

From: [redacted] (OGC) (FBI)
Sent: Tuesday, March 07, 2006 6:05 PM
To: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Subject: FW: Draft EC and NSL for Toll Billing Record NSL
~~SECRET~~
RECORD cccc

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FYI

DECLASSIFIED BY 65179 DMH/KSR/JW
ON 12-04-2007

[redacted]
Assistant General Counsel
National Security Law Policy and Training Unit
FBI HQ Room 7975
[redacted]
Unclassified Fax: (202) 324-[redacted]
Secure Fax: [redacted]

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-----Original Message-----
From: [redacted] (OGC) (FBI)
Sent: Tuesday, March 07, 2006 6:02 PM
To: [redacted] (OGC) (FBI)
Subject: FW: Draft EC and NSL for Toll Billing Record NSL

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RECORD cccc

Julie just read and approved the form NSL. She is sending it to Valerie. I'll look at the EC, as soon as I get a caffeine fix [redacted]

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-----Original Message-----
From: [redacted] (OGC) (FBI)
Sent: Tuesday, March 07, 2006 5:54 PM
To: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Subject: Draft EC and NSL for Toll Billing Record NSL

~~SECRET~~
RECORD cccc



toll record NSL 2006.03.09.wpd... toll record EC 2006.03.09.wpd ...

[redacted]
Assistant General Counsel
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~~DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign Counterintelligence Investigations~~
~~DECLASSIFICATION EXEMPTION 1~~
~~SECRET~~

~~DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign Counterintelligence Investigations~~
~~DECLASSIFICATION EXEMPTION 1~~
~~SECRET~~

~~DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign Counterintelligence Investigations~~
~~DECLASSIFICATION EXEMPTION 1~~
~~SECRET~~

NSL VIO-31660

From: [redacted] (OGC) (FBI)
Sent: Monday, February 19, 2007 12:11 PM
To: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Cc: [redacted] (OGC) (FBI); THOMAS, JULIE F. (OGC) (FBI)
Subject: FW: NSL Briefing Paper Update

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[redacted]

Need your help with #5

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[redacted]

Unit Chief
Counterterrorism Law Unit II
FBI HQ Room 7947

[redacted]

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-----Original Message-----

From: [redacted] (DO) (OGA)
Sent: Friday, February 16, 2007 9:07 PM
To: [redacted] (OGC) (FBI); THOMAS, JULIE F. (OGC) (FBI)
Subject: RE: NSL Briefing Paper Update

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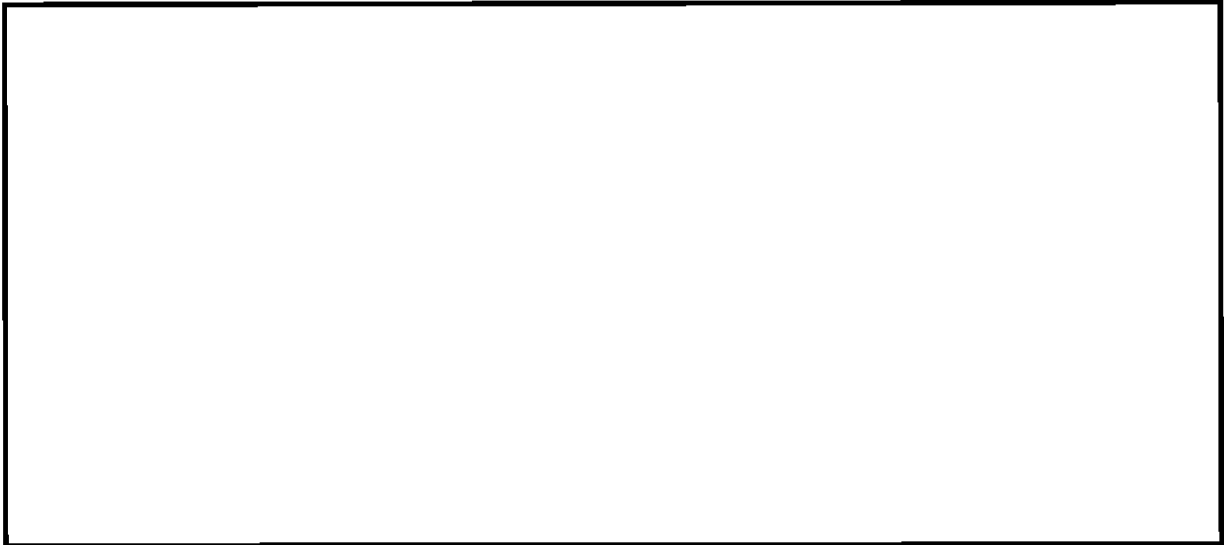
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[redacted] I think you may have intended to forward me the recommendations chart but instead sent an updated version of the NSL briefing paper. In any event, I've looked at the hard copy of the recommendations chart and here are a few thoughts

[redacted]

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Thanks

-----Original Message-----

From: [redacted] (OGC) (FBI)
Sent: Friday, February 16, 2007 5:46 PM
To: THOMAS, JULIE F. (OGC) (FBI); [redacted] (DO) (OGA)
Subject: FW: NSL Briefing Paper Update

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Draft copy.



Unit Chief
Counterterrorism Law Unit II
FBI HQ Room 7947



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-----Original Message-----

From: [redacted] (OGC) (FBI)
Sent: Friday, February 16, 2007 4:52 PM
To: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Subject: NSL Briefing Paper Update

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I have updated the briefing paper on NSLs for the Director. [redacted]



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Thanks



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<< File: OGC-NSLs.02152007.doc >>

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From: [REDACTED] (OGC) (FBI)
Sent: Thursday, May 25, 2006 11:18 AM
To: [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI);
[REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI);
THOMAS, JULIE E. (OGC) (FBI); [REDACTED] (OGC) (FBI);
[REDACTED] (FBI); [REDACTED] (OGC) (FBI)

Subject:
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NY Judge: Endless Ban On Speech In NSLs Likely Unconstitutional

Associated Press

By Larry Neumeister

May 23, 2006

NEW YORK, NY -- A federal appeals judge warned the government on Tuesday that the permanent ban on speech it seeks with its FBI national security letters -- which allow it to obtain records about people in terrorism investigations -- was probably unconstitutional.

Judge Richard Cardamone of the 2nd U.S. Circuit Court of Appeals commented as the court acted on lawsuits challenging the government's ability to force companies to turn over information about customers or subscribers as part of the war on terrorism and keep quiet about it. "While everyone recognizes national security concerns are implicated when the government investigates terrorism within our nation's borders, such concerns should be leavened with common sense so as not forever to trump the rights of the citizenry under the Constitution," he said. Alluding to a recent change in federal law, a three-judge panel including Cardamone dismissed a Connecticut case as moot and returned a New York case to a lower court judge to see how the new law affects it.

Cardamone wrote a separate concurring opinion to highlight what he said was the government's recent insistence that a permanent ban on

speech is sometimes permissible under the First Amendment. He said he suspected "a perpetual gag on citizen speech of the type advocated so strenuously by the government may likely be unconstitutional." A telephone message left with a spokeswoman for the government was not immediately returned Tuesday evening. Cardamone said courts historically have ruled in favor of the government when a ban on speech is limited so that it narrowly meets the demands of a compelling government interest. He said the bans are not constitutional once an investigation ends.

Lately, though, the government has insisted that permanent bans on speech are necessary in antiterrorism probes because all terrorism investigations are permanent and unending and grow out of other investigations, he said. "The government's urging that an endless investigation leads logically to an endless ban on speech flies in the face of human knowledge and common sense: witnesses disappear, plans change or are completed, cases are closed, investigations terminate," he wrote. He said a ban on speech and an unending shroud of secrecy concerning government actions "do not fit comfortably with the fundamental rights guaranteed American citizens" and could serve as a cover for official misconduct.

The comments came as the Manhattan court considered the First Amendment ramifications of challenges to government searches of Internet and telephone records, a right the government gained under a 1986 law that was expanded by the Patriot Act of 2001. Recently, Congress made changes in the law that affect national security letters, or NSLs, investigative tools used by the FBI to compel businesses to turn over customer information without a judge's order or grand jury subpoena. The changes specify that an NSL can be reviewed by a court and explicitly allows those who receive the letters to inform their lawyers about them.

The appeals court said the changes render moot a Connecticut case in which U.S. District Judge Janet Hall ruled that a gag order on librarians who received an FBI demand for records about patrons unfairly prevented them from joining a debate over the rewriting of the Patriot Act. In the New York case, U.S. District Judge Victor Marrero had ruled that the national security letters violate the Constitution because they amount to unreasonable search and seizure. He found that the nondisclosure requirement violated free speech. The case pertained

to an unidentified Internet access firm that received one of the letters in which the FBI certified that phone or Internet records are "relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities." The appeals court said Marrero can consider new evidence or arguments and rule again. Cardamone said the government had asked the appeals court to vacate Hall's ruling in the Connecticut case rather than leaving it unreviewed.

He said the request was "not surprising but right in line with the pervasive climate of secrecy." He said the government, in effect, was seeking to "purge from the public record the fact that it had tried and failed to silence the Connecticut plaintiffs." American Civil Liberties Union lawyer Ann Beeson, who argued before the appeals court, said Cardamone was "sending a strong message to the government that it can't simply claim secrecy is always necessary to protect national security." She said it's clear the government "was using the Patriot Act as a gag to prevent these librarians in Connecticut from speaking publicly about the Patriot Act." She said the ACLU would stage a news conference this week to "unmask our clients." "Our clients," she said, "are very much looking forward to speaking for the first time publicly."

[Redacted]

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