

**SANTA CRUZ COUNTY
BOARD OF SUPERVISORS INDEX SHEET**

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Resolution(s): _____

Ordinance(s): _____

Contract(s): _____

Continue Date(s): _____

Index: --Letter of Supervisor Almquist of April 1, 2003
--Attachments
--~~List~~ of Callers
--Letter of Paul Elerick dated April 29, 2003

Item: 84. CONSIDERED resolution to defend Civil Liberties and the Bill of Rights through opposition to the USA Patriot Act;
(1) accepted and filed report; and
(2) ADOPTED RESOLUTION NO. 105-2003 To Defend Civil Liberties and the Bill of Rights through Opposition to the USA Patriot Act; with an additional direction to add language that clearly states that the Resolution be inclusive of Patriot Act II

COUNTY OF SANTA CRUZ
STATE OF CALIFORNIA



AT THE BOARD OF SUPERVISORS MEETING

On the Date of April 29, 2003

REGULAR AGENDA Item No. 84

Upon the motion of Supervisor Almquist, duly Seconded by Supervisor Wormhoudt, with Supervisor Campos voting "no", the Board, accepted and filed report; and (2) ADOPTED RESOLUTION NO. 105-2003 To Defend Civil Liberties and the Bill of Rights through Opposition to the USA Patriot Act; with an additional direction to add language that clearly states that the Resolution be inclusive of Patriot Act II

cc:

CAO

County Counsel

Assembly Member John Laird

Assembly Member Simon Salinas

Senator Bruce McPherson

Senator Byron Sher

Congress Member Sam Farr

Congress Member Anna Eshoo

State of California, County of Santa Cruz-ss.

I, Susan A. Mauriello, Ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz, State of California, do hereby certify that the foregoing is a true and correct copy of the order made and entered in the Minutes of said Board of Supervisors. In witness thereof I have hereunto set my hand and affixed the seal of said Board of Supervisors.

by _____, Deputy Clerk ON April 30, 2003



County of Santa Cruz

BOARD OF SUPERVISORS

701 OCEAN STREET, SUITE 500, SANTA CRUZ, CA 95060-4069

(831) 454-2200 FAX: (831) 454-3262 TDD: (831) 454-2123

JANET K. BEAUTZ
FIRST DISTRICT

ELLEN PIRIE
SECOND DISTRICT

MARDI WORMHOUDT
THIRD DISTRICT

TONY CAMPOS
FOURTH DISTRICT

JEFF ALMQUIST
FIFTH DISTRICT

AGENDA: 4/8/03

April 1, 2003

BOARD OF SUPERVISORS
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

RE: RESOLUTION OF THE COUNTY OF SANTA CRUZ TO DEFEND
CIVIL LIBERTIES AND THE BILL OF RIGHTS THROUGH
OPPOSITION TO THE USA PATRIOT ACT

*"They that can give up essential liberty to obtain a little
temporary safety deserve neither liberty nor safety."*

Ben Franklin

Dear Members of the Board:

As members of the Board are aware, the United States Congress passed H.R. 3162, the USA Patriot (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) Act on October 26, 2001, exactly 32 days after the House Bill was introduced. A copy of the text of the Act, which is more than 140 pages long, can be found at www.epic.org/privacy/terrorism/hr3162.html. It also appears that the Bush Administration, through Attorney General John Ashcroft, is currently working on language for new legislation, currently dubbed "Patriot II." At about the same time, Congress appropriated \$200 million to fund, within the Defense Department, an Information Awareness Office, which the President briefly proposed should be run by John Poindexter. The function of this Office, to create the capability to join in one giant data base information about all of us through which supercomputers could sift looking for evidence of terrorist activities, implements one of the central objectives of the President's strategy for military hegemony laid out in the report of the Project for the New American Century, domination and control of cyberspace for military and intelligence purposes. (www.newamericancentury.org)

At a time when the United States Government is engaged in open warfare in Iraq with the stated goal, among others, to bring democracy and human freedom to this country, the USA Patriot Act opens up the possibility for abuse of these same liberties within the United States. The country now has hundreds of thousands of military personnel deployed in combat with the goal of fostering freedom. As combat volunteers, they have chosen to swear an oath to defend the Constitution of the United States with their lives, if necessary. It is incumbent upon us as American citizens to assure that the Constitution and the Bill of Rights are not undermined by the language and intent of a document enacted at a time of great fear and extreme global duress.

The terrorist attack of September 11, 2001, was intended to disrupt our way of life and to bring fear and horror to the citizens of this country. In reaction to this attack, the passage of the USA Patriot Act has fed into the terrorists' ultimate goal of eroding the American way of life, a life based on the very freedoms expressed in the three notable charters of democracy: the Declaration of Independence, the Constitution, and the Bill of Rights. The USA Patriot Act, by infringing on our liberty, serves to greatly weaken the very rights and freedoms that we ask our military personnel to defend and extend to other parts of the world that have suffered under despotism, in the name of supposedly increasing national security.

The Constitution of the United States separates the federal government into three distinct branches and provides a system of "checks and balances" that is intended to prevent any one branch of government from accumulating excessive power. The USA Patriot Act--hastily drafted and passed with little or no Congressional debate under pressure from the President--grants sweeping new powers to the Executive Branch and its law enforcement agencies. However, even greater extralegal powers have been provided to these agencies by the implementation of 11 Executive Orders, 10 new agency interim regulations, and 2 final regulations implemented by the Justice Department. The Bush Administration, by using Executive Orders and emergency interim agency regulations as its tools of choice for combating terrorism, has chosen methodologies that are largely outside the purview of both the legislature and the judiciary. As a result, the war on terror is largely being conducted by Executive fiat and the constitutional guarantees of both citizens and non-citizens alike have been seriously compromised, making scrutiny of the Congressional action in adopting the USA Patriot Act even more critical.

H.R. 3162 was passed with the intent of providing stronger tools for law enforcement and the intelligence community relative to the investigation of suspected terrorist activities .withinthe

United States. While the goal of this law, prevention of terrorist activities, is laudable, the parts of the law which seek to achieve this result by infringing on the constitutional rights of American citizens are a matter of great concern.

The USA Patriot Act expands the government's surveillance authority in a number of ways, principally through amendments to the Foreign Intelligence Surveillance Act ("FISA"), 50 U.S.C. § 1801 *et seq.* Section 206 of the Patriot Act, for example, amends FISA to allow "roving" electronic surveillance. The provision essentially allows the Federal Bureau of Investigation (FBI) to monitor any communications device used by a surveillance target, even if it cannot specify in advance which devices the target will use. Section 213 amends the Federal Rules of Criminal Procedure to allow "sneak-and-peek" searches--that is, secret searches. Notice can be delayed until long after a search has been executed. Section 214 of the Act allows "pen register" and "trap and trace" devices to be used against Americans who are not suspected of criminal activity or of association with a foreign power. Section 215 of the Act allows the FBI to require any person or entity to produce "any tangible thing," so long as the request is related to an ongoing foreign-intelligence investigation. Here, again, the FBI need not show any individualized suspicion that the target is engaged in criminal activity or associated with a foreign power. In summary, the USA Patriot Act's surveillance provisions effect a dramatic expansion in the government's ability to monitor clandestinely people living in the United States, including citizens who are not suspected of contravening any law or of acting on behalf of a foreign power.

In addition, under the Foreign Intelligence Surveillance Act of 1978, wiretapping related to the domestic activities of hostile foreign groups was allowed, but only when gathering intelligence was the sole purpose of the surveillance. Information could not be gathered for criminal investigations. Under Section 218 of the USA Patriot Act, this restriction has been weakened--foreign intelligence gathering need only be a "significant purpose" of an investigation that may be primarily criminal in nature. Together, these provisions permit law enforcement agents to do an end-run around the Fourth Amendment's prohibition of warrantless searches.

Equally disturbing are the provisions of the USA Patriot Act that greatly weaken the requirement that investigators show probable cause for many types of searches. Prior laws governing electronic communications provided for a lower standard than probable cause to put a trace on telephone calls, allowing investigators to determine who a suspect is calling, but not to

monitor the conversations themselves. Under the Act, the same standard is applied to e-mail communications. Investigators are allowed to access "dialing, routing and signaling information" without a showing of probable cause. However, routing information on e-mail cannot be physically separated from the content of the message. This means that FBI agents must be entrusted to examine the address information while disregarding the content of the message. Such a practice is tantamount to doing away with the probable cause requirement for reading the content of e-mail communications.

The USA Patriot Act contains provisions that will chill or even criminalize people's legitimate expressions of their political views. For example, the Act creates a new category of crime, domestic terrorism, which blurs the line between speech and criminal activity. Section 802 of the Act defines domestic terrorism as "acts dangerous to human life that are a violation of criminal laws" that "appear to be intended to influence the policy of a government by intimidation or coercion," a definition so vague that acts of civil disobedience may be construed to violate the law. Civil disobedience typically seeks to influence government policy, and therefore may be construed as an attempt to coerce that change. Furthermore, the portion of the definition stating that acts must be "dangerous to human life" is extremely broad; it does not distinguish between intentional acts and those that might cause inadvertent harm. Thus, a spontaneous demonstration that blocks the path of an ambulance might invite charges of domestic terrorism under the new law.

By undermining the ability of Americans to hear unpopular opinions, and permitting unfettered monitoring of individuals on the basis of their political affiliation, these policies threaten to choke off thought and expression that often lead to greater justice for all. What chance would the Civil Rights Movement have stood of bringing about an end to de jure racial segregation if it had been operating under the USA Patriot Act rules of surveillance? Rosa Parks, Martin Luther King, Jr., and other activists could have been charged with domestic terrorism for their acts of nonviolent civil disobedience. Their every move, political activities, personal relationships, financial transactions, and private records could have been monitored and their dossiers could have been indexed and made available to law enforcement agencies throughout the deep South.

Attached is a copy of an FBI memorandum obtained in the ACLU Freedom of Information request that describes the FBI's approach to their broader powers to use "National Security Letters" (NSL), a form of administrative subpoena that do not receive the scrutiny of any Judge. The memorandum articulates a number of ways in which the use of these NSL's are facilitated under the

USA Patriot Act. Interestingly, the memorandum talks of the need not to overuse or abuse the powers **on** the basis that the Act "**sunset**s" in four years, and that the Agency would not want such abuses cited as a reason not to leave these powers in effect after that time.

Other troubling provisions of this act work to:

Grant the FBI broad access to sensitive business, banking, and credit records about individuals without having to show evidence of a crime.

Lead to large-scale investigations of American citizens for "intelligence" purposes, and allow nationwide enforcement of search warrants approved by any federal Judge.

Give the Attorney General and the Secretary of State the power to designate domestic groups as terrorist organizations and deport any non-citizen who belongs to them.

Allow for indefinite detention of non-citizens who are not terrorists on minor visa violations if they cannot be deported because they are stateless, their country of origin refuses to accept them or because they would face torture in their country of origin.

All of these provisions, as written or as implemented, threaten violation **of** the Bill of Rights which, you will recall, provides in part that:

Amendment IV: *The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things seized.*

Amendment V: *No person shall be held to answer **for** a capital, **or** otherwise infamous crime, unless on a presentment or indictment **of** a grand jury. .nor deprived of life, liberty, or property, without due process of law. . .*

Amendment VI: *In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. .and to be informed of the nature and cause*

of the accusations; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Congress has made repeated efforts--though only partially successful ones--to oversee the Department of Justice's (DOJ) implementation of the USA Patriot Act. Various congressional committees have conducted briefings and hearings on the issue. In addition, various congressional committees have submitted to the Department of Justice both written and oral requests for information. The House Judiciary Committee asked the Department of Justice in June, 2002, to respond in writing to 50 questions concerning the Department of Justice's implementation of the Act, and posed a number of "follow-up" questions in subsequent letters, and the Senate Judiciary Committee posed an additional 43 questions in letters of its own.

Notwithstanding that the public is entitled to know how the DOJ is using the vast surveillance powers that the Patriot Act authorizes, the Department refused to cooperate fully with these oversight efforts. **Of the 93** questions posed by the Senate Judiciary Committee, **37** remain unanswered according to allegations in a Freedom of Information enforcement action brought by various citizen groups.

While the Department of Justice eventually answered the 50 questions posed by the House Judiciary Committee's June, 2002, letter, it declared many of the answers classified and insisted that they be provided not to the House Judiciary Committee, but rather to the House Intelligence Committee, which had not sought the information and did not plan to oversee the implementation of the Act. Moreover, the DOJ furnished these classified answers ("Classified Answers") only after the Chairman of the House Judiciary Committee threatened to subpoena the Attorney General in order to obtain the requested information.

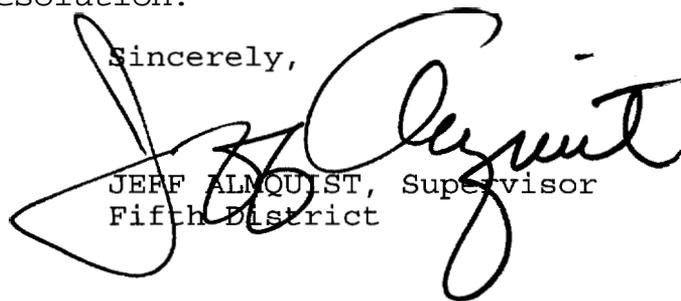
The provisions of the Patriot Act serve to weaken our civil liberties and dim the light of freedom that **is** the foundation of our country. The heart of human freedom, which is the essence of our Constitution, is now threatened in the name of security. The provisions of the USA Patriot Act now cause many Americans to worry not only about global security issues but about their personal security from undue investigation by their own government without their knowledge. While the United States claims to be seeking democracy for other countries, we are quickly abandoning some of these very principles of freedom and democracy within our own country. The federal government, in advancing these new powers for its agents, seems to equate the American spirit with power, not with liberty.

This runs counter to the Constitution, the Bill of Rights, and the spirit of our country as envisioned by the framers of the Constitution. What Americans have fought to defend over the last two centuries is being given away bit by bit by the enactment of laws like the USA Patriot Act and the proposed Patriot Act 11. As Americans, it **is** our duty to protect and defend the Constitution and all that it stands for. A true Patriot **is** a person who stands up for liberty in the face of all threats, including legislation that, perhaps enacted under the best intentions, is likely to result in the erosion of our freedoms.

At a time when freedom is under assault in many areas of the world, we, as citizens of the United States and as elected officials sworn to uphold the Constitution, must stand in support of those freedoms. It is, quite simply, our moral imperative to take whatever action is necessary to make our voices heard that we stand for the Constitution, the Bill of Rights, and the very essence of freedom, freedom from unwarranted governmental interference in our daily lives.

Therefore, with this in mind, I would like to offer a Resolution expressing our concerns about H.R. 3162. I would ask Board members to support this resolution as a means of protecting the spirit of personal human freedom on which our country was founded by adopting the attached resolution.

Sincerely,



JEFF ALQUIST, Supervisor
Fifth District

JA:lg
Attachments

cc: Susan Mauriello, County Administrative Officer
Dana McRae, County Counsel
Assembly Member John Laird
Assembly Member Simon Salinas
Senator Bruce McPherson
Senator Byron Sher
Congress Member Sam Farr
Congress Member Anna Eshoo

1204B5

FEDERAL BUREAU OF INVESTIGATION

Precedence: IMMEDIATE

Date: 11/28/2001

To: All Field Offices

Attn: ADIC;
SAC;
CDC
FCI/IT Supervisors
AD Watson;
DADs;
Section Chiefs
AD Gallagher;
DADs;
Section Chiefs

Counterterrorism

National Security

From: General Counsel
National Security Law Unit, Room 7975
Contact: [Redacted]

Approved By: Mueller Robert S III
Pickard Thomas J
Parkinson Larry R
Bowman M E

b7C

Drafted By: [Redacted] :mjw
R Jr :jrl

Case ID #: 66F-HQ-A1255972

Title: NATIONAL SECURITY LETTER MATTERS

Synopsis: Provides guidance on the preparation, approval, and service of National Security Letters (NSLs).

Reference: 66F-HQ-A1255972 Serial 15

- Enclosure(s) :
- 1) Subscriber Information NSL Model
 - 2) Toll Billing Records NSL Model
 - 3) Electronic Subscriber Information NSL Model
 - 4) Electronic Communication Transactional Records NSL Model
 - 5) Financial Records NSL Model
 - 6) Identity of Financial Institutions NSL Model
 - 7) Consumer Identifying Information NSL Model
 - 8) Subscriber/Electronic subscriber (EC) Model
 - 9) Toll/Transactional Records EC Model
 - 10) Financial Records EC Model
 - 11) Financial Institutions/Consumer Identity EC Model
 - 12) ECPA NSL Checklist
 - 13) RFPA NSL Checklist;

11-6-02
ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-6-02 BY 60267 NCS/EP/CLT
#966750

To: All Field Offices From: General Counsel
Re: 66F-HQ-A1255972, 11/28/2001

14) FCRA NSL Checklist

Details: In the referenced communication, dated 11/09/2001, the Director of the FBI delegated the authority to certify **NSLs** to the following officials: (1) the Deputy Director; (2) The Assistant Directors (ADs) and all Deputy Assistant Directors (DADs) of the Counterterrorism Division (CTD) and the National Security Division (NSD); (3) the General Counsel and the Deputy General Counsel for National Security Affairs (**DGC**), Office of the General Counsel (OGC); (4) the Assistant Director in Charge (ADIC), and all Special Agents in Charge (SACs), of the New York, Washington, D.C., and Los Angeles field divisions; and (5) the SACs in all other field divisions. The purpose of this electronic communication is to provide comprehensive guidance on the preparation, approval, and service of **NSLs**.

1. Introduction to National Security Letters

NSLs are administrative subpoenas that can be used to obtain several types of records. There are three types of NSLs. First, pursuant to the Electronic Communications Privacy Act (ECPA), 18 U.S.C. § 2709, the FBI can issue NSLs for: (1) telephone subscriber information (limited to name, address, and length of service); (2) telephone local and long distance toll billing records; and (3) electronic communication transactional records. Second, pursuant to the Right to Financial Privacy Act (RFPA), 12 U.S.C. § 3414 (a)(5), the FBI can issue NSLs to obtain financial records from banks and other financial institutions. Finally, pursuant to the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681u, the FBI can issue NSLs to obtain consumer identifying information and the identity of financial institutions from credit bureaus.

NSLs are tools available in investigations conducted under the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations (FCIG). The FCIG currently provide that an NSL can be issued during the course of a full international terrorism or foreign counterintelligence investigation. NSLs cannot be used in criminal investigations unrelated to international terrorism or clandestine intelligence activities. Given the new statutory language, the OGC and DOJ have taken the position that NSLs also may be authorized in foreign counterintelligence (FCI) and international terrorism (IT) preliminary inquiries (PIs), with prior coordination through the relevant NSD or CTD unit at FBIHQ. This position is based on the conclusion that all investigations authorized under the FCIG, including PIs, are to "protect against international terrorism or clandestine intelligence activities," as required by the NSL statutory authorities. At present, however, issuing an NSL in the context of a PI will require a

To: All Field Offices From: General Counsel)
Re: 66F-HQ-A1255972, 11/28/2001

waiver or modification of the **FCIG**. Obtaining such a waiver currently is possible only in international terrorism cases. The **FCIG** are being revised, but this revision may take **some** time. Thus, whenever the information sought is relevant to an established full investigation, the field likely will find it more efficient to issue an **NSL** out of the related **full** investigation than to request one in a PI.

2. General Policy on the Use of **NSL** Authority

NSLs are powerful investigative tools, in that they can compel the production of substantial amounts of relevant information. However, they must be used judiciously. The **USA PATRIOT** Act greatly broadened the **FBI's** authority to gather this information. However, the provisions of the Act relating to **NSLs** are subject to a "sunset" provision that calls for the expiration of those provisions in four years. In deciding whether or not, to re-authorize the broadened authority, Congress certainly will examine the manner in which the **FBI** exercised it. Executive Order 12333 and the **FCIG** require that the **FBI** accomplish its investigations through the "least intrusive" means. Supervisors should keep this in mind when deciding whether or not a particular **use of NSL** authority is appropriate. The greater availability of **NSLs** does not mean that they should be used in every **case**.

In addition, the removal of **any** requirement for **FBIHQ** coordination in the issuing of **NSLs** creates the possibility of duplicate requests for the same information by different field offices. Field offices must take steps to avoid this. In particular, the field should check **FBI** databases (**ACS**, Telephone Application, etc.) and open sources to see if the information sought has already been obtained by the **FBI** or whether it is publically available. **This** is particularly important when considering issuing **NSLs** for telephone or electronic communications data under the Electronic Communications Privacy Act (**ECPA**). Unlike the criminal authorities in **ECPA**, the **NSL** authority does not require the **government** to **reimburse carriers** or Internet Service Providers (**ISPs**) for the cost of producing the requested information. A dramatic increase in duplicate **NSLs** will only augment existing pressure to require governmental reimbursement.

Individual field offices have the responsibility for establishing and enforcing an appropriate **review** and **approval** process for the use of **NSL** authorities.

To: All Field Offices From: General Counsel
Re: 66F-HQ-A1255972, 11/28/2001

3. The Mechanics of Producing NSLs

For all **types of NSLs**, the **issuing** office needs to prepare two documents: (1) the **NSL** itself; and (2) an **EC** approving the NSL and documenting the predication. Model **NSLs** and **ECs** for all variations of the three types of NSLs are included as attachments to this communication. These materials will also be placed on the **NSLU** Intranet Website and will be distributed by GroupWise e-mail. Once the initial implementation of these new authorities is accomplished, NSLU will work to develop a macro or form to further streamline the NSL process.

A. The NSL

There are presently seven variations of the three **NSL** types: 1) subscriber information; 2) toll **billing** records; 3) electronic subscriber information; 4) electronic communication transactional records; 5) financial records; 6) identity of financial institutions; and 7) consumer identifying information. This section will discuss the features that these variations share in common and highlight the differences.

All NSLs must be addressed to an appropriate company point of contact. NSLU will place a list of known points of contact on its intranet website. However, *the* responsibility for ensuring that the company point of contact is up to date belongs to the drafting field division. Field divisions should advise NSLU of any new points of contact, or when a particular point of contact is no longer valid. Please note that the company point of contact address does not include a zip code, because NSLs must be hand-delivered.

The first paragraph of every **NSL** provides the **appropriate** statutory authority for the request, identifies the types of records requested, and provides available identifying information so that the company can process the **NSL request**. It is this first paragraph that contains the differences that warrant the seven NSL varieties.

Subscriber and electronic subscriber **NSLs** should have a specific date for each of the phone numbers/e-mail addresses requested. Typically, the specific date is going to be the date that the phone number or e-mail address was used in communication with the subject of the investigation. Any phone numbers identified in a **subscriber** request should contain all ten digits of the phone number, including the area code.

Toll billing record and electronic communication transactional record requests should have a range of dates for

To: All Field Offices From: General Counsel
Re: 66F-HQ-A1255972, 11/28/2001

each of the phone numbers/e-mail addresses requested. The date range may be from inception to present, or some other specified date range relevant to the investigation. Any phone numbers identified in a toll billing record request should contain all ten **digits** of the phone number, including the area code.

Financial record requests should include **all** available identifying information to facilitate the financial institution's records search. Typically, such identifying information includes: name, account numbers, social security number, and date of birth. The time period for financial record requests is typically from inception of account(s) to present, although a more specific **date** range may be used.

Credit record requests are similar to financial requests in that they should include available identifying information to facilitate the credit agency's records search. **Typically**, such identifying information includes: name, social security number, and date of birth. There **is** no need to specify a date range for credit record requests because these requests seek all records where the consumer maintains or has maintained an account.

The second paragraph of every **NSL** contains the statutorily required certification language. The certification language **is** virtually identical for every **NSL**. However, please note that the certification language used in the financial records **NSLs** is slightly different than the others in that it states "the records are sought for foreign counterintelligence purposes" Financial records also contain an additional certification that the **FBI** has complied with all applicable provisions **of** the RFPA. **Use** of the model **NSLs** will ensure that the proper certifications are made.

The next paragraph contains an admonition for the phone company, ISP, financial institution, or credit agency receiving the **NSL**. The paragraph warns that no officer, employee, or agent **of** the company may disclose that the **FBI** has sought **or** obtained **access** to the requested information or records.

The last substantive paragraph instructs the company point of contact to provide the records personally to a representative of the delivering field division. **It** also states that any questions should be directed to the delivering field division. This last paragraph requires the person preparing the **NSL** to input the appropriate delivering field division in two places.

The model **NSLs** for financial records and electronic communication transactional **records** each have a separate attachment. These attachments provide examples of information

To: All Field Offices From: General Counsel
Re: 66F-HQ-A1255972, 11/28/2001

which the company might consider to be financial or electronic communication transactional records.

Finally, the NSL is an unclassified document because it does not detail the specific relevance of the requested records to an authorized FBI investigation. There is **no need to** classify the NSL **when** attaching it to the cover **EC**.

B. The Cover EC

The Cover **EC** serves four essential functions in the NSL process: (1) it documents the predication for **the NSL by** recording why the information sought is relevant to an investigation; (2) it documents the approval of the NSL **by** relevant supervisors and the legal review of the document; (3) it contains the information needed to fulfill **the** Congressional reporting **requirements** for each **type of** NSL; and (4) **it transmits** the NSL to **the** requesting squad or delivering field division for delivery **to** the appropriate telecommunications carrier, ISP, financial institution, **or** credit agency. There **are four** varieties of model ECs provided with this communication: (1) subscriber/electronic subscriber information; (2) toll billing/electronic communication transactional records; (3) financial records; and (4) credit information. When preparing an NSL request, the field should use one of these model ECs, giving special consideration to the elements discussed in this section.

1) Field Descriptors

This section will generally explain how **most** of the **EC** field descriptors should be completed. The "Precedence" descriptor will typically be "**ROUTINE.**" The "Date" descriptor should reflect the date the NSL and the EC were approved. The "To" descriptor **will always** include "General Counsel" and the requesting **squad's** field division. It **may** also include the name of the delivering field division (always **Los Angeles** in the case of FCRA NSLs) and the office of origin, if applicable. The "Attn" descriptor **should** include the name of the Chief, NSLU, and the **squad** supervisors and case agents **from the requesting** squad, delivering field division, and office of **origin**, if applicable and **if** known. The credit model **EC identifies** the FBI personnel working on Squad 4, Santa Ana RA, **who are** currently responsible for the service of FCRA NSLs. The "From" descriptor should identify the certifying official's field division, and include the title of the certifying official. The "Contact" descriptor should reflect the name and phone number of the requesting squad case agent. The "Drafted By" descriptor **should** reflect the name of the person **who** prepared the NSL package. The "Case ID #" descriptor **must** contain the case file **number** relevant to the

To: All Field Offices From: General Counsel
Re: 66F-HQ-A1255972, 11/28/2001

request, and the case file numbers indicated in the model EC. The "**Title**" descriptor should list the **subject's** name, any known aliases, whether the investigation is an FCI or IT investigation directed at a particular foreign power, and identify the office of origin, e.g., **WILLIAM BADGUY, AKA BILL BADGUY, FCI-IRAQ, OO: NEW YORK.** The "**Synopsis**" descriptor should use the standard boilerplate contained in the appropriate model EC. The "**Derived From**" descriptor should be "**G-3**" in bold typeface. The "**Declassify On**" descriptor should be "**X1**" in bold typeface. the "**Full Investigation Instituted**" descriptor should contain the date the full FCI or IT investigation was opened **on** the subject and indicate whether the subject is a **U.S.** person. Please note that the word "**Field**" has been deleted from the field descriptor contained in the standard EC macro. In the unlikely event that an NSL is issued during a PI with prior FBIHQ approval, the field descriptor should be edited to state "**Preliminary Inquiry Instituted.**" The remaining descriptors can be filled in according to the model EC being used.

2) Predication and Relevance

The **USA PATRIOT** Act has greatly simplified the NSL process. The FBI official authorizing the issuance of an **NSL is no** longer required to certify that there are specific and articulable facts giving reason to believe that the information sought pertains to a foreign power, or an agent of a foreign power. **NSLs** may now be issued upon a certification of relevance to an authorized investigation to protect against international terrorism or clandestine intelligence activities.

Accordingly, the first paragraph in the "**Details**" section of the EC should contain the predication for the full investigation and identify the relevance of the requested records to the investigation. Both the predication and relevance should be **stated** clearly and concisely. The predication should track with the predicates contained in **FCIG, Section III.C.1.** For example, the predication might state, "**A full** foreign counterintelligence investigation of subject, a Non-U.S. person, was authorized **in** accordance with the Attorney General Guidelines because he may be a suspected intelligence officer for the Government of Iraq." Another example might state, "**A full** international terrorism **investigation of** subject, a **U.S.** person, was **authorized in** accordance with the Attorney General Guidelines because he may be engaged in international terrorism activities **by** raising funds for **HAMAS.**"

The relevance requirement ties the requested records to the appropriate full investigation. For example, relevance could be established by stating, "**This** subscriber information is being

To: All Field Offices From: General Counsel
Re: 66F-HQ-A1255972, 11/28/2001

requested to determine the individuals or entities that the subject has **been in** contact with during the past six months." Another example might state, "The subject's financial records are being requested to determine his involvement in possible HAMAS fund raising activities."

3) Approval

The **second** paragraph in the "Details" section and the "Approved By" descriptor field of the EC should reflect the **level** of the official approving the issuance of the EC and signing the NSL's certification. Prior to certification, every NSL and cover **EC issued** by the field division should be reviewed by the **squad** supervisor, the Office of the Chief Division Counsel, and the **ASAC**. Lawyers reviewing NSL packages should use the checklists provided with this communication to ensure legal sufficiency. The last step in the approval process occurs when the certifying official (Deputy Director, ADs, General Counsel, ADICs, DADs, DGC, or SACs) personally **signs** the NSL and initials the EC. Certifying officials may not further delegate signature authority.

4) Reporting Requirements

NSLU will continue to prepare the mandatory reports to Congress required for each **NSL** type. To ensure that **NSLU** receives sufficient information to prepare these reports, it is critical that the person preparing the NSL **package** follow the NSL and **EC** models very carefully. The second lead in every model **EC** requests **NSLU** to "record the appropriate information needed to fulfill the Congressional reporting requirements for NSLs." **NSLU** will **be able to** compile the reporting data provided that the cover **EC** includes the case file number, the subject's **U.S.** person status, the type of NSL issued, and the number of phone numbers, e-mail addresses, account numbers, or individual records being requested in the **NSL**. Once **NSLU** has entered this reporting data into its NSL database, it **will** clear the **lead** set in the cover **EC**.

E) Transmittal

Often, the **squad** requesting *the* NSL will **be able** to hand-carry the NSL locally to the appropriate company point of contact. However, in many situations, the field division drafting the NSL **will** have to get it delivered by another field division. In these situations, the drafting division **should** attempt to identify the **squad** and personnel at the delivering field division who will be responsible for delivering the **NSL**. In the event that the office of origin is different than either

To: All Field Offices From: General Counsel
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the drafting division or delivering division, the person drafting the NSL package should ensure that the case agent from the office of origin receives a copy of the package. The first lead in the model ECs should direct the requesting squad or delivering field division to deliver the attached NSL. If the delivering division is different than the drafting division or the office of origin, then this first lead should also request the delivering division to submit the results to the drafting division and/or the office of origin.

4. NSL Preparation Assistance

Some field divisions may, for a variety of reasons, opt not to exercise their delegated authority to issue NSLs. Other field divisions may exceed their capacity to issue NSLs and seek assistance in handling the overflow. NSLU will continue to process any NSL request that it receives. Field divisions should send their requests directly to NSLU, with information copies to the FBIHQ substantive unit. Such requests must contain all the information identified in this communication as necessary to prepare the NSL package. NSLU anticipates that it will be able to process such requests within one to three business days.

Any questions regarding this communication may be directed to [redacted] NSLU, OGC, at [redacted]

b7C

BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA

RESOLUTION NO. 105-2003

On the motion of Supervisor Almquist
duly seconded by Supervisor Wormhoudt
the following resolution is adopted

RESOLUTION OF THE COUNTY OF SANTA CRUZ TO DEFEND
CIVIL LIBERTIES AND THE BILL OF RIGHTS
THROUGH OPPOSITION TO THE USA PATRIOT ACT

WHEREAS, the County of Santa Cruz and its citizens are governed by the United States Constitution, including the Bill of Rights, and the California State Constitution, and depend on the leaders of the United States to protect and preserve the freedoms which are the foundation of our democracy; and

WHEREAS, the County of Santa Cruz consists of a diverse population, including non-citizens, whose contributions to the community are vital to its character and function; and

WHEREAS, fundamental rights granted by the United States Constitution are threatened by actions taken at the federal level, notably by passage of sections of the USA Patriot Act and several Executive Orders which, among other things:

- Violate the First and Fourth Amendments to the Constitution through the expansion of the government's ability to wiretap telephones, monitor e-mail communications, and all other uses of the internet, survey medical, banking, credit, and student records, and secretly enter homes and offices without customary administrative oversight or without showing of probable cause;
- Give law enforcement expanded authority to obtain library records, and prohibit librarians from informing patrons of monitoring or information requests, and otherwise gain access to other forms in which information is communicated;
- Grant potential unchecked powers to the Attorney General and the U.S. Secretary of State to designate legal domestic groups as "terrorist organizations," while lifting administrative regulations against covert, surveillance counter-intelligence operations by the FBI that in the past have targeted domestic groups and individuals;
- Violate the Fifth, Sixth and Fourteenth Amendments to the Constitution in establishing secret military tribunals, and in subjecting citizens and non-citizens to indefinite detention even when they have not been allowed an attorney, brought to trial, or even charged with a crime; and

RESOLUTION OF THE COUNTY OF SANTA CRUZ TO DEFEND CIVIL LIBERTIES
AND THE BILL OF RIGHTS THROUGH OPPOSITION TO THE USA PATRIOT ACT
Page 2

- Authorize eavesdropping on confidential communications between lawyers and their clients in federal custody; and

WHEREAS, the County of Santa Cruz adheres to the principle that no County agency may profile or discriminate against any person solely on the basis of ancestry, race, ethnic or national origin, color, age, sexual orientation, gender, religion, physical or mental disability, or apparent socio-economic status; and

WHEREAS, the County of Santa Cruz and its officers recognize their constitutional commitment to uphold the legal and human rights of county residents; and

WHEREAS, the County of Santa Cruz opposes any use of governmental power to suppress the free and open exchange of knowledge and information or to intimidate individuals exercising free inquiry; and

WHEREAS, other public jurisdictions around the country have passed similar resolutions reinforcing local efforts to support and defend legal and human rights of their residents, reflecting a common belief that sections of the USA Patriot Act and related regulations, guidelines, and Executive Orders are a present danger to our Constitutional rights and privacy rights.

NOW, THEREFORE, BE IT RESOLVED that the Santa Cruz County Board of Supervisors remains firmly committed to the protection of civil rights and civil liberties for all and affirms its commitment to embody democracy and to embrace, defend and uphold the inalienable rights and fundamental liberties granted under the United States and the California State Constitutions;

BE IT FURTHER RESOLVED that the Board of Supervisors requests local law enforcement to continue to preserve and uphold residents' freedom of speech, assembly, association, privacy, the right to counsel and due process in judicial proceedings, and protection from unreasonable searches and seizures.

BE IT FURTHER RESOLVED that our federal legislative delegation be petitioned to actively monitor the implementation of the USA Patriot Act, and any existing and new Executive Orders dealing with related subjects, including the proposal, currently in draft, known as Patriot II, and to actively work for the repeal of those provisions that violate the guaranteed civil liberties enumerated in the Bill of Rights.

BE IT FURTHER RESOLVED that the Clerk of the Board deliver this Resolution to all local law enforcement agencies, the Governor's office and to all members of the California federal legislative delegation.

RESOLUTION OF THE COUNTY OF SANTA CRUZ TO DEFEND CIVIL LIBERTIES
AND THE BILL OF RIGHTS THROUGH OPPOSITION TO THE USA PATRIOT ACT
Page 3

PASSED AND ADOPTED by the Board of Supervisors of the County
of Santa Cruz, State of California, this 29th day of
April, 2003, by the following vote:

AYES: SUPERVISORS Beautz, Wormhoudt, Campos, Almquist and Pirie
NOES: SUPERVISORS None
ABSENT: SUPERVISORS None

ELLEN PIRIE

ELLEN PIRIE, Chairperson
Board of Supervisors

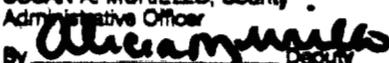
ATTEST: **GAIL T. BORKOWSKI**
Clerk of said Board

Approved as to form:


County Counsel

DISTRIBUTION: Governor Gray Davis
Assembly Member John Laird
Assembly Member Simon Salinas
Senator Bruce McPherson
Senator Byron Sher
All Members, California Federal Legislative
Delegation
Santa Cruz County Sheriff's Office
Watsonville Police Department
Capitola Police Department
Santa Cruz Police Department
Scotts Valley Police Department
California Highway Patrol, Santa Cruz Area

3118N5

STATE OF CALIFORNIA)
COUNTY OF SANTA CRUZ) ss
I, SUSAN A. MAURIELLO, County Administrative
Officer and ex-officio Clerk of the Board of Super-
visors of the County of Santa Cruz, State of
California do hereby certify that the foregoing is
a true and correct copy of the resolution passed
and adopted by and entered in the minutes of the
said board. In witness whereof I have hereunto
set my hand and affixed the seal of the said
Board on May 1, 2003.
SUSAN A. MAURIELLO, County
Administrative Officer
By  Deputy



County of Santa Cruz

BOARD OF SUPERVISORS

701 OCEAN STREET, SUITE 500, SANTA CRUZ, CA 95060-4069

(831) 454-2200 FAX: (831) 454-3262 TDD: (831) 454-2123

JANET K. BEAUTZ
FIRST DISTRICT

ELLEN PIRIE
SECOND DISTRICT

MARDI WORMHOUDT
THIRD DISTRICT

TONY CAMPOS
FOURTH DISTRICT

JEFF ALMQUIST
FIFTH DISTRICT

AGENDA: 4/8/03

April 7, 2003

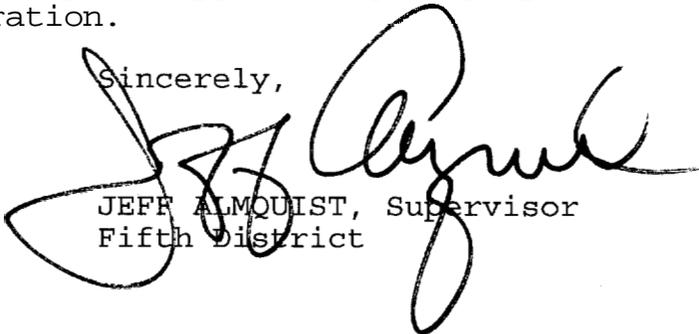
BOARD OF SUPERVISORS
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

RE: REQUEST FOR CONTINUANCE OF ITEM #24 - A PROPOSED
RESOLUTION TO DEFEND CIVIL LIBERTIES AND THE BILL
OF RIGHTS THROUGH OPPOSITION TO THE USA PATRIOT ACT

Dear Members of the Board:

At the request of members of the community, I am recommending that the Board continue Item 24, a proposed resolution to defend civil liberties and the Bill of Rights through opposition to the USA Patriot Act, until April 29, 2003. This continuance will afford members of the community the opportunity to prepare comments for Board consideration.

Sincerely,


JEFF ALMQUIST, Supervisor
Fifth District

JA:ted

1215B5

LIST OF CALLERS REGARDING ITEM #84 - OPPOSITION TO THE USA
PATRIOT ACT

Name : Corda Ebey
1316 W. Cliff Drive
Santa Cruz, CA 95060

Comment: Support the resolution opposing the Patriot Act

Name : Michael Levy
1013 Sumner Street
Santa Cruz, CA 95062

Comment: Support the resolution opposing the Patriot Act

Name: Dell Elliott
418 Walnut Avenue
Santa Cruz, CA 95060

Comment: I voted for Mardi. Support the resolution opposing the
Patriot Act.

1337C6

CBD BOSMAIL

From: CBD BOSMAIL
Sent: Tuesday, April 29, 2003 8:18 AM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 4/29/2003

Item Number : 84

Name : Paul Elerick

Email : elerick@cruzio.com

Address : 1960 Jennifer Dr.
Aptos, CA 95003

Phone : 831-688-2304

Comments :

Please add my name to those who oppose the illegal "Patriot Act". I urge each of you to vote for the resolution opposing this most serious threat to the security and freedom of our country. Please make this a unanimous vote for freedom, and AGAINST the so-called Patriot Act being promoted by the current administration in Washinton D.C.