



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 29, 2003

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

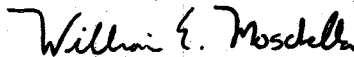
Dear Mr. Chairman:

Please find enclosed the Department's third and final submission of answers to questions posed to Federal Bureau of Investigation Director Robert Mueller following his testimony before the Committee on June 6, 2002. We again apologize for any inconvenience our delay in responding may have caused the Committee.

Responses to the following questions are enclosed: Senator Leahy questions 7d, 17b, 21, 22, 27, 28, 29, 30 and 31; Senator Cantwell questions 6a and 9a; and unnamed Senator question 1.

Thank you for your attention to this matter. If we can be of further assistance on this or any other matter, please do not hesitate to contact this office.

Sincerely,


William E. Moschella
Assistant Attorney General

Enclosures

cc: The Honorable Patrick J. Leahy
Ranking Minority Member

**Written Questions of Senator Leahy
to the Honorable Robert S. Mueller, III**

At the Hearing Before the Senate Judiciary Committee
Oversight Hearing on Counterterrorism
June 6, 2002

30. **We have heard from Coleen Rowley that a supervisor at FBI Headquarters made changes to the Minneapolis agents' affidavit that 'set it up for failure.' The New York Times has also reported that another headquarters agent was basically banned from the FISA court by the Judge based on his affidavits. This is a matter of bipartisan concern among Members of the Judiciary Committee. On the day of your appearance before the Judiciary Committee, the FBI provided a copy of the so-called "Woods Procedures" relating to the FBI's process for obtaining orders under FISA:**
- a. **According to the document provided, these procedures were declassified the day of your appearance. Since these matters relate not to any specific case but only bear on procedures to be followed in seeking FISA orders, please explain the decision to originally classify this document and provide the name of the person responsible for that decision.**

The decision to classify the guidance setting out the procedures to be followed for ensuring accuracy in factual submissions to the FISA Court was made by the drafter of the

document, Michael Woods, who was then the Unit Chief of the National Security Law Unit, Office of the General Counsel, FBI. The guidance was classified, because under Section 1.5(c) of Executive Order 12958, it met the criteria for classified information in that it contained information on intelligence sources and methods.

b. Why were the procedures adopted? Please include in your answer whether there were any actual or perceived problems or incidents that made these procedures necessary and describe these incidents and problems.

The FISA Verification Procedures (the so-called "Woods Procedures") were instituted in April 2001 in order to minimize factual inaccuracies in FISA packages. Specifically, the goal of the procedures is to ensure accuracy with regard to: (1) the facts supporting probable cause; (2) the existence and nature of any related criminal investigations or prosecutions involving the subject of the FISA; and (3) the existence and nature of any prior or ongoing asset relationship between the subject and the FBI.

Applications to the FISA Court for electronic surveillance or physical search authority are complex and detailed. The declaration is an important part of the application package in that it sets out the factual basis supporting probable cause and conveys to the FISA Court any other facts relevant to the Court's findings. Prior to implementation of the so-called "Woods Procedures," there were instances where inaccurate information was provided by FBI field office and headquarters personnel to the Court. Problems included representations that there were no pending criminal investigations on the surveillance target when in fact there were such investigations, and an omission that a target of FISA surveillance was an FBI criminal informant. Additionally, there were FISA application and renewal packages which included incorrect descriptions of the "wall" procedures put in place to separate parallel criminal and intelligence investigations. As a result, incorrect information was repeated in subsequent and related FISA packages. These issues are discussed at length in the May 17, 2002 opinion of the FISC, which has been provided to the Congress and to the public; as noted in the opinion, the Department's Office of Professional Responsibility is conducting an investigation into the matter. By signing and swearing to the declaration, the headquarters agent is attesting to knowledge of what is contained in the declaration. Prior to the imposition of the verification procedures, the declarant had to rely on his or her best understanding of the information submitted by the field office.

c. To what extent, if at all, have the procedures worked to address any of the problems or concerns that led to their adoption?

The procedures have been very successful in helping to ensure that the facts contained in the FISA declarations are accurate. Under the verification procedures, documentation showing

that certain steps have been accomplished must be attached to every initiation and renewal FISA package before it is sent for certification. The steps required include searching one of the FBI's computer systems, Automated Case Support (ACS), to determine whether the target is also the subject of a documented FBI criminal investigation, past or present; searching ACS for asset and informant files of the relevant field office; contacting the Asset and Informant Unit at Headquarters for a check of the target's name for asset/informant status Bureau-wide; determining the status of any criminal investigation related to the target; and ensuring the relevant field office(s) reviews for accuracy all the facts presented in the declaration.

Perhaps the best unclassified evidence for the improvements made by the new procedures is a public speech given by the then-Presidenting Judge of the FISC in April 2002, in which he said, among other things, that "we consistently find the [FISA] applications "well-scrubbed" by the Attorney General and his staff before they are presented to us," and that "the process is working. It is working in part because the Attorney General is conscientiously doing his job, as is his staff." It was particularly gratifying to hear the Judge compliment the FBI. He said: "I am personally proud to be a part of this process, and to be witness to the dedicated and conscientious work of the FBI, NSA, CIA, and Justice Department officials and agents who are doing a truly outstanding job for all of us."

d. Are any additional or amended procedures relating to the seeking of FISA orders being considered? If so, what is the nature of those additional or amended procedures?

The FBI, in coordination with the Department's Office of Intelligence Policy and Review (OIPR), has instituted a number of changes in the FISA process that are designed to improve the accuracy and timeliness of the FISA applications submitted to the FISA Court.

Starting March 1, 2003, field offices are now required to follow a standard format, distributed as an eight-page FISA request form. The form elicits information about the target's status, the facts and circumstances that establish probable cause to believe the target is an agent of a foreign power, and particulars about the facilities and places to be targeted and the minimization procedures to be employed. The form also requires confirmation that field offices have verified the accuracy of facts alleged in the form. The request form is filled out by the case agent in the field office, reviewed and approved by the field office's Chief Division Counsel and the Special Agent-in-Charge, and then sent via e-mail to an operational unit within the appropriate Headquarters Division.

We expect that the use of this standard form will aid agents in the field by making clear what information is expected from them in order to begin the FISA initiation process. It should result in a more organized and complete request from the field.

In order to ensure that each FISA initiation request that is passed from FBI Headquarters to OIPR is viable and complete, we are implementing a new process in which the FBI's National Security Law Branch attorneys will receive a copy of each counterterrorism initiation request when it arrives in from the field. The attorneys will work closely with Supervisory Special Agents and analysts in counterterrorism to finalize each request and submit it to OIPR in a timely fashion. The goal of this change is to increase the level of legal review given to FISA initiations at the front end, identifying at an early stage any deficiencies in the factual basis for the applications.

In an additional effort to improve the efficiency of the process, the FBI established a FISA Unit within the National Security Law Branch in November, 2002. The FISA Unit, which is currently staffed with a Unit Chief and six staff members, performs administrative support functions for the FISA process. The FISA Unit is currently working with contractors to design, install, and test a new FISA management system. The FISA management system is an automated tracking system that will electronically connect field offices, Headquarters, the National Security Law Branch, and OIPR to one another. It will transmit FISA documents between the participants in the FISA process and allow them to track the progress of FISA packages during each stage of the process.

The management system should speed up the process in several ways. First, the FISA request form will be loaded onto the system so that field agents can quickly insert their case-specific information into a standardized form. In addition, by tracking the progress of each package, the system will identify delays in the process. Also, it will allow OIPR to request additional information from the field via the system, so that questions can be resolved in a timely fashion. The FISA management system will soon be ready for testing in several field offices.

In addition to managing the development and operation of the management system and ensuring that those involved in the FISA process adhere to reasonable time-frames, the FISA Unit is responsible for distributing the FISC's orders and warrants to the appropriate field offices for their use and for service upon communications carriers and other persons specified in the orders and warrants.

Finally, in addition to these improvements in the process, the Director of the FBI has ordered that any issue as to whether a FISA application is factually sufficient must be brought to his attention.

31. The Woods procedures require the field office to conduct a computer search only of the target name.

a. Why is it not required that a broader subject or key word search also be conducted?

The indexing procedures used by criminal investigators at the FBI are based on name. Therefore, the most efficient and effective computer search is conducted using the subject's name.

b. Why is the headquarters unit facilitating the processing of FISA applications not required to conduct such a search in addition to the field office, especially since certain reports are "blocked" from field access?

The agent in the field office seeking the FISA authorization has primary responsibility for the overall operation of the case. The headquarters supervisor acts as the sworn declarant on FISA packages for reasons of physical proximity to the FISA Court but must rely on the accuracy of the information presented by the field office in the declaration. Since the field office requesting the authority has the greatest knowledge of the specific details of the case, it is prudent to have the field search the Automated Case Support system to determine if the FISA target is also the subject of a documented FBI criminal investigation, past or present; and to search the asset and informant files of their particular field office. Positive hits in the computer system on a target name will require additional information that only the field can provide. Prior to the finalization of packages, the field consults with headquarters on the results of the search and discusses further steps that need to be taken to ensure complete accuracy.

c. Is it intended that the Woods procedures be the extent of the investigation in connection with the preparation of a FISA application, or is it expected that the field agents and headquarters unit will pursue all necessary and logical leads, including a basic key word search?

The Woods procedures are used to ensure the accuracy of the information contained in the declaration but in no way constitute the extent of the investigation in connection with the preparation of a FISA application. Requests from field offices to headquarters for a FISA initiation or renewal typically incorporate a memorandum documenting the factual predicate for the requested coverage. The relevant unit at Headquarters then prepares an "action memorandum" to the Office of Intelligence Policy and Review requesting that the FISA initiation or renewal package be prepared. Action memoranda often include relevant additional facts developed in discussion with the originating field office, or classified intelligence community information provided by headquarters agent and analytical personnel who have developed an expertise with respect to and have been assigned oversight responsibility for the investigation of certain foreign powers in the United States and their agents. Additionally, information, both

classified and unclassified, which has been obtained by the FBI through a variety of sources, including U.S. and foreign intelligence services and law enforcement agencies, is routinely included in action memoranda (and subsequently the FISA declarations) in order to make the strongest possible case for authorization of FISA surveillance and search authority. Some but not all of this information may be gleaned from the FBI computer system. Effective March 1, 2003, the FBI will submit requests for FISA coverage to OIPR in a standard format developed by DOJ and the FBI.