide information pertaining to the implementation of section 215 of USA PATRIOT Act from January 1, 2002 to present (September 13, 2002). That information is classified at the SECRET level and, accordingly, is being delivered to the Committee under separate cover.

17. Follow-up Question: Why was an exact number not provided?

Answer: Law enforcement agents involved in a particular investigation have no operational need to keep track of information concerning whether electronic evidence was obtained from a service provider outside rather than inside the district issuing a warrant. Because law enforcement has no reason to track this information, the Department cannot provide the exact number of search warrants for electronic evidence that have been executed outside the issuing district.

20. Follow-up Questions:

(A) Section 205(c) of PATRIOT requires some specific information on the number of translators employed by FBI, etc.

Answer: The FBI currently employs 403 Language Specialists who are FBI employees serving as full-time translators and interpreters in 25 languages critical to the FBI mission. The funded staffing level for Language Specialists is 446.

In addition, the FBI contracts with 658 Contract Linguists and Contract Monitors in 58 languages to provide surge capabilities in the critical languages and additional language support in less-commonly spoken languages.

The FBI routinely requests language assistance from other Intelligence Community agencies. Competing demands for high volume languages and the

need for linguists to be cleared at the Top Secret level hinders the sharing of linguists from some government, state and local agencies.

Since 09/17/2001, the FBI has received more than 20,000 applications for its Contract Linguist position and more than 2,500 applications for its Special Agent position from individuals claiming a proficiency in both English and a foreign language. On the basis of careful workforce planning, the FBI has been able to selectively screen and expedite the processing of the best qualified candidates in order to meet current and projected FBI needs. The FBI's workforce planning in this area was recently the subject of significant praise by the General Accounting Office within its January 2002 report to Congress, titled, "Foreign Languages, Human Capital Approach Needed to Correct Staffing and Proficiency Shortfalls." The processing of each candidate involves proficiency testing, a polygraph examination, and an FBI-conducted background investigation. Special Agent candidates are also subject to a panel interview. Despite the rigors of this process, thus far in FY 2002 the FBI has brought on board 266 Contract Linguists; 23 Language Specialists, and over 40 Special Agents with at least a professional level proficiency in English and a foreign language. Several hundred more candidates remain at various stages of processing.

Even prior to 09/11/2001, the FBI was actively engaged in the recruitment and processing of individuals claiming both an English and foreign language proficiency for our Special Agent, Language Specialist, and Contract Linguist positions. During the five year period that ended 09/30/2001, the FBI brought on board 122 Special Agents, 445 Contract Linguists, and 144 Language Specialists with a professional-level proficiency or higher in both English and a foreign language.

The FBI will continue to direct its recruitment and applicant processing resources towards those critical skills needed by the FBI, including foreign languages, as it adapts to its evolving investigative mission.

Through extensive recruitment and through careful workforce planning, the FBI has successfully brought on board many of the linguists needed to meet investigative mission requirements. The FBI is currently working with other Department of Justice components, as well as the Intelligence Community, to implement the Law Enforcement and Intelligence-agency Linguist Access (LEILA) system to maximize the use and availability of linguists who are currently on contract to any one of the partner agencies. The LEILA database will store information regarding the proficiency and security clearance levels of linguists currently on contract as independent contractors or through translation companies. Partner agencies who are interested in procuring the services of linguists may then contract for translation services directly through the companies

who are on the GSA Schedule for Language Services.

(B) Section 1008

Answer: The Department submitted the report required by section 1008 of the PATRIOT Act on September 12, 2002 to the Chairmen and Ranking Members of the Senate and House Committees on the Judiciary, the Senate Foreign Relations Committee, and the House Committee on International Relations. On that same day, representatives from the Department and the Foreign Terrorist Tracking Task Force briefed staff of the House Judiciary Committee on the report.

(C) Section 1009

Answer: The Department submitted the report required by section 1009 of the PATRIOT Act on September 13, 2002. Representatives of the Department briefed staff of the House Judiciary Committee on the report on September 12, 2002.

26. Follow-up Question: There is an apparent internal inconsistency in the first paragraph of the answer. It says the Department did not rely on the PATRIOT Act to arrest or detain anyone -- but later say that some of the criminal detentions were for violations of "federal criminal statutes (including some which were created or amended by the Act)." Isn't that some reliance on PATRIOT? What does that paragraph mean?

Answer: 18 U.S.C. § 3142(e) provides the legal authority for the federal courts to order the detention of a criminal defendant pending trial. That statute, which focuses on the risk of flight and the safety of the community, applies to all criminal defendants and was not amended by the USA PATRIOT Act. Accordingly, whether the defendants were charged with violations of the criminal laws as amended by the USA PATRIOT Act or under preexisting criminal laws, the basis for their detention was a federal court order under 18 U.S.C. § 3142(e), not any amendments made by the USA PATRIOT Act relating to pre-trial detention. Moreover, as to criminal defendants, the Department makes public the names of all defendants (except for fugitives) in accordance with the existing rules relating to criminal prosecutions.

As discussed in the initial response to Question 26, the Department relied on preexisting legal authority to detain and withhold the names of aliens being held under the Immigration and Nationality Act pending the completion of their removal proceedings, as well as to detain and withhold the names of persons being held as material witnesses.

Subsequent to enactment of the USA PATRIOT Act, three of the detainees were charged with violations of federal criminal statutes amended or created by the PATRIOT Act.

John Walker Lindh was charged under 18 U.S.C. § 2332. The penalties related to § 2332 were modified by the PATRIOT Act. Richard Reid was also charged under 18 U.S.C. § 2332, as well as 18 U.S.C. § 1993, a new statute created by the PATRIOT Act. This charge under § 1993 was ultimately dismissed by the court. Mohamed Hussein was charged in Boston with operating an unlicensed money transmitting business under 18 U.S.C. §1960. He has been convicted and sentenced.

Attachment to Follow-up Question 4:

IN THE UNITED STATES DISTRICT COURT

FOR THE xxxxxxxxxx DISTRICT

IN RE:	)	**UNDER SEAL**
JOHN DOE NO. 01-246	)	GRAND JURIES NO. 02-1, 02-2, 02-3, 02-4

NOTICE PURSUANT TO RULE 6(e)(C)(iii) OF THE
FEDERAL RULES OF CRIMINAL PROCEDURE

Pursuant to Section 203(a) of the USA PATRIOT Act of 2001, Pub. L. No. 107-56, 115 Stat. 272, 279 (2001), codified as Fed. R. Crim. P. 6(e)(3)(C), the undersigned attorney for the government hereby provides notice to the Court regarding the disclosure to certain Federal departments, agencies, and entities of criminal investigative information that may include "matters occurring before" the above-captioned grand jury regarding xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx and related criminal activity, as follows:

1. Grand juries empaneled in this district have issued subpoenas and engaged in other investigative activities in conjunction with xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx and related criminal activity. To the extent that information relating to the grand juries's activities constitutes "matters occurring before the grand jury" within the meaning of Rule 6(e)(2) of the Federal Rule of Criminal Procedure, it may not be disclosed "except as otherwise provided for" under the Rules. See Fed. R. Crim. P. 6(e)(2).

2. Section 203(a) of the USA PATRIOT Act, which was signed into law on October 26, 2001, amends Rule 6(e)(3)(C)(i) to authorize disclosure of matters occurring before the grand jury:

> (V) when the matters involve foreign intelligence or counterintelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), or foreign intelligence information (as defined in clause (iv) of this subparagraph), 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 official duties.

Fed. R. Crim. P. 6(e)(3)(C)(i)(V).

3. The investigation into the September 11 attacks and related criminal activity involves such "foreign intelligence or counterintelligence"[1] and foreign intelligence information."[2]

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[1] 50 U.S.C. § 401a provides:

> (2) The term "foreign intelligence" means information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.
>
> (3) The term "counterintelligence" means information gathered, and activities conducted, to protect against espionage, other intelligence activities, sabotage, or assassinations conducted by or on behalf of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.

[2] Fed. R. Crim. P. 6(e)(3)(C)(iv)provides:

> In clause (i)(V) of this subparagraph, the term 'foreign intelligence information' means–
>
> (I) information, whether or not concerning a United States person, that relates to the ability of the United States to protect against--
>
> (aa) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;
>
> (bb) sabotage or international terrorism by a foreign power or an agent of a foreign power; or
>
> (cc) clandestine intelligence activities by an intelligence service or

Moreover, the sharing of information developed during the investigation assists a variety of "Federal law enforcement, intelligence, protective, immigration, national defense, [and] national security official[s]" in the performance of their official duties. Consequently, criminal investigative information, which may include matters occurring before grand juries, has been disclosed and will continue to be disclosed to such officials. Of course, an official who receives such information "may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information." Fed. R. Crim. P. 6(e)(3)(C)(iii).

4. The amended rule requires that, "[w]ithin a reasonable time after such disclosure, an attorney for the government shall file under seal a notice with the court stating the fact that such information was disclosed and the departments, agencies, or entities to which the disclosure was made." Id. Unlike the notice required in other contexts, see Fed. R. Crim. P. 6(e)(3)(B), in matters involving these sort of intelligence interests, which may (as in this case) involve literally thousands of Federal law enforcement and other officials, the rule does not require the notice to name each individual official to whom the grand jury information has been disclosed, only their "departments, agencies, or entities."

5. Accordingly, the undersigned attorney for the government hereby notifies the Court that information relating to the above-captioned grand jury investigations, which may

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network of a foreign power or by an agent of foreign power; or

(II) information, whether or not concerning a United States person, with respect to a foreign power or foreign territory that relates to--

(aa) the national defense or the security of the United States; or

(bb) the conduct of the foreign affairs of the United States.

include "matters occurring before the grand jury," has been and will be disclosed to the following Federal departments, agencies, and entities pursuant to Fed. R. Crim. P. 6(e)(C)(i)(V):

(a) Department of Justice (including Federal Bureau of Investigation).

(b) Department of Treasury.

(c) Department of Defense.

(d) Department of State.

(e) Department of Transportation.

(f) Department of Energy.

(g) Postal Inspection Service.

(h) Central Intelligence Agency.

(i) National Security Agency.

(j) National Security Council.

(k) Naval Criminal Investigative Service

(l) Nuclear Regulatory Commission.

(m) Federal Aviation Administration.

(n) Social Security Administration Inspector General.

6. Pursuant to Rule 6(e)(3)(C)(iii), this notice is filed UNDER SEAL.

Respectfully submitted,

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United States Attorney

By: _____
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Assistant United States Attorney