

QUESTIONS AND ANSWERS



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 1, 2005

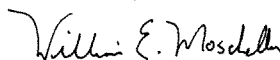
The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find responses to questions posed to FBI Director Robert S. Mueller III, following Director Mueller's appearance before the Committee on May 20, 2004. The subject of the Committee's hearing was "FBI Oversight: Terrorism and Other Topics."

We hope that this information is helpful to you. If we may be of additional assistance in connection with this or any other matter, we trust that you will not hesitate to call upon us.

Sincerely,


William E. Moschella
Assistant Attorney General

Enclosure

cc: The Honorable Patrick J. Leahy
Ranking Minority Member

d. Based upon the application of this provision of law during the period since its passage, are there changes to this statute, including the addition of predicate crimes, which the Congress should consider?

Response:

Sections 201 and 202 of the USA PATRIOT Act are currently scheduled to expire at the end of 2005. The FBI strongly supports making these important statutory provisions permanent. In addition, the FBI would ask Congress to consider amending 18 U.S.C. 2516 to allow for the use of existing electronic surveillance authorities in investigating the full-range of terrorism related crimes. In particular, Congress should consider adding the following predicate offenses to those currently listed in 18 U.S.C. 2516(1): 1) 18 U.S.C. 37 (relating to violence at international airports); 2) 18 U.S.C. 930(c) (relating to an attack on a federal facility with a firearm); 3) 18 U.S.C. 956 (conspiracy to harm persons or property overseas); 4) 18 U.S.C. 1993 (relating to mass transportation systems); 5) an offense involved in or related to domestic or international terrorism as defined in 18 U.S.C. 2331; 6) an offense listed in 18 U.S.C. 2332b(g)(5)(B); and 7) 18 U.S.C. 2332d.

While the few statistics listed in response to questions 83 a and b, above, may be understood to indicate limited use of this new authority and limited value of these new USA PATRIOT Act sections, this would not be correct. In most international terrorism investigations since October 2001, electronic surveillance has been successfully pursued under FISA authority and, therefore, the criminal terrorism predicates under Title 18 were not necessary. Nevertheless, in future investigations in which probable cause regarding connection to a foreign power cannot be as easily established (and thus FISA surveillance is not an option), these new USA PATRIOT Act provisions will permit the use of a federal wiretap in response to significant terrorist threats. The flexibility to use either foreign intelligence collection tools or criminal evidence gathering processes, and to share the results, is an important feature of the USA PATRIOT Act in the war against terrorism.

84. Sections 203(b) and 203(d) of the USA-Patriot Act provide specific authority for the provision of intelligence information acquired in the course of a criminal investigation to elements of the Intelligence Community. Section 901 of the same [A]ct makes such disclosure in most cases mandatory. The following questions pertain to the implementation of these sections.

a. Section 203© of the USA-Patriot Act requires the Attorney General to "establish procedures for the disclosure of information" as provided for in Section 203.

Have such procedures been promulgated? If so, please provide a copy of those procedures to the Committee.

Response:

On 9/23/02, the Attorney General promulgated guidelines that established the procedures for disclosure of information under Section 203 of the USA PATRIOT Act. Those guidelines, and the FBI's instructions to the field with respect to those guidelines, follow.



Office of the Attorney General
Washington, D. C. 20530

September 23, 2002

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM THE ATTORNEY GENERAL *John Ashcroft*

SUBJECT Guidelines for Disclosure of Grand Jury and Electronic, Wire, and Oral Interception Information Identifying United States Persons.

The prevention of terrorist activity is the overriding priority of the Department of Justice and improved information sharing among federal agencies is a critical component of our overall strategy to protect the security of America and the safety of her people.

Section 203 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, 115 Stat. 272, 278-81, authorizes the sharing of foreign intelligence, counterintelligence, and foreign intelligence information obtained through grand jury proceedings and electronic, wire, and oral interception, with relevant Federal officials to assist in the performance of their duties. This authorization greatly enhances the capacity of law enforcement to share information and coordinate activities with other federal officials in our common effort to prevent and disrupt terrorist activities.

At the same time, the law places special restrictions on the handling of intelligence information concerning United States persons ("U.S. person information"). Executive Order 12333, 46 FR 59941 (Dec. 8, 1981) ("EO 12333"), for example, restricts the type of U.S. person information that agencies within the intelligence community may collect, and requires that the collection, retention, and dissemination of such information must conform with procedures established by the head of the agency concerned and approved by the Attorney General. Section 203(c) of the USA PATRIOT Act, likewise, directs the Attorney General to establish procedures for the disclosure of grand jury and electronic, wire, and oral interception information "that identifies a United States person, as that term is defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801)."

Pursuant to section 203(c), this memorandum specifies the procedures for labeling information that identifies U.S. persons. Information identifying U.S. persons disseminated pursuant to section 203 must be marked to identify that it contains such identifying information prior to disclosure.

Section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. § 1801) provides:

“United States person” means a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 1101(a)(20) of Title 8), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3) of this section.

Information should be marked as containing U.S. person information if the information identifies any U.S. person. The U.S. person need not be the target or subject of the grand jury investigation or electronic, wire, and oral surveillance; the U.S. person need only be mentioned in the information to be disclosed. However, the U.S. person must be “identified.” That is, the grand jury or electronic, wire, and oral interception information must discuss or refer to the U.S. person by name (or nickname or alias), rather than merely including potentially identifying information such as an address or telephone number that requires additional investigation to associate with a particular person.

Determining whether grand jury or electronic, wire, and oral interception information identifies a U.S. person may not always be easy. Grand jury and electronic, wire, and oral interception information standing alone will usually not establish unequivocally that an identified individual or entity is a U.S. person. In most instances, it will be necessary to use the context and circumstances of the information pertaining to the individual in question to determine whether the individual is a U.S. person. If the person is known to be located in the U.S., or if the location is unknown, he or she should be treated as a U.S. person unless the individual is identified as an alien who has not been admitted for permanent residence or circumstances give rise to the reasonable belief that the individual is not a U.S. person. Similarly, if the individual identified is known or believed to be located outside the U.S., he or she should be treated as a non-U.S. person unless the individual is identified as a U.S. person or circumstances give rise to the reasonable belief that the individual is a U.S. person.

Grand jury and electronic, wire, and oral interception information disclosed under section 203 should be received in the recipient agency by an individual who is designated to be a point of contact for such information for that agency. Grand jury and electronic, wire, and oral interception information identifying U.S. persons is subject to section 2.3 of EO 12333 and the procedures of each intelligence agency implementing EO 12333, each of which place important limitations on the types of U.S. person information that may be retained and disseminated by the United States intelligence community. These provisions require that information identifying a U.S. person be deleted from intelligence information except in limited circumstances. An intelligence agency that, pursuant to section 203, receives from the Department of Justice (or

another Federal law enforcement agency) information acquired by electronic, wire, and oral interception techniques should handle such information in accordance with its own procedures implementing EO 12333 that are applicable to information acquired by the agency through such techniques.

In addition, the Justice Department will disclose grand jury and electronic, wire, and oral interception information subject to use restrictions necessary to comply with notice and record keeping requirements and as necessary to protect sensitive law enforcement sources and ongoing criminal investigations. When imposed, use restrictions shall be no more restrictive than necessary to accomplish the desired effect.

These procedures are intended to be simple and minimally burdensome so that information sharing will not be unnecessarily impeded. Nevertheless, where warranted by exigent or unusual circumstances, the procedures may be modified in particular cases by memorandum of the Attorney General, Deputy Attorney General, or their designees, with notification to the Director of Central Intelligence or his designee. These procedures are not intended to and do not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

The guidelines in this memorandum shall be effective immediately

Precedence: PRIORITY

Date: 11/05/2002

To: All Divisions
Directors

Attn: Assistant Directors
Deputy Assistant

Section Chiefs
SACs
ASACs
Chief Division Counsels
JTF Supervisors

From: Office of the General Counsel
Front Office, Room 7159

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Drafted By: Steele Charles M:cms

Case ID #: 62F-HQ-C1382989

Title: GUIDANCE ON NEW ATTORNEY GENERAL
GUIDELINES ON SHARING FOREIGN
INTELLIGENCE INFORMATION ACQUIRED
IN CRIMINAL INVESTIGATIONS AND
RELATED GUIDELINES

Synopsis: This EC provides guidance on the new Attorney General Guidelines on sharing foreign intelligence information acquired in the course of criminal investigations.

Details: On 9/23/02 the Attorney General issued three new sets of guidelines implementing sections 905 and 203 of the USA PATRIOT Act. Copies of the guidelines are enclosed; they are

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also posted on the Office of the General Counsel's (OGC) website, in the Law Library webpage.² All employees should become familiar with the guidelines and with the guidance set forth in this EC.

1. **Guidelines Regarding Disclosure to the Director of Central Intelligence and Homeland Security Officials of Foreign Intelligence Acquired in the Course of A Criminal Investigation**

From an operational standpoint, these are the most important of the new guidelines. They will significantly affect the way in which the FBI approaches criminal investigations. The guidelines implement the mandate of section 905(a) of the PATRIOT Act that federal law enforcement agencies "shall expeditiously disclose to the Director of Central Intelligence [DCI], pursuant to guidelines developed by the Attorney General in consultation with the Director, foreign intelligence acquired ... in the course of a criminal investigation."³ This is an affirmative statutory duty: the FBI (and other federal law enforcement agencies) must share foreign intelligence information (as defined in the guidelines) acquired in criminal investigations. The new guidelines are intended to institutionalize, formalize, and enhance such information sharing, which has been going on since passage of the PATRIOT Act, in order to further the FBI's primary mission of detecting and preventing acts of terrorism.

² On 9/24/02, the new guidelines were announced and posted on the FBI Intranet homepage. On 9/25/02, OGC notified all Chief Division Counsels (CDCs) by e-mail of the issuance of the guidelines. On 10/8/02, OGC notified all HQ Divisions by e-mail of the issuance of the guidelines, and directed them to the OGC webpage.

³ The guidelines also require that foreign intelligence information be disclosed to designated Homeland Security officials. No such officials have yet been designated for purposes of receiving foreign intelligence. OGC will provide notification when such designations are made.

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The procedures established by the guidelines for the sharing of foreign intelligence information with intelligence agencies are not intended to replace or supersede existing operational or information sharing mechanisms (e.g., information sharing that goes on in the context of Joint Terrorism Task Forces (JTTFs)). Agents should continue to use such mechanisms, subject to the guidelines.

The disclosure obligation extends to grand jury and Title III information which contains foreign intelligence information. Section 203 of the PATRIOT Act permits disclosure of such information to the CIA, notwithstanding prior legal impediments (e.g. the grand jury secrecy rule). Section 905(a), however, goes further, and requires that all such information be expeditiously disclosed.

"Foreign intelligence," as used in the guidelines, is defined as "information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities." This definition comes from the National Security Act of 1947, 50 U.S.C. § 401a.

Some of the more important provisions of the guidelines are summarized below.

Training (Guidelines ¶ 3)

The guidelines, and Section 908 of the PATRIOT Act, require the Department of Justice (DOJ) (in consultation with the DCI and other officials) to develop a training curriculum and program to ensure that law enforcement officials receive sufficient training to identify foreign intelligence subject to the disclosure requirement. Training is critical to the successful implementation of the guidelines; it is crucial that law enforcement agents be able to recognize foreign intelligence information subject to the disclosure requirement. In some

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instances it will be obvious that certain information constitutes foreign intelligence information; in other cases it may not be so clear.

DOJ and the FBI are consulting with the CIA to formulate and implement a training curriculum and program, which will include training for both new and onboard Agents. CIA personnel will participate, providing instruction on how to identify the types of foreign intelligence information needed by the Intelligence Community.

Further details will be provided when the training curriculum is finalized.

Entities to Whom Disclosure Shall be Made
(Guidelines, ¶ 4)

The guidelines require the DCI, in consultation with the Assistant to the President for Homeland Security, to designate appropriate offices, entities and/or officials of intelligence agencies and homeland security offices to receive the disclosure of section 905(a) information not covered by an established operational or information sharing mechanism. The DCI is to ensure that sufficient numbers of recipients are identified to facilitate expeditious sharing and handling of section 905(a) information. The DCI has not yet identified recipients pursuant to this provision; OGC will provide notification when recipients are designated.

Note that these designated recipients will come into play only where there isn't already "an established operational or information sharing mechanism." Guidelines, paragraph 4. Where there are already established mechanisms (e.g. JTTFs), FBI Agents can and should use them to disclose 905(a) information.

Methods for Disclosure of Section 905(a) Information

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(Guidelines, ¶ 5)

The guidelines divide foreign intelligence information into two categories: (1) information relating to terrorism or weapons of mass destruction (WMD),⁴ and (2) all other types of foreign intelligence information. Similarly, the guidelines address two different categories of terrorism/WMD information: that which relates to "a potential ... threat," and "other" terrorism/WMD information.

Foreign intelligence information relating to a "potential terrorism or WMD threat to the United States homeland, its critical infrastructure, key resources (whether physical or electronic), or to United States persons or interests worldwide" must be disclosed "immediately." Guidelines, ¶ 5(a). All other foreign intelligence information (including all other foreign intelligence information relating to terrorism or WMD information, e.g. information relating to the financing of a terrorist organization, or to an organization's long-term recruitment plans) must be disclosed "as expeditiously as possible."⁵

Whether particular terrorism/WMD foreign intelligence information relates to a "potential threat" (i.e. requiring immediate disclosure) will depend on the facts and circumstances of the particular situation. Clearly, information indicating the planning or commission of an imminent act of terrorism will fall into this category. On the other hand, foreign intelligence information relating to long-term recruiting efforts by a terrorist organization will have to be disclosed

⁴ "Terrorism information" and "weapons of mass destruction," for purposes of the guidelines, are defined in ¶ 5(a), at page 4.

⁵ As to section 905(a) information other than that relating to terrorism and WMD, the guidelines require federal law enforcement agencies, in consultation with DOJ and the DCI, to develop (or continue to follow existing) protocols to provide for expeditious sharing. ¶ 5(b), at page 4.

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expeditiously, but not immediately. The upcoming training will help clarify what information is so related to a "potential threat" that it must be disclosed immediately; for the time being, Agents should exercise sound judgment in making the determination, keeping in mind that the ultimate purpose for the disclosure requirement is to help "disrupt[] terrorist plans, prevent[] terrorist attacks, and preserv[e] the lives of United States persons." Guidelines, ¶ 5(a).

Disclosure may be made in the following ways: (1) through existing field-level operational or information sharing mechanisms (e.g. JTTFs); (2) through existing headquarters operational or information sharing relationships; or (3) when the law enforcement officer reasonably believes that time does not permit the use of any such established mechanisms, through any other field level or other mechanism intended to facilitate immediate action, response or other efforts to address a threat. (I.e., if an Agent reasonably believes that the circumstances require immediate action, he or she should take whatever steps are necessary to share the information with the appropriate intelligence agency immediately. This could mean, for example, picking up the phone and calling a point of contact he or she has with the CIA.)

As soon as practicable after disclosing section 905(a) information (under any of the above-referenced mechanisms), the disclosing Agent must notify the relevant JTTF (e.g., the JTTF supervisor) of the disclosure. JTTFs, in turn, must keep the relevant Anti-Terrorism Task Force (ATTF) (e.g., the United States Attorney's Office representative on the ATTF) apprised of the nature of information disclosed under the guidelines. JTTFs are not required to notify ATTFs of every disclosure of foreign intelligence information; DOJ recognizes that such a requirement would be impractical. JTTFs, however, should take steps to keep ATTFs generally apprised of the nature of section 905(a) information disclosed; JTTFs should also ensure that ATTFs are specifically advised of particularly important disclosures (e.g. disclosures relating to specific threats). Whether a particular

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disclosure is important enough to warrant specific notice to the ATTF is a judgment call. ATTFS shall, in turn, apprise DOJ's Terrorism and Violent Crime Section (TVCS) of section 905(a) disclosures. (Also: where section 905(a) information is disclosed at the headquarters level, the disclosing headquarters entity shall, as soon as practicable and to the extent reasonable, notify TVCS of all disclosures.)

It has not yet been decided whether a single, standard procedure will be developed to govern how JTTFs will notify ATTFS, or rather whether each JTTF will be asked to develop its own mechanism. That matter is under consideration at FBIHQ. In the meantime, each JTTF should preliminarily develop its own mechanism for notifying ATTFS, taking into account its own particular structure, personnel, existing communication channels with ATTFS, etc.

Consultation With Prosecutors With Respect to
Title III and Grand Jury Information (Guidelines, ¶ 5(c))

In order to avoid harm to pending or anticipated prosecutions, the guidelines establish requirements for pre-disclosure consultation with prosecutors in certain situations. Specifically, the guidelines state that, except as to terrorism/WMD information related to a potential threat, the law enforcement agent must consult with the prosecutor assigned to the case if (1) the information was developed through investigation occurring after a formal referral for prosecution, and (2) the information was produced by a Title III interception or solely as a result of a grand jury subpoena or testimony occurring before a grand jury receiving information concerning the particular investigation.

This consultation requirement serves the important purpose of allowing the prosecutor to decide whether to impose use restrictions (as set forth in ¶ 8 of the guidelines) or to

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seek an exception to the disclosure requirement (as set forth in ¶ 9 of the guidelines).

This pre-disclosure consultation with the prosecutor must be accomplished expeditiously. An Agent who consults with a prosecutor pursuant to this provision should document the fact of the consultation, including the date and time of the contact with the prosecutor. If the prosecutor concurs with disclosure, the Agent must make the disclosure no later than 48 hours after the prosecutor is initially notified. If the prosecutor objects, the Agent should obtain and document the prosecutor's reasons and, if the Agent disagrees with the prosecutor's position, consult with his or her supervisors. (The Agent should not disclose the information, however, until the disagreement with the prosecutor is fully resolved.) If the Agent does not have a decision from the prosecutor as of 48 hours after the initial contact, the Agent should contact the prosecutor to determine the prosecutor's position.

Title III or grand jury-generated section 905(a) information which an Agent reasonably believes is related to a potential terrorism or WMD threat shall be disclosed immediately, without need for advance consultation with the prosecutor. Contemporaneously or as soon after making such disclosures as possible, the Agent shall notify the prosecutor (to enable the prosecutor to make any required notice to the court).

Requests for Additional Information (Guidelines, ¶ 6)

Initial disclosure of section 905(a) information shall be accomplished automatically, without specific prior request to the disclosing agency. Requests by any recipient for additional information, or for clarification or amplification of the initial disclosure, should be coordinated through the component that provided the initial information or the designated HQ office of the disclosing agency.

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Disclosure of Grand Jury and Title III Information
(Guidelines, ¶ 7)

Where grand jury or Title III information is shared under the guidelines, notice of such disclosures must be promptly provided to DOJ's Office of Enforcement Operations (OEO).⁶ Agents do not have to contact OEO themselves; that is the obligation of the AUSA or DOJ prosecutor assigned to the grand jury matter or Title III.

The PATRIOT Act also requires special procedures for the disclosure of grand jury and Title III information that identifies United States persons. Those procedures are set forth in the second set of guidelines issued on 9/23/02 and discussed below. Also, all of the procedures established pursuant to those guidelines are made applicable to all disclosures under these guidelines of section 905(a) information that identifies United States persons.

Use Restrictions (Guidelines, ¶ 8)

Generally, the guidelines contemplate that 905(a) information will be disclosed without imposition of use restrictions. However, the disclosing official may impose appropriate use restrictions necessary to protect sensitive law enforcement sources and pending criminal investigations and prosecutions.

The scope and duration of any such restrictions must be tailored to address the particular situation. Any such restrictions must be no more restrictive than necessary to accomplish the desired effect. Also, the originator of the information must periodically review the restrictions to

⁶ The guidelines require OEO to establish appropriate record keeping procedures to ensure compliance with notice requirements related to the disclosure of grand jury information. Guidelines, ¶ 7.

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determine whether they can be narrowed or lifted at the request of the recipient.

Finally, disclosures of grand jury and Title III information must be subject to any use restrictions necessary to comply with record or notice keeping requirements, and to protect sensitive law enforcement sources and pending criminal investigations and prosecutions. Agents should consult with the AUSA or DOJ prosecutor assigned to the grand jury matter or Title III to determine what use restrictions, if any, are necessary in each case.

AG Exceptions to Mandatory Disclosure
(Guidelines, ¶ 9)

Section 905(a) authorizes the Attorney General, in consultation with the DCI, to exempt from the disclosure requirement one or more classes of foreign intelligence or foreign intelligence relating to one or more targets or matters. Paragraph 9 of the guidelines implements this provision. It states that pending the development of permanent exceptions, exemptions will be determined by the Attorney General, in consultation with the DCI and the Assistant to the President for Homeland Security, on a case-by-case basis.

No permanent exceptions have yet been developed. OGC will provide notification if and when permanent exceptions are developed.

Requests for exceptions must be submitted "by the department, component or agency head in writing with a complete description of the facts and circumstances giving rise to the need for an exception and why lesser measures such as use restrictions are not adequate." Guidelines, ¶ 9(c). Authority to request exceptions has not yet been delegated below the level of component agency head (and it is not clear whether it will

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be). For now, therefore, FBI requests for exceptions can only be submitted by the Director.

Any FBI requests for exceptions should be submitted for review and approval to CID and CTD. CID and/or CTD will then forward the requests to the Director's Office. OGC will be available to provide assistance with regard to any such requests.

Closed Investigations

OGC has concluded, in consultation with DOJ, that there is no legal impediment to sharing foreign intelligence information acquired in criminal investigations which have been closed. Field offices should therefore identify closed criminal investigations which appear likely to have developed foreign intelligence information; if any such information is found, it must be disclosed pursuant to the guidelines.

Field offices need not conduct comprehensive general searches of all closed files, or of broad categories of closed files. If, however, there is reason to believe it is likely that particular closed files contain foreign intelligence information, the field office should conduct reviews of those files.

2. Guidelines for Disclosure of Grand Jury and Electronic, Wire, and Oral Interception Information Identifying United States Persons

Section 203 of the PATRIOT Act authorizes the sharing of foreign intelligence, counterintelligence, and foreign intelligence information obtained through grand jury proceedings

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and Title III interceptions with relevant Federal officials⁷ to assist in the performance of their duties. At the same time, section 203(c) requires the Attorney General to establish procedures for the disclosure of grand jury and Title III information that identifies United States persons.⁸

These new guidelines implement section 203(c) by establishing the required procedures for labeling grand jury and Title III information which identifies United States persons. Such information must be marked, prior to disclosure, to indicate that it contains such identifying information. Information should be marked if it identifies any United States person (i.e. the person need not be a target or a subject). However, the United States person must be "identified;" i.e., the grand jury or Title III information must discuss or refer to the U.S. person by name (or nickname or alias), rather than merely including potentially identifying information (e.g. an address or telephone number) which requires additional investigation to link to a particular person.

For the time being, no particular language or method of marking is required.⁹ The information must be clearly marked, however, in a manner which will ensure that the recipient will immediately understand that the information identifies United States persons. One way to do this, for example, would be to place the information in a sealed envelope marked with the following language in conspicuous lettering:

⁷The information may be shared with any Federal law enforcement, intelligence, protective, immigration, national defense, or national security officials receiving that information in the performance of his official duties. Fed. R. Crim. P. 6(e)(3)(C)(V) (grand jury information); 18 U.S.C. § 2517(6) (Title III information).

⁸"United States person" means a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 1101(a)(20) of Title 8), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3) of this section. 50 U.S.C. § 1801.

⁹FBIHQ is considering whether to institute a single, standard method of marking.

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"NOTE: THIS PACKAGE CONTAINS INFORMATION WHICH IDENTIFIES UNITED STATES PERSON(S)." Agents should also specifically direct the recipient to the references to identified U.S. persons.

Agents need not rely solely on the grand jury or Title III information itself in determining whether the information identifies a United States person; Agents may also use the context and circumstances of the information in making that determination.

If the person is known to be located in the U.S. (or if his or her location is unknown), he or she should be treated as a U.S. person unless circumstances give rise to the reasonable belief that he or she is not a United States person. Similarly, if the person is known or believed to be located outside the U.S., he or she should be treated as a non-United States person unless he or she is identified as, or circumstances give rise to the reasonable belief that he or she is, a United States person.

Receiving agencies are to designate individuals as points of contact for purposes of receiving this information. (No such designations have yet been made; OGC will provide notification when designations are made.) Also, receiving agencies are to handle such information in accordance with their own procedures implementing Executive Order 12333 (which governs such agencies' collection and use of such information).

**3. Guidelines Regarding Prompt Handling of
Reports of Possible Criminal Activity
Involving Foreign Intelligence Sources**

These guidelines implement section 905(b) of the PATRIOT Act, which requires the Attorney General to develop guidelines to ensure that DOJ responds within a reasonable period of time to reports from the intelligence community of

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possible criminal activity involving foreign intelligence sources or potential foreign intelligence sources.

Section 905(b) and the guidelines reflect a recognition that in such situations the referring intelligence community agency may have a strong interest in knowing on an expedited basis whether DOJ intends to investigate potential crimes.

Accordingly, the guidelines require DOJ to confer expeditiously (and not later than seven days after the referral) with the referring intelligence community agency. After conferring, DOJ shall inform the referring agency within a reasonable period of time (not more than 30 days, except in extraordinary circumstances) whether it intends to commence or decline a criminal investigation.

LEAD(s) :

Set Lead 1: (Adm)

ALL RECEIVING OFFICES

This communication should be distributed to all employees within your division. In particular, please ensure prompt distribution to all Special Agents and other appropriate investigative personnel.

♦♦

CC: 1 - Mr. Bruce Gebhardt
1 - Mr. Grant Ashley
1 - Mr. Pasquale D'Amuro
1 - Mr. Kenneth Wainstein
1 - Mr. Charles Steele
1 - Mr. M.E. Bowman

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1 - Mr. Patrick Kelley
1 - Ms. Elaine Lammert
1 - Mr. James Lovelace
1 - Mr. John Livingston