

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE



# Use and Protection of US Person Information in US Intelligence Community Activities

LEADING INTELLIGENCE INTEGRATION

UNCLASSIFIED



## Why We Are Here

- Intelligence Community (IC) professionals take an **OATH** to carry out the missions of their agencies in accordance with the Constitution and laws
- EO 12333 requires that we execute our **NATIONAL SECURITY MISSION** *in a manner that protects fully the freedoms, civil liberties and privacy rights of US persons*
- Protecting these **FREEDOMS, CIVIL LIBERTIES AND PRIVACY RIGHTS** fosters trust from the public, our mission partners and other stakeholders that we properly use and protect the data they provide to us
- **TRUST** is critical to our efforts to protect national security. Without trust in our IC institutions, processes and leaders, we risk losing access to data and authorities vital to accomplishing our national security mission
- Collecting, handling, sharing and safeguarding US Person information lawfully and consistently across the IC is therefore **ESSENTIAL** to achieving the IC's missions and goals



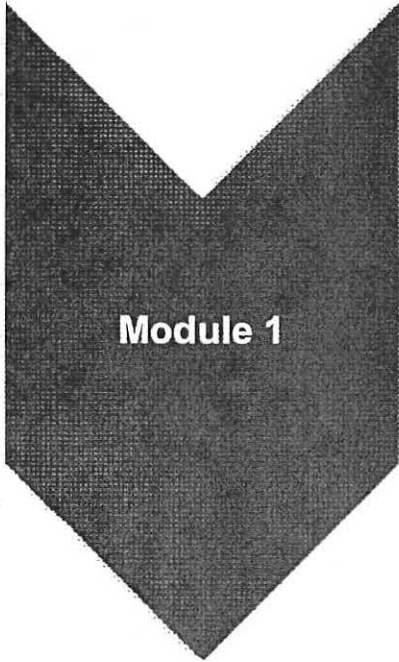
## Course Goals

- Understand the IC's dual mandate to provide timely and relevant intelligence AND to protect the privacy rights and civil liberties of US Persons
- **Module 1:** Understand the basic rules under EO 12333 regarding the collection, retention and dissemination of US Person information
  - Definition of US Person
  - Types of US Person information that may be collected and shared
- **Module 2:** Provide an overview of NCTC authorities

The procedures described here do not apply to FISA-derived information.



# Module 1



- *Framework of EO12333*
- *Definition of US Person*
- *Attorney General-Approved Implementing Guidelines*



## Module Objectives

- Understand the US Person framework in EO 12333
- Appreciate how the IC's history has shaped the laws and practices governing the collection, retention and dissemination of information concerning US Persons
- Understand that US Person information may be collected, retained, or disseminated when:
  - consistent with the element's mission;
  - justifiable under an authorized EO 12333 category of collection; and
  - permissible under the element's Attorney General (AG)-approved implementing guidelines



# Domestic Intelligence Collection: Congressional Investigations

- In 1975 and 1976, Congress investigated the IC's domestic intelligence activities
  - The Senate's Church Committee
  - The House's Pike Committee

"Domestic intelligence activity has threatened and undermined the Constitutional rights of Americans to free speech, association and privacy. It has done so primarily because the Constitutional system for checking abuse of power has not been applied."

~ Church Committee Final Report



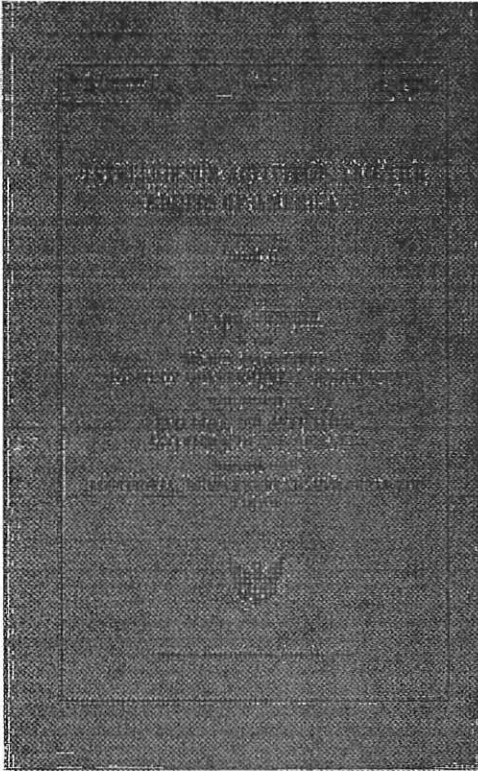


## Church/Pike Investigations

- NSA surveillance:
  - Intercepted and reviewed millions of international telegrams
  - Watch-listed and reported on thousands of allegedly "subversive" Americans
  - Conducted general phone surveillance in lieu of directed wiretaps on targets
  
- FBI surveillance:
  - Wiretapped lobbyists, political enemies, presumed Communist sympathizers
  - Infiltrated women's liberation movement
  - Investigated NAACP for 25 years; wiretapped/bugged Dr. King and associates
  - Conducted hundreds of warrantless break-ins
  
- CIA activities:
  - Provided covert support to military coups/assassinations around the world



## Sample Conclusions (from Church/Pike)



- **Intelligence is essential**
  - “[T]he power of government to conduct *proper* domestic intelligence activities under effective restraints and controls must be preserved.”
- **Beware of times of crisis**
  - “In time of crisis, the Government will exercise its power to conduct domestic intelligence activities to the fullest extent.”
- **Technology and Big Brother**
  - “In an era where the technological capability of Government relentlessly increases, we must be wary of the drift toward ‘big brother government.’”
- **Protect Privacy and Civil Liberties**
  - “[T]oo often ... domestic intelligence activities have invaded individual privacy and violated the rights of lawful assembly and political expression.”





## **Domestic Intelligence Collection: Response to Congressional Investigations**

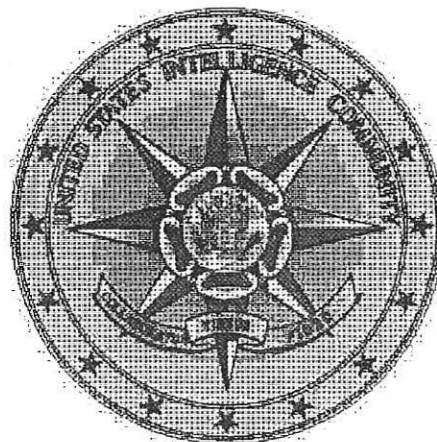
- The original version of what became EO12333 was written, in part, in response to the Church/Pike committees findings
- While the EO has been amended several times, its protections for the freedoms, civil liberties and privacy rights of US Persons have remained essentially unchanged
- Church/Pike committees became the permanent intelligence oversight entities in the Senate and House



## EO 12333

"Executive Order 12333 is a cornerstone document for the Intelligence Community. The Executive Order sets strategic goals and defines roles and responsibilities within the Intelligence Community, while also affirming the Nation's commitment to protect Americans' civil liberties and privacy rights in the conduct of intelligence activities."

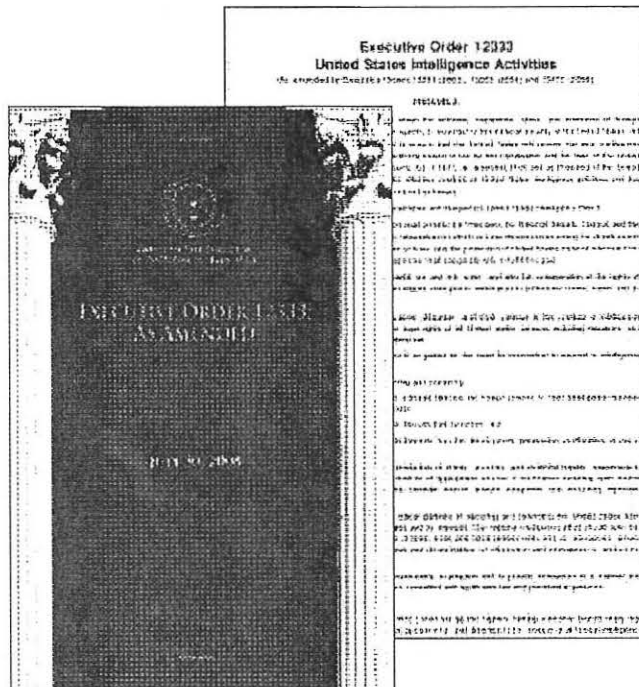
~White House Press Release  
on the 2008 Revision





# EO 12333, United States Intelligence Activities (as amended in 2008)

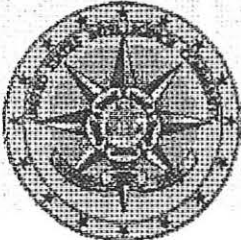


- Key document establishing the IC's missions and responsibilities, and governing how we conduct intelligence activities
  - EO 12333 as amended reflects original executive branch standards (Part 2) for the conduct of intelligence activities
  - The 2008 revision (Part 1) updates the EO to reflect the Intelligence Reform and Terrorism Prevention Act of 2004





# EO 12333 - Structure

EO 12333 has three main parts

| Part 1   | Part 2  | Part 3   |
|--|---|--|
| <p><i>"Goals, Directions, Duties, and Responsibilities with Respect to United States Intelligence Activities"</i></p> <ul style="list-style-type: none"> <li>• Specifies the missions and authorities of each IC element</li> </ul>  | <p><i>"Conduct of Intelligence Activities"</i></p> <ul style="list-style-type: none"> <li>• Provides principles intended to achieve the proper balance between acquisition of essential information and protection of personal interests</li> </ul>  | <p><i>"General Provisions"</i></p> <ul style="list-style-type: none"> <li>• Contains definitions</li> </ul>  |



## EO 12333 / Part 1

### Agency Mission Examples

- **CIA:** coordinates clandestine collection of foreign intelligence through “human sources or through human-enabled means” *outside of the US*
- **FBI:** coordinates clandestine collection of foreign intelligence through “human sources or through human-enabled means” *inside the US*
- **DOD:** conducts programs and missions to fulfill national, departmental, and tactical intelligence requirements
- **NSA:** possesses primary authority to engage in signals intelligence activities



## EO 12333 / Part 2

### Collection Rules Examples

- **Part 2.3:** describes categories of information regarding US Persons that the IC elements are authorized to collect
- **Part 2.4:** requires least intrusive means of collection within the US or directed at US Persons abroad; prohibits surveillance/monitoring except in specific circumstances
- **Part 2.6:** describes circumstances in which IC element may participate in or provide support to law enforcement
- **Part 2.9:** limits ability to participate in a US organization without disclosing IC affiliation



## EO 12333 / Part 3

### Definitions

- **Intelligence activities:** all activities that elements of the Intelligence Community are authorized to conduct pursuant to EO 12333
- **Foreign intelligence:** information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists
- **National Intelligence and Intelligence Related to National Security:** all intelligence, regardless of the source ... gathered within or outside the United States, that pertains ... to more than one United States Government agency; and that involves threats to the United States, its people, property, or interests; the development, proliferation, or use of weapons of mass destruction; or any other matter bearing on United States national or homeland security.

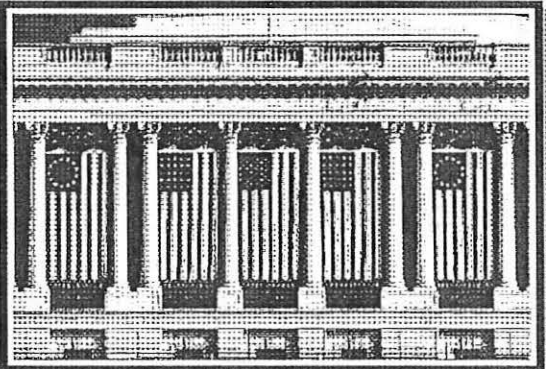
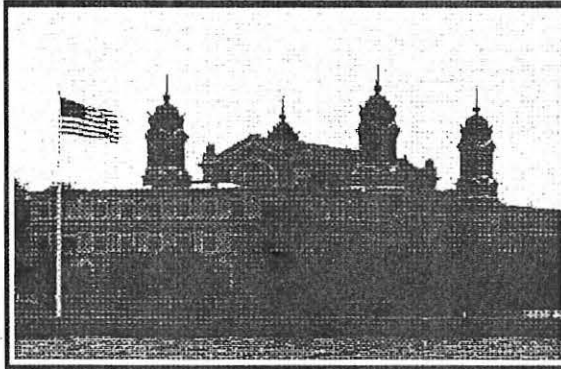


## Definitions Cont'd

### US Person (USP)

US Person (USP) is:

- A US citizen,
- An alien known by the intelligence agency element concerned to be a permanent resident alien (i.e., lawful permanent resident, green card holder),
- An unincorporated association substantially composed of US citizens or permanent resident aliens, or
- A corporation incorporated in the US, except for a corporation directed and controlled by a foreign government or governments.







## Responsibility to Provide

EO 12333, Part 1.1(g) dictates that all departments and agencies have a responsibility to prepare and provide intelligence in a manner that allows the full and free exchange of information, consistent with applicable law and presidential guidance

“Responsibility to provide” as balanced against “need to protect” is also echoed in ICD 501 and ICPM 2007-200-2



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# Criteria for Collection, Retention, and Dissemination of USP Information

**Categories of US Person information that may be collected, retained, or disseminated IF consistent with the IC element's mission AND accomplished in accordance with the element's Attorney General-approved procedures:**

- Information that is publicly available or collected with the consent of the person concerned
- Foreign intelligence or counterintelligence information
- Information obtained in the course of a lawful foreign intelligence, counterintelligence, international drug or international terrorism investigation
- Information needed to protect the safety of persons or organizations
- Information needed to protect foreign intelligence or counterintelligence sources, methods, and activities from unauthorized disclosure
- Information concerning potential sources or contacts for the purpose of determining their suitability or credibility



## Criteria for Collection, Retention, and Dissemination of USP Information (cont'd)

**Categories of US Person information that may be collected, retained, or disseminated IF consistent with the IC element's mission AND accomplished in accordance with the element's Attorney General-approved procedures:**

- Information arising out a lawful personnel, physical, or communications security investigation
- Information acquired by overhead reconnaissance not directed at specific US Persons
- Incidentally acquired information that may indicate involvement in activities that may violate federal, state, local, or foreign laws
- Information necessary for administrative purposes (HR, contracting information, etc.)



## Attorney General's Guidelines

- EO 12333 requires each IC element to have procedures implementing Part 2 of the EO regarding collecting, retaining, or disseminating US Person information
- These procedures must address all matters covered by Part 2 of the EO as they will be implemented by the specific element under its unique authorities: e.g., as regards use of certain collection techniques, conduct of physical surveillance (if permissible), provision of support to law enforcement and civil authorities (circumstances), and participation in organizations without disclosing IC affiliation
- These procedures must be approved by the Attorney General in consultation with the DNI



## Dissemination inside and outside the IC

- Information may be disseminated, but the HOW depends on whether inside or outside the IC. For example:
  - *If inside the IC:* To other appropriate IC elements so they can determine if relevant to their mission; or finished information in accordance with disseminator's AG-approved implementing guidelines
  - *If outside the IC:* Finished information where recipient agency has a need for the information in the performance of a lawful function, and sharing is consistent with disseminator's AG-approved implementing guidelines



## Module Summary

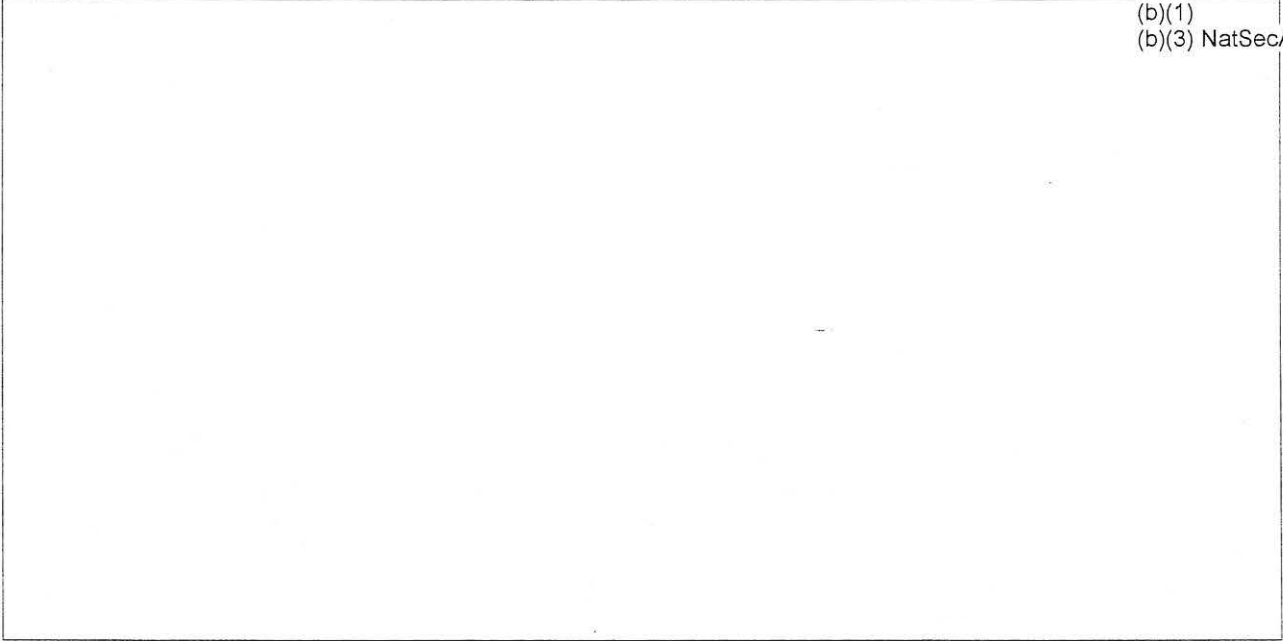
- EO 12333 is a cornerstone document that defines the IC elements' missions, authorities and responsibilities, and lays out rules to protect US Persons' privacy and civil liberties.
  
- The definition of a US Person includes:
  - US citizens
  - Permanent resident aliens
  - Unincorporated organizations substantially composed of US citizens and permanent resident aliens, and
  - Organizations incorporated in the US
  
- US Person information may be collected, retained, or disseminated if consistent with the element's mission; consistent with an authorized category of collection; and permissible under the element's AG-approved guidelines



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(b)(3)  
NatSecAct

So here I was, minding my own business, and...



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(b)(3) NatSecAct

In other words, it's a typical day.



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Scenario 1:

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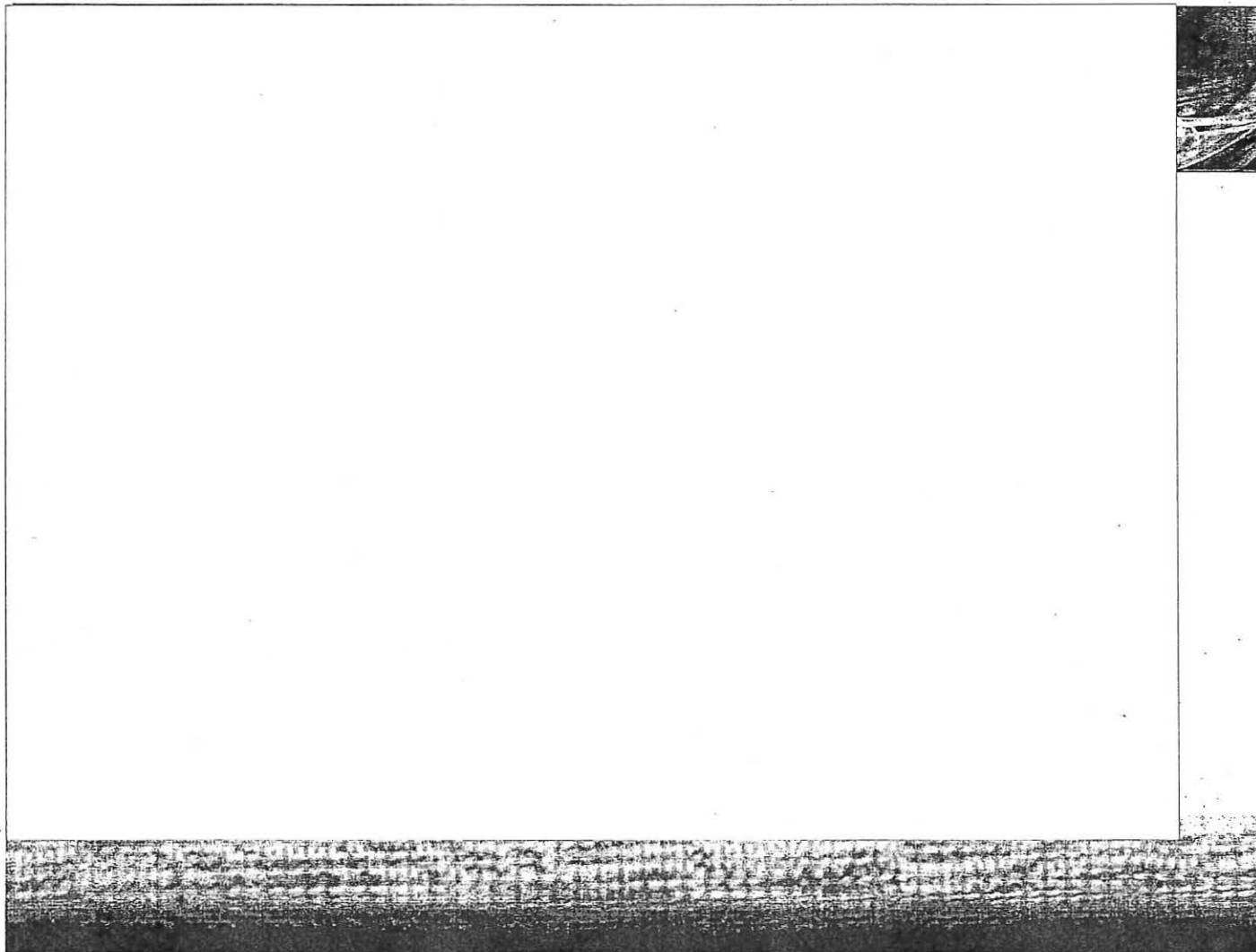
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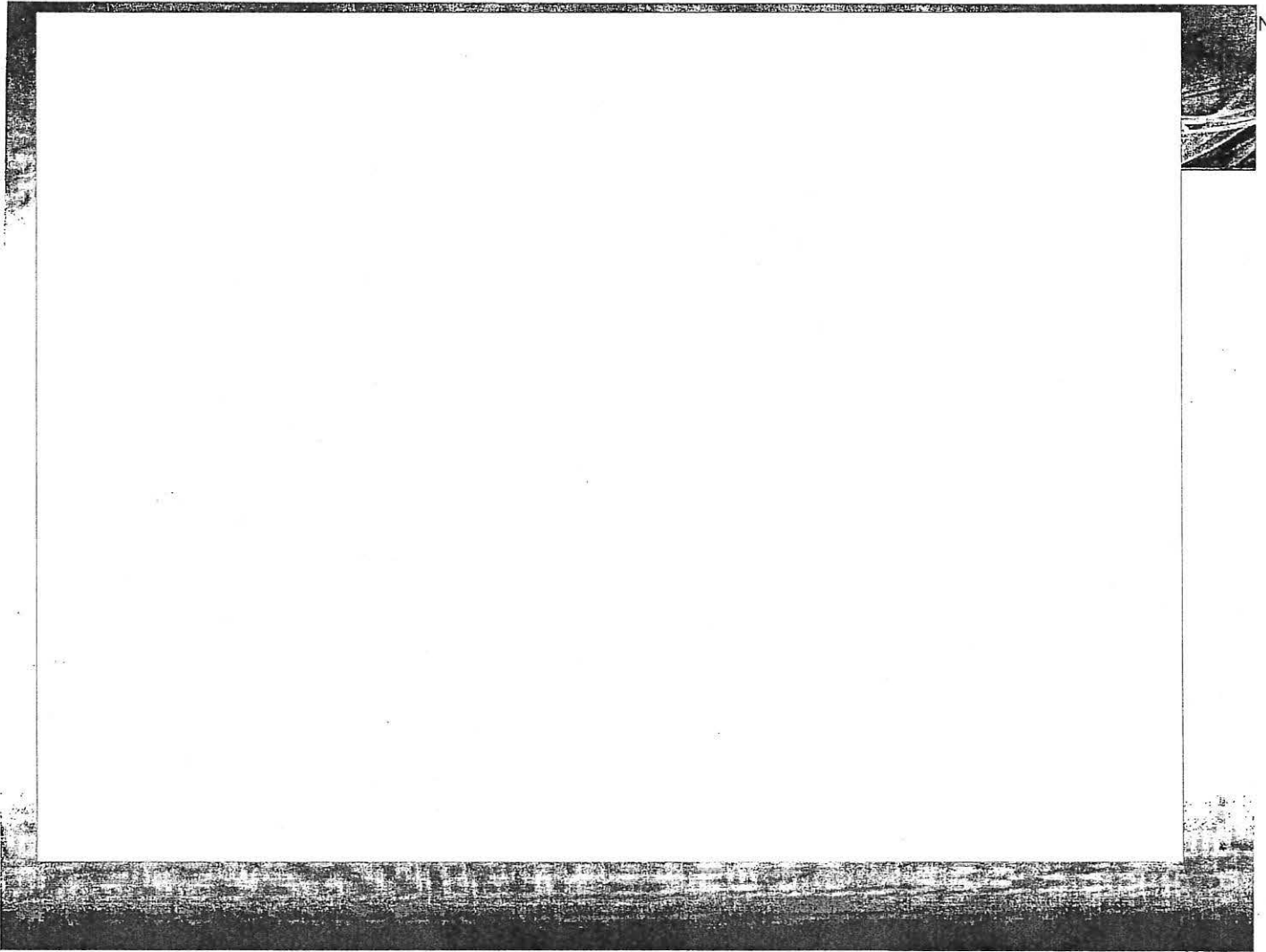
Scenario 1

**Rules:**

- CIA may provide specialized technical assistance to another federal agency when approved by HQ, if the assistance involves CIA activities authorized by AR 2-2 (FI collection).
- CIA may provide specialized technical assistance to a Law Enforcement entity with General Counsel approval.

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Scenario 3:

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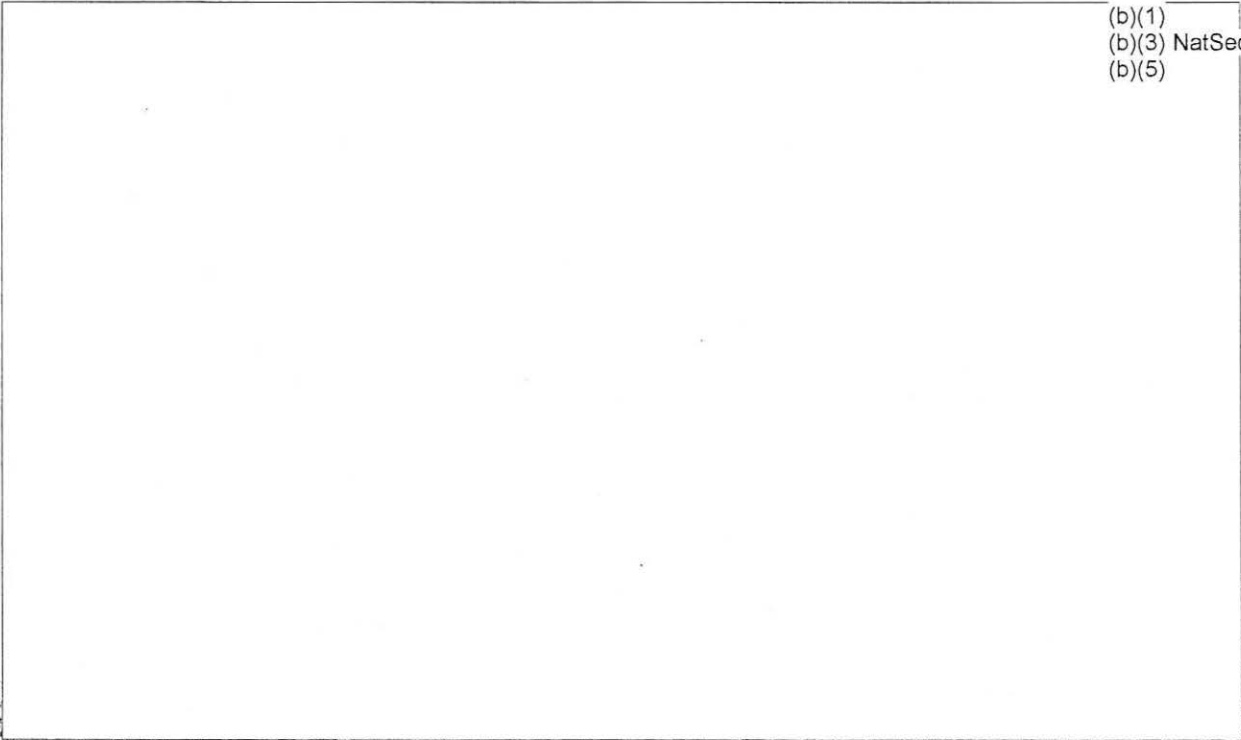
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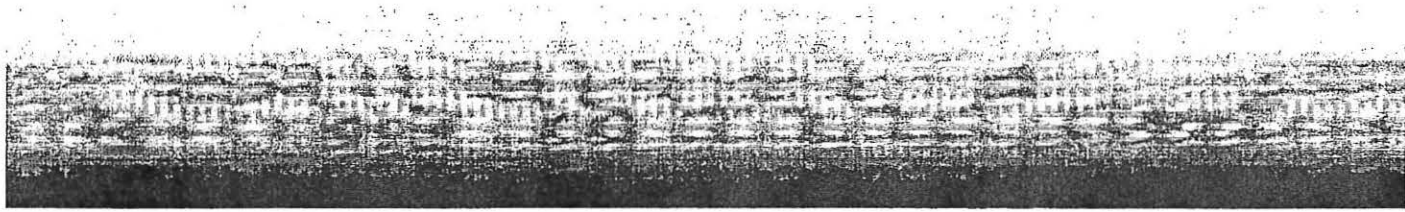
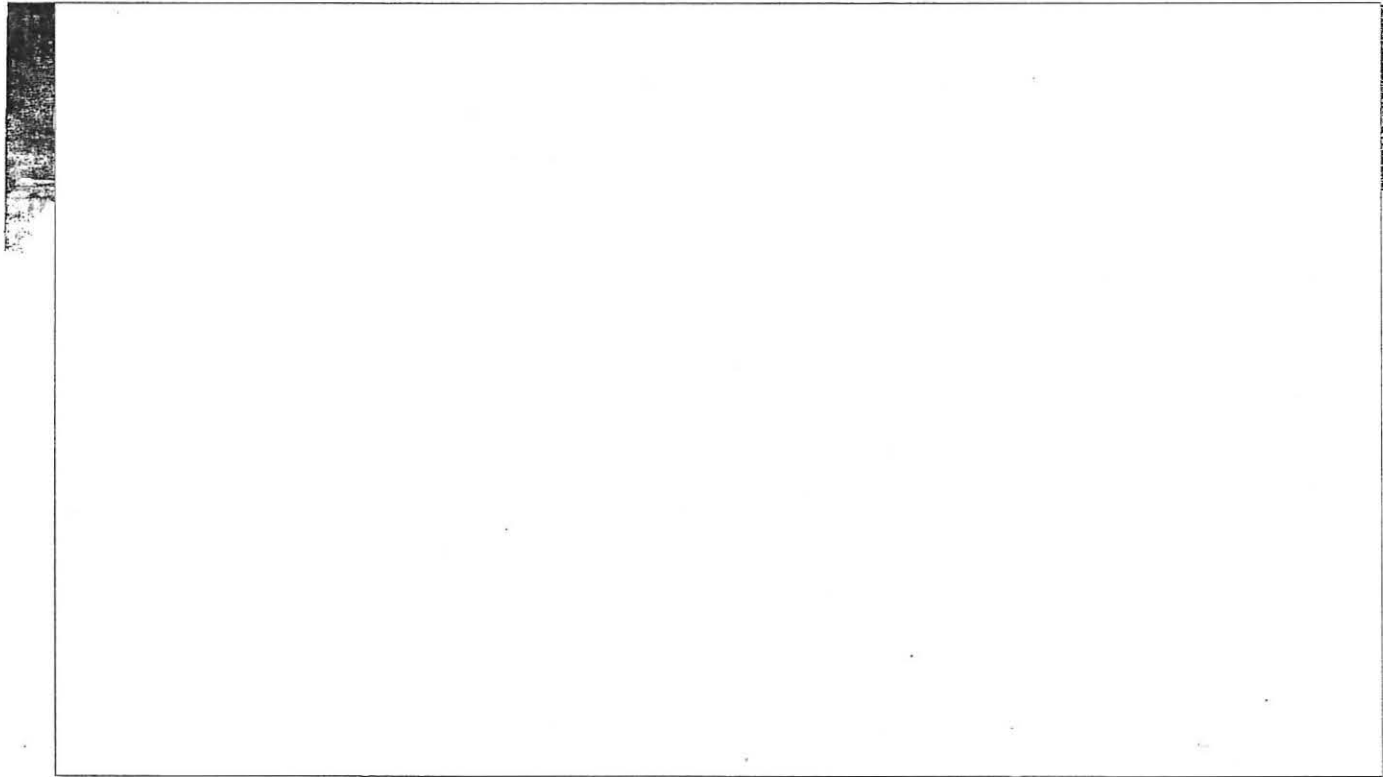
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# Scenario 3

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# Scenario 5

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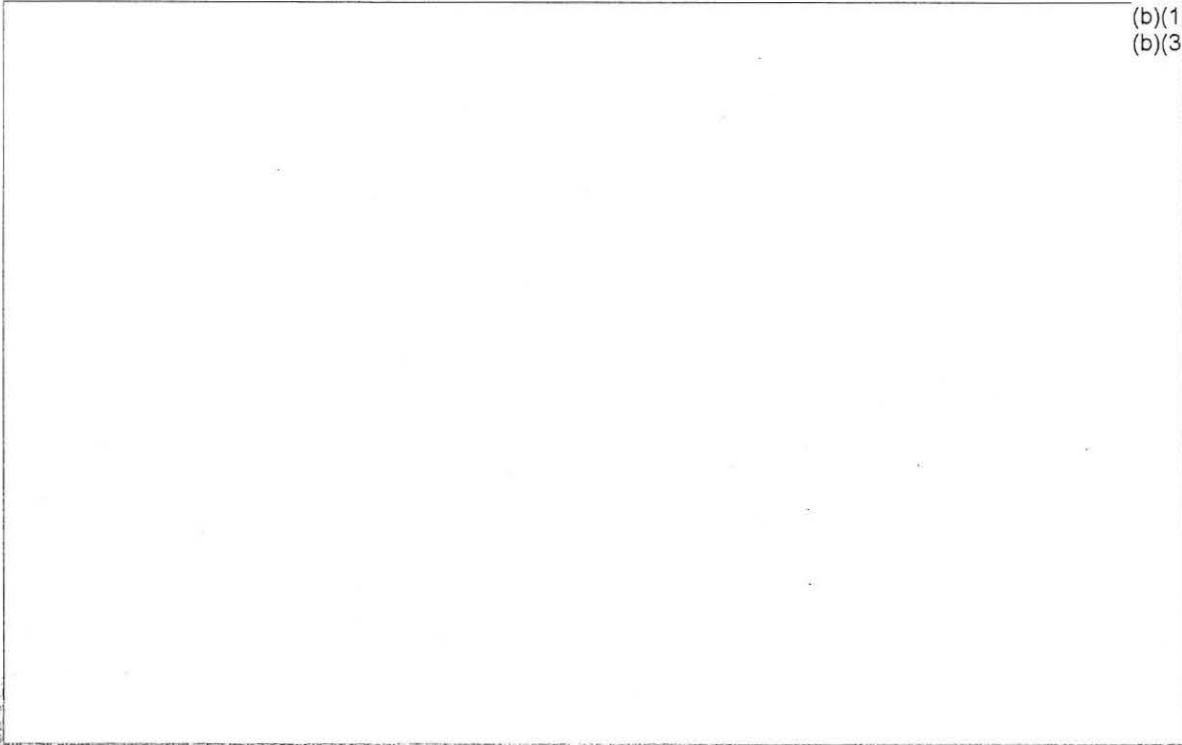




Scenario 5

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Scenario 5:

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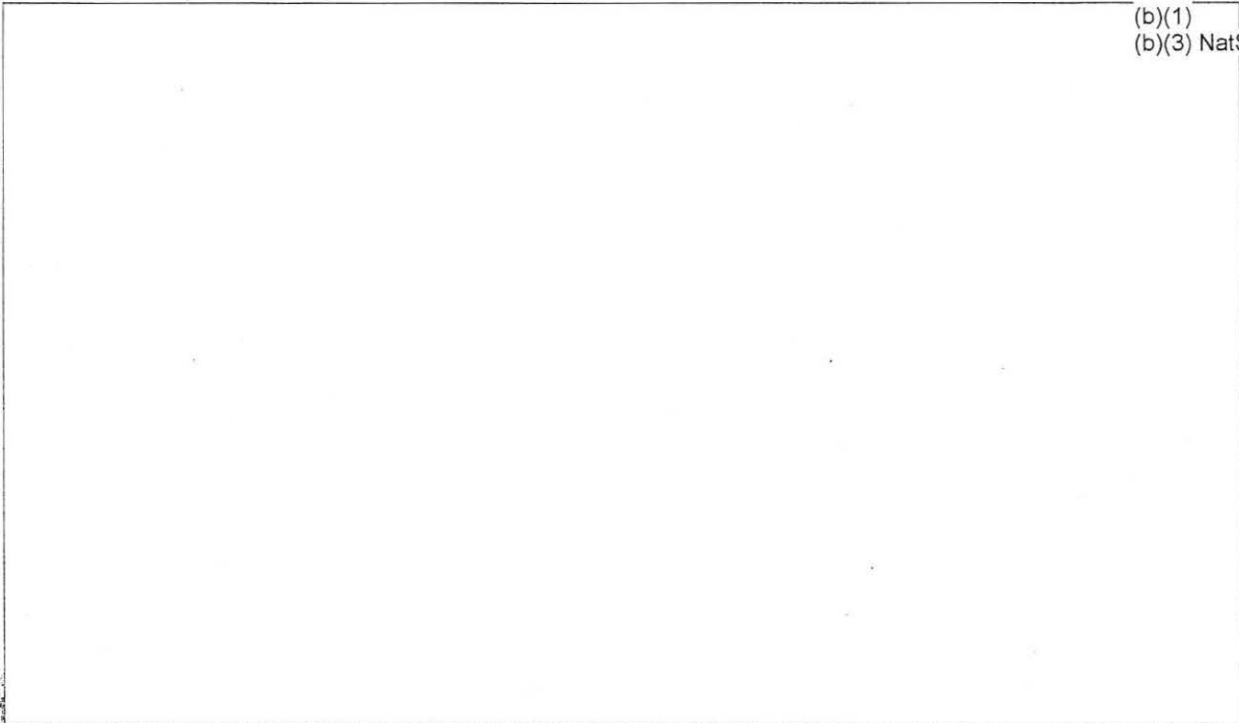
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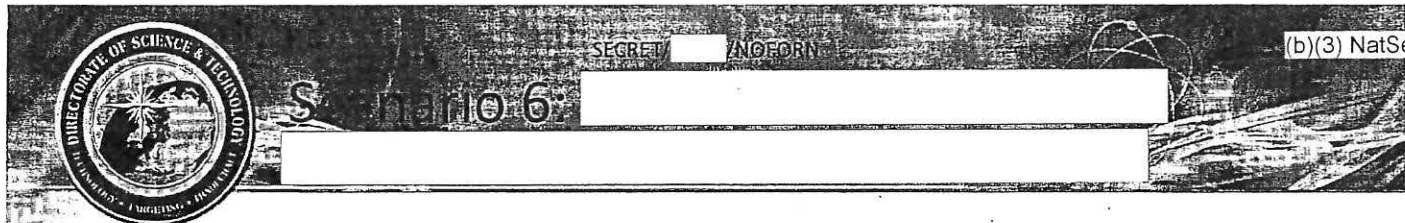
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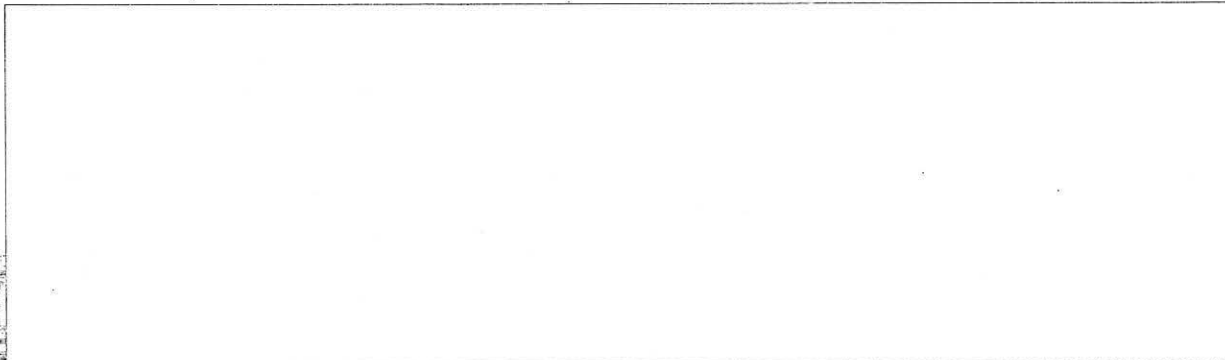


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**Rules:** Under the Fourth Amendment, USPs have a protectable privacy interest in the contents of their communications. The FISA requires a court order to target USPs and collect the contents of their communications. Even if incidentally collected, we must retain USP info consistent with AR 2-2, Annex A procedures.

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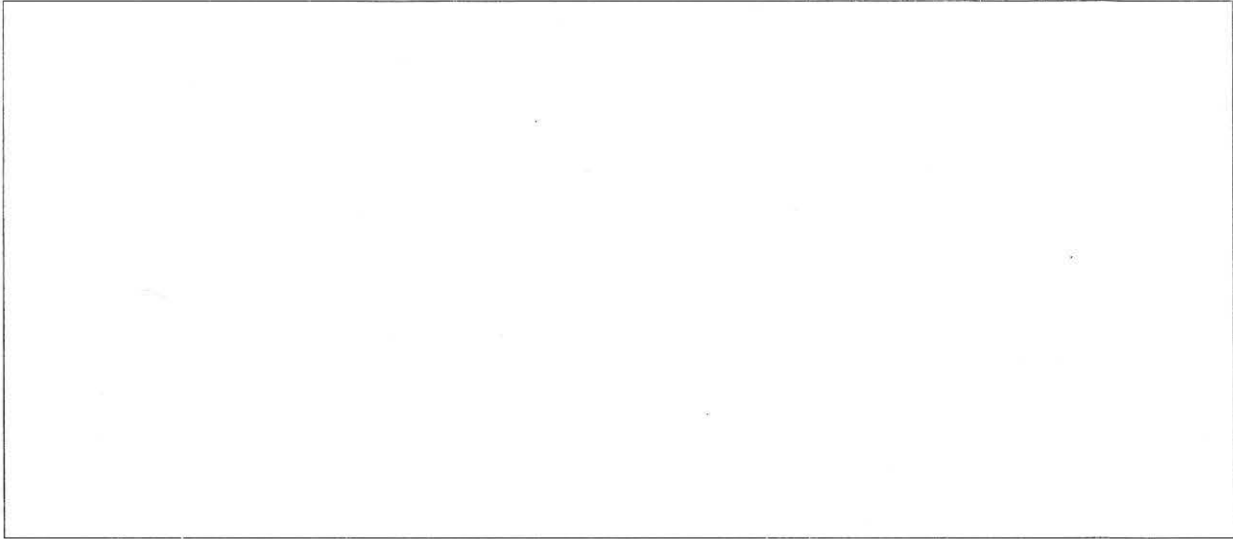




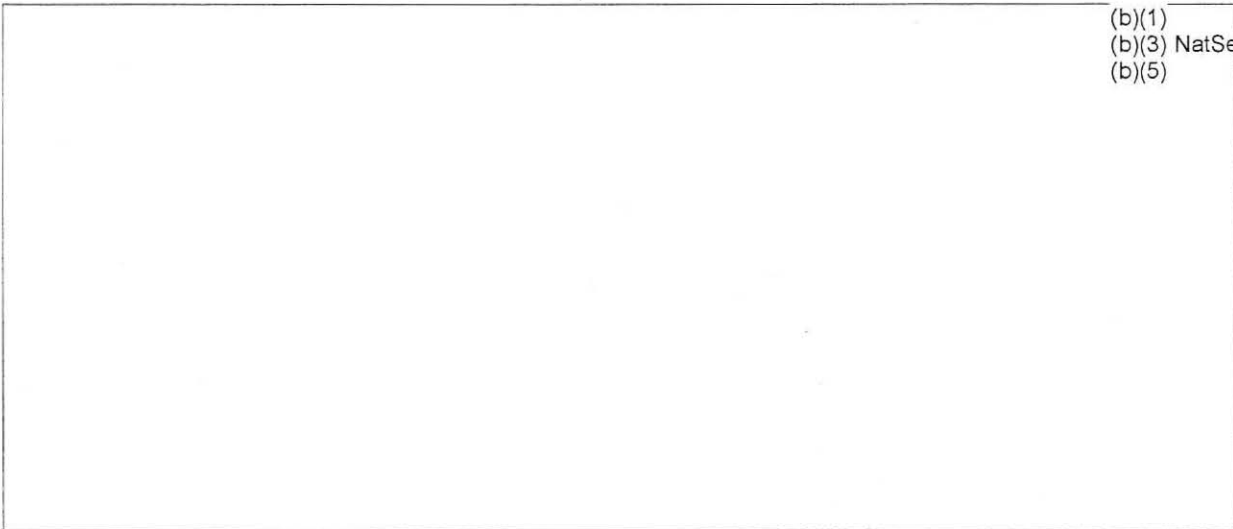
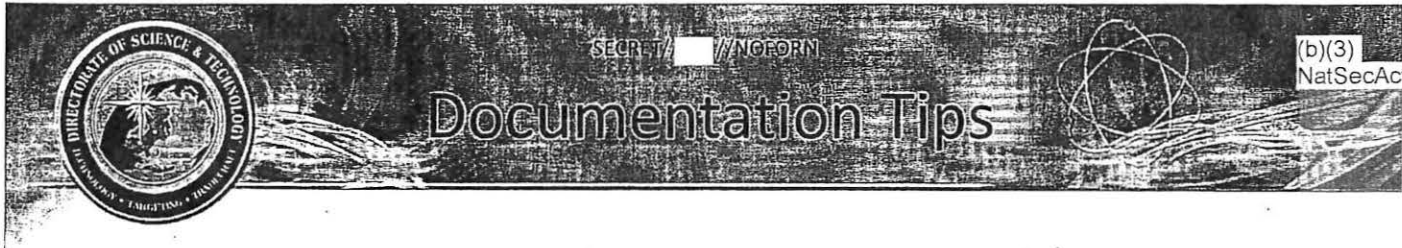
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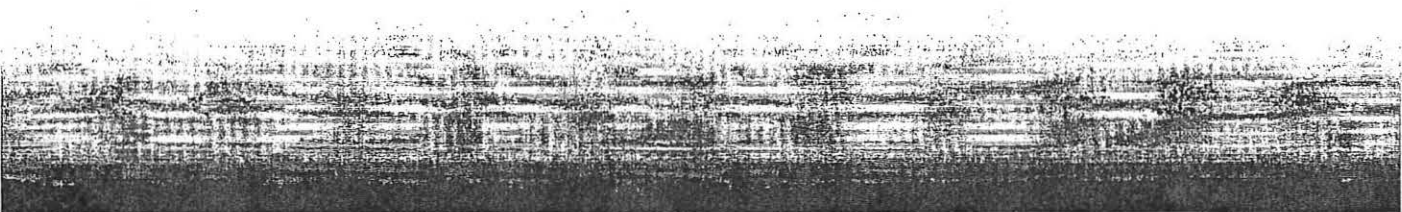
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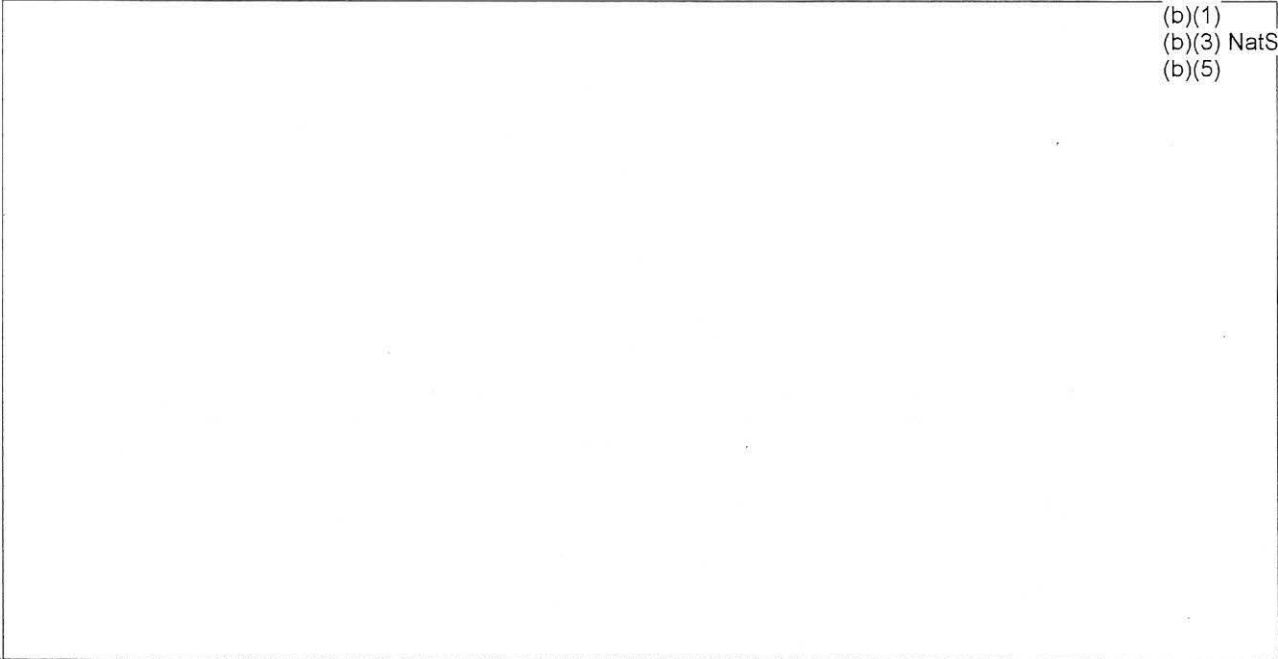




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# Documentation Tips



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# Final Thoughts

***If you only remember one thing from  
this presentation:  
C.Y.A. = call your attorney  
Questions?***



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