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Page 1

Precedence: ROUTINE

Date: 04/29/2004

To: Counterterrorism

Attn: ITOS 1/CONUS 1/Team 2

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SSA [REDACTED]

b7C

IOS [REDACTED]

General Counsel

Attn: NSLB/CTLU II

Attn: CDC [REDACTED]

SSA [REDACTED]

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From: [REDACTED]

b2

CT-1

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Contact: SA [REDACTED]

b7C

Approved By: [REDACTED]

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED EXCEPT  
WHERE SHOWN OTHERWISE

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Drafted By: [REDACTED]

b7C

Case ID #: (U) 278-HQ-C1229736-VIO (Pending)

DATE: 08-30-2005

Title: (U) PRESIDENTIAL INTELLIGENCE  
OVERSIGHT BOARD (IOB)

CLASSIFIED BY 65179/DMH/JW/05-CV-0845

REASON: 1.4 (C)

DECLASSIFY ON: 08-30-2030

Synopsis: (U) To report a potential IOB violation involving  
inadvertent recording of pen/toll information pursuant to the  
USFISC-authorized installation of a pen register/trap.

~~(SECRET)~~ ~~(U)~~ Derived From: G-3  
Declassify On: X1

b1 ,b2, b7E

Reference: (U) 66F-HQ-A1247863 Serial 130

Details: (S) Consistent with the guidelines set forth in the  
referenced communication, [REDACTED] Division reports that [REDACTED]

(S)

(S)

(S) Controlling legal authority for the relevant  
investigation is as follows:

b1 , b2, b6, b7C, b7E

Case ID : 278-HQ-C1229736-VIO

Serial : 457

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Page 2

b1 ,b2

[S]

authorized on

USFISC-authorized installation of a pen register/trap and trace device was initiated on [redacted] at [redacted] by George P. Kazen, (U) Judge, United States Foreign Intelligence Surveillance Court.

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X

X

(S) On approximately [redacted] SA [redacted] (case agent) telephoned the technical Squad and asked [redacted] to inform [redacted]

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(S) On [redacted] IA [redacted] noted through [redacted]

(S) According to SSA [redacted] technical [redacted]

X

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Page 3

(S)

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(S) Upon discovering the error [redacted] SA [redacted] immediately notified SSA [redacted]

Following the notification to the Technical Squad, SSA [redacted] briefed the appropriate [redacted] Division management personnel and [redacted] SSA [redacted]

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(S)

LEAD(s) :

Set Lead 1: (Info)

#### COUNTERINTELLIGENCE

AT WASHINGTON, DC

(U) SSA [redacted] are requested to coordinate with NSLB to insure that required reporting mandates are met.

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Set Lead 2: (Action)

#### GENERAL COUNSEL

AT WASHINGTON, DC

(U) NSLB is requested to coordinate with ITOS 1/CONUS 1/Team 2 and DOJ/OIPR to ensure required reporting mandates are met.

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Page 1

Precedence: ROUTINE

Date: 02/02/2005

To: Counterterrorism

Attn: ITOS I/COMUS I

SSA [REDACTED]

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b7C

[REDACTED] Division

Attn: [REDACTED]

SSA [REDACTED]

Inspection Division

Attn: Charlene Thornton

From: General Counsel

National Security Affairs/Room 7975

Contact: [REDACTED]

Approved By: Thomas Julie F

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WHERE SHOWN OTHERWISE

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Drafted By: [REDACTED]

Case ID #: (U) (S) 278-HQ-C1229736-VIO

Title: (U) (S) UNSUB(s)  
COUNTERTERRORISM DIVISION  
IOB (U)

DATE: 08-30-2005  
CLASSIFIED BY 65179/DMH/JW/05-CV-0845  
REASON: 1.4 (C)  
DECLASSIFY ON: 08-30-2030

Synopsis: (S) It is the opinion of the Office of General Counsel (OGC) that this matter must be reported to the Intelligence Oversight Board (IOB). OGC will prepare a cover letter and a letterhead memorandum for the General Counsel to report this matter to the IOB.

(S) (U) Derived from: G-3  
Declassify on: X-1

Reference: (U) (S) 66F-HQ-A1247863-130

Administrative: (U) This communication contains one or more footnotes. To read the footnotes, download and print the document in WordPerfect 8.

Details: (U) Referenced communication from [REDACTED] Division to OGC, dated 04/29/04, requested that OGC review the facts of the captioned matter and determine whether it warrants reporting to the IOB. In our opinion, it does. Our analysis follows.

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(S) As discussed in the referenced electronic communication (EC) and the EC from the Counterterrorism Division ("Counterterrorism") cited below, the [REDACTED] Division initiated a

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Case ID : 278-HQ-C1229736-VIO

Serial : 686

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Page

2

[REDACTED] (S)  
The Foreign Intelligence Surveillance Court (FISC) subsequently authorized electronic surveillance (pen register/tran and trace device) was initiated on [REDACTED]

[REDACTED] by George P. Kazen, (S)  
Judge, United States Foreign Intelligence Surveillance Court).

b1 ,b2, b6, b7A, b7C, b7E

(S)

(S)

(S)

(S)

(S)

(S)

(S)

(S)

(S) Upon discovering the error on [REDACTED]  
notified the appropriate Counterterrorism Division authorities.

(S)

~~SECRET~~

b1 , b2, b6, b7A, b7C, b7E

~~SECRET~~

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Page 3

(U) Section 2.4 of Executive Order (E.O.) 12863, dated 09/13/1993, mandates that Inspectors General and General Counsel of the Intelligence Community components (in the FBI, the Assistant Director, INSD, and the General Counsel, OGC, respectively) report to the IOB all information concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive. This language was adopted verbatim from E.O. 12334, dated 12/04/1981, when the IOB was known as the President's Intelligence Oversight Board.

(U) Title 18, United States Code, Section 2511(2)(f) states that the procedures contained in the FISA and Title III of the 1968 Omnibus Crime Control Act (as amended by the Electronic Communications Privacy Act) shall be the exclusive means by which electronic surveillance . . . and the interception of domestic wire and oral communications may be conducted. Additionally, Section 2.5 of E.O. 12333 provides that, ie'lec-tronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978, shall be conducted in accordance with that Act, as well as this Order. Under Title 50, United States Code, Section 1802(b), the FISC is authorized to grant an order approving the electronic surveillance of a foreign power or an agent of a foreign power for the purposes of obtaining foreign intelligence information. Under the pertinent FISA definition, the term electronic surveillance means, the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication to or from a person in the United States, without the consent of any party thereto, if such acquisition occurs in the United States. 50 U.S.C. 1801(f)(2).

(S) In this instance, it is clear that as a consequence of an error, the FBI unintentionally obtained electronic data beyond the periods authorized by the FISC. Thus, the surveillance was not authorized under the Foreign Intelligence Surveillance Act or Executive Order 12333. Although steps were taken by FBI [ ] to sequester the unauthorized take to prevent its use or further dissemination, in accordance with reporting requirements of Section 2.4 of E.O. 12863, FBI [ ] error nonetheless must be reported to the IOB. OGC will prepare an appropriate cover letter and an LHM for the General Counsel to report this matter to the IOB.

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Lead(s):

Set Lead 1: (Action)

COUNTERTERRORISM

AT WASHINGTON, DC

Set Lead 2: (Action)

[REDACTED]

AT [REDACTED]

(U)

~~(S)~~ If it has not already been accomplished, coordinate with Counterterrorism Division and FBI [REDACTED] to ensure that all recordings, log sheets and memoranda of any kind related to the unauthorized ELSUR are collected, sequestered, sealed and delivered to the Counterterrorism Division for submission to the Office of Intelligence Policy and Review, Department of Justice, for destruction.

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[REDACTED]

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**\*\*FOOTNOTES\*\*** (U)

il: ~~(S)~~ EC [REDACTED] Serial [REDACTED] from the Counterterrorism Division to Inspection and OGC, dated 05/12/03 and titled "President's Intelligence Oversight Board (PIOB) Matters."

b7A

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INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER  
[REDACTED] DIVISION  
FEDERAL BUREAU OF INVESTIGATION HEADQUARTERS (FBIHQ) (U)  
2004-55

b2  
b7E

Investigation of this IOB matter has revealed that the  
Division initiated a [REDACTED]

(S)

The Foreign  
Intelligence Surveillance Court (FISC) subsequently authorized  
electronic surveillance of [REDACTED]

(S)

Due to an administrative and technical error on the  
part of FBI [REDACTED] and [REDACTED]

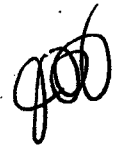
(S)

A copy of this submission to the IOB has been provided  
to the FBI's Executive Assistant Director for Counterterrorism/  
Counterintelligence. (U)

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~~Derived from : G-3~~  
~~Declassify on: X1~~

~~SECRET~~

**APPROVED:**   
Crim. Inv. \_\_\_\_\_ Inspection \_\_\_\_\_ Training \_\_\_\_\_  
CJIS \_\_\_\_\_ Laboratory \_\_\_\_\_ Off. of EEO \_\_\_\_\_  
Finance \_\_\_\_\_ National Sec. \_\_\_\_\_ Affairs \_\_\_\_\_  
Director \_\_\_\_\_ Gen. Counsel \_\_\_\_\_ OPR \_\_\_\_\_ Off. of Public & \_\_\_\_\_  
Deputy Director \_\_\_\_\_ Info. Res. \_\_\_\_\_ Personnel \_\_\_\_\_ Cong. Affs. \_\_\_\_\_



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Page

1

Precedence: ROUTINE

Date: 02/14/2005

To: [REDACTED] b2  
b7E

Attn: SAC  
CDC

Counterterrorism

Attn: ITOS1/CONUS1  
SSA [REDACTED]

b6  
b7C

Inspection

Attn: SC Toni Fogle

From: General Counsel

National Security Law Branch/LX Crossing Room 5S200

Contact: [REDACTED]

Approved By: Thomas Julie F

b2

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HEREIN IS UNCLASSIFIED EXCEPT  
WHERE SHOWN OTHERWISE

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Drafted By: [REDACTED]

b7C

Case ID # [REDACTED] 278-HQ-C1229736-V10 (Pending).

DATE: 09-09-2005  
CLASSIFIED BY 65179/DMH/JW/05-CV-0845  
REASON: 1.4 (C)  
DECLASSIFY ON: 09-09-2030

(U) [REDACTED]  
Title: [REDACTED] INTELLIGENCE OVERSIGHT BOARD  
(108) MATTER 2004-89

(U) [REDACTED]  
Synopsis: [REDACTED] It is the opinion of the Office of the General  
Counsel (OGC) that this matter must be reported to the  
Intelligence Oversight Board (IOB) and to the Inspection Division  
(INSD), FBIHQ. OGC will prepare and deliver the necessary  
correspondence to the IOB. Our analysis follows.

Reference: [REDACTED] 278-HQ-C1229736-V10 Serial 457  
(U) [REDACTED] 278-HQ-C1229736-V10 Serial 555

Administrative: (U) This communication contains one or more  
footnotes. To read the footnotes, download and print the  
document in WordPerfect 6.1.

Case ID : 278-HQ-C1229736-V10

Serial : 724

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(S) (U) Derived from : G-3  
Declassify On: X25-1

(S)

Details: (S) As reported by the Counterterrorism Division in an Electronic Communication (EC) dated 09/15/2004, on [redacted] the [redacted] Division [redacted] on [redacted] who are each a United States person as that term is used in Section 101(i) of the Foreign Intelligence Surveillance Act of 1978 (FISA).<sup>11</sup> On [redacted] obtained authorization from the Foreign Intelligence Surveillance Court (FISC) to install [redacted]

(S)

(S)

(S) On [redacted] case agent contacted the [redacted] Technical Squad and advised them that FISA authority would expire on [redacted] and to disable the line appropriately. Thereafter on [redacted] Intelligence Analyst (IA) queried Telephone Application and determined that th [redacted]

(S)

(S)

(S) On [redacted] IA noted through a review of Telephone Applications that the collection [redacted] The [redacted] Supervisory Special Agent, Technical Squad, was notified immediately and on that date took the necessary steps to disable the line.

(S)

(S) Subsequently it was determined that [redacted]

(S)

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(S)

(S)

(S)

(S)

(U) Upon discovering the error of [redacted] Case Agent immediately notified the Counterterrorism Squad Supervisor who then briefed the appropriate [redacted] Division management and the FBI Headquarters CTD/ITOS 1/CONUS 1/Team 2 Supervisory Special Agent [redacted]

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(U) Measures have been taken by [redacted] to prevent a recurrence of this error. The Technical Squad's personnel have been instructed in the proper procedures and the need for vigilance in a handling all Court authorized technical surveillance and the need for attentiveness to all aspects of technical collection.

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(U) Section 2-56 of the National Foreign Intelligence Program Manual (NFIPM) requires OGC to determine whether the facts related above are required to be reported to the IOB. Section 2.4 of Executive Order (EO) 12863, dated 09/13/1993, mandates that Inspectors General and General Counsel of the Intelligence Community components (in the FBI, the Assistant Director, INSD, and the General Counsel, OGC, respectively) report to the IOB "concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive

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order or Presidential directive."

Applying these principles to the case at hand, the OGC concludes that the inadvertent collection of information from the

[redacted] (S)  
was a violation of The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG), Section V.14, and the Foreign Intelligence Surveillance Act of 1978 (FISA), as amended, 50 U.S.C. 1841-1846.

[redacted] (S)  
When the authorization in the order of the USFISC had expired, further collection on the

[redacted] (S)  
Though the FBI terminated the device in a timely manner, collection was inadvertently reinitiated contrary to the authorization by the US FISC. Consequently, in accordance with E.O. 12863 and Section 2-56 of the NFIPM, the inadvertent error must be reported to the IOB, which this Office will do.

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LEAD (s):

Set Lead 1: (Info)

[redacted]

AT [redacted]

b2  
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(U) Read and Clear.

Set Lead 2: (Action)

INSPECTION

AT WASHINGTON, DC

(U) For action deemed appropriate.

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Page

5

1 - Ms. Thomas

1 -

1 - IOB File

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**\*\*FOOTNOTES\*\*** (U)

(1) ~~(S)~~ A United States person is defined in Section 101(i) of the Foreign Intelligence Surveillance Act (FISA)(codified at 50 U.S.C. 1801 et seq.) as a citizen of the United States for an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Naturalization Act) . . . . See also Section I.C of The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG).

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Page 2

Should you or any member of your staff require additional information concerning this matter, an oral briefing will be arranged for you at your convenience. (U)

Sincerely,

Julie F. Thomas  
Deputy General Counsel

- 1 - The Honorable Alberto R. Gonzales  
Attorney General  
U.S. Department of Justice  
Room 5111
- 1 - Mr. James A. Baker  
Counsel, Office of Intelligence Policy and Review  
U.S. Department of Justice  
Room 6150

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INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER  
[redacted] FIELD OFFICE  
IOB MATTER 2004-89 (U)

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Investigation of this IOB matter has determined that on [redacted] the [redacted] Division [redacted] initiated [redacted] who [redacted] are each a United States person. ON [redacted] (S)

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Page 3

obtained authorization from the Foreign Intelligence Surveillance Court (FISC) to [redacted]

[redacted] The residential telephone was serviced by [redacted] which had confirmed that the telephone was subscribed by [redacted] (S)

On [redacted] in accordance with the FISC order, [redacted] discontinued technical surveillance of targets' residential telephone number [redacted] (S)

[redacted] hereafter on [redacted] a [redacted] Intelligence Analyst (IA) queried the [redacted] system and determined [redacted] (S)

On [redacted] IA noted through a review of [redacted] Supervisory Special Agent, Technical Squad, was notified immediately and on that date took the necessary steps to disable the line. (S)

Derive from: G-3  
Declassify on: X25-1

Upon discovering the error on [redacted] appropriate management personnel were notified at [redacted] and at FBI Headquarters. [redacted] (S)

Measures have been taken by [redacted] to prevent a recurrence of this error including instructing [redacted] Technical Squad's personnel in the proper procedures and the need for vigilance in a handling all Court authorized technical surveillance and the need for attentiveness to all aspects of [redacted] (S)

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Page 4

technical collection. ~~(S)~~ (U)

Though inadvertent, the over collection violated 50 U.S.C. 1842(c)(2) and The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection. ~~(S)~~ (U)

This matter also has been referred to the FBI's Inspection Division for action deemed appropriate. (U)

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Page 1

Precedence: PRIORITY

Date: 01/31/2003

To: Inspection  
General Counsel  
Counterterrorism

Attn: Inspection Management Unit  
National Security Law Unit  
RFU

From: [redacted]  
Squad 2  
Contact: [redacted]

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b7C

Approved By: [redacted]

b6  
b7C

Drafted By: [redacted] rjg

Case ID #: (U) 278-HQ-C1229736-VIO (Pending)

Title: ~~(S)~~(U) SA [redacted] INS/JTTF  
SSA [redacted]  
[redacted] DIVISION  
IOB

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED EXCEPT  
WHERE SHOWN OTHERWISE

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Synopsis: ~~(S)~~(U) Reporting possible IOB matter

~~(S)~~(U) Derived From: G-3  
Declassify On: X1

DATE: 09-22-2005  
CLASSIFIED BY 65179/DMH/JW/05-CV-0845  
REASON: 1.4 (C)  
DECLASSIFY ON: 09-22-2030

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Administrative: ~~(S)~~(U) Reference telcall on January 24, 2003  
between [redacted] Division, and AGC [redacted]  
[redacted] OGC FBIHQ.

b1 , b2, b6, b7A, b7C, b7E

Details: ~~(S)~~ On [redacted] the FISA Court.

(S)

~~(S)~~ On or about [redacted]

(S)

~~(S)~~ The [redacted]

(S)

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Case ID : 278-HQ-C1229736-VIO

Serial : 75

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Page 2

however, was not stopped but continued until the expiration of the FISA Court order on [redacted] Between [redacted] (S)  
[redacted] and [redacted] employees, on a weekly basis.

(S)

(S) This data retrieved [redacted] has been uploaded (S)  
by [redacted] employees into the [redacted] The  
compact disks are presently in elsur storage in [redacted]

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(U)(S) [redacted] has reiterated to agents the absolute  
necessity that they be continuously aware of the status of all  
elsur coverage on targets.

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LEAD(s):

Set Lead 1: (Adm)

## INSPECTION

AT WASHINGTON, DC

(U)(S) Advise [redacted] Division regarding appropriate and  
necessary future action, especially with respect to compact disks  
presently in elsur storage.

b2  
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Set Lead 2: (Adm)

## GENERAL COUNSEL

AT WASHINGTON, DC

(U)(S) Advise [redacted] Division with respect to compact  
disks presently in elsur storage and advise OIPR as appropriate.

Set Lead 3: (Adm)

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## COUNTERTERRORISM

AT WASHINGTON, DC

(S) Read and clear.  
(U)

~~SECRET~~

(01/26/1998)

10BX703.WPD

DATE: 12-12-2005  
CLASSIFIED BY 65179 DMH LP CWC  
REASON: 1.4 (C)  
DECLASSIFY ON: 12-12-2030

~~SECRET~~

## FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 02/10/2005

To: Director's Office  
Inspection

[Redacted]

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Attn: OPR

Attn: SSA [Redacted]

Attn: SSA [Redacted]

SA [Redacted]

SSA [Redacted]

TTA [Redacted]

INS/JTTF

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From: Office of the General Counsel

National Security Law Branch/CILU/Room 7975

Contact: [Redacted]

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Approved By: Thomas Julie F

[Redacted]

Drafted By:

[Redacted]

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED EXCEPT  
WHERE SHOWN OTHERWISE

Case ID #: (S) 278-HQ-C1229736-VIO

(U) (S) 278-HQ-1415235

Title:

(S) (U)

SSA [Redacted]

SA [Redacted]

SSA [Redacted]

TTA [Redacted]

INS/JTTF

DIVISION

IOB 2003-27

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(U)

Synopsis: (S) It is the opinion of the Office of General Counsel (OGC) that this matter must be reported to the Intelligence Oversight Board (IOB). OGC will prepare and deliver the necessary correspondence to the IOB.

(S) (U)

~~Derived from: G-3~~

~~Declassify On: X1~~

~~DATE: 09-27-2005~~

~~CLASSIFIED BY 65179/DMH/JW/05-CV-0845~~

~~REASON: 1.4 (C)~~

~~DECLASSIFY ON: 09-27-2030~~

Reference: (S) 278-HQ-1415235 Serial 1

(U)

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To: Inspection  
From: Office of the General Counsel  
Re: (S) 278-HQ-C1229736-VIO, 02/10/2005  
(U)

**Administrative:** (U) This communication contains one or more footnotes. To read the footnotes, download and print the document in Corel WordPerfect.

(S)

**Details:** (S) As discussed in the electronic communication (EC)<sup>1</sup> on [redacted] Division initiated a [redacted] who was a "United States person" as that term is used in the then existing Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations (FCIG)<sup>2</sup> and the Foreign Intelligence Surveillance Act of 1978 (FISA).<sup>3</sup> On [redacted] obtained authority from the Foreign Intelligence Surveillance Court (FISC) to initiate electronic surveillance of subject's [redacted]. The initiation and continuation of the FI and the utilization of FISA required that [redacted] comply with the requirements of the FCIG and the FISA. The referenced EC reported that the submission of [redacted] 90-day LHM to National Security Law Unit (NSLU) and the Office of Intelligence Policy and Review (OIPR) was delayed.<sup>4</sup> The 90-day LHM, dated [redacted] was not received by NSLU until [redacted]. Further, [redacted]

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(U) (S) EC from INSD to OGC and the Director's Office, dated [redacted] and titled "SSA [redacted] [redacted] SA [redacted] INS/JTTF [redacted] SSA [redacted] [redacted] TTA [redacted] DIVISION [redacted] IOB 2003 27." (INSD EC)

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(U) (S) A "United States person" is defined in Section II.W. of the FCIG as "an individual who is. . . [a] United States citizen . . . or . . . [b] a permanent resident alien . . . ." On 10/31/03, the FCIG were superseded by the Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG). However, because this potential error occurred while the FCIG were in effect, the potential error is analyzed within the context of the then existing FCIG.

<sup>3</sup> (U) The FISA is codified at 50 U.S.C. 1801 et seq. A "United States person" is defined in Section 101(i) of the FISA as: "a citizen of the United States, [or] an alien lawfully admitted for permanent residence . . . ."

<sup>4</sup> (U) INSD EC.

<sup>5</sup> (U) These dates were confirmed on [redacted] by Ms. [redacted] National Security Law Unit, Office of the General Counsel. Ms. [redacted] maintains a database with the 90-day and annual LHMs submitted on this

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~~SECRET~~

~~SECRET~~

To: Inspection  
From: Office of the General Counsel  
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 02/10/2005

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(U)

(S)

Although [redacted] took steps to discontinue monitoring,  
[redacted]

(U) Section 2.4 of Executive Order (EO) 12863, dated 09/13/1993, mandates that Inspectors General and General Counsel of the Intelligence Community components (in the FBI, the Assistant Director, INSD, and the General Counsel, OGC, respectively) report to the IOB concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive. This language was adopted verbatim from EO 12334, dated 12/04/1981, when the IOB was known as the President's Intelligence Oversight Board (PIOB). By longstanding agreement between the FBI and the IOB (and its predecessor, the PIOB), this language has been interpreted to mandate the reporting of any violation of a provision of the FCIG, or other guidelines or regulations approved by the Attorney General in accordance with EO 12333, dated 12/04/1981, if such provisions were specifically intended to ensure the protection of the individual rights of U.S. persons. Violations of provisions that are essentially administrative in nature need not be reported to the IOB. The FBI is required, however, to maintain records of such administrative violations so that the Counsel to the IOB may review them upon request.

(U) ~~(S)~~ As to the first issue of delayed reporting, Section IX of the FCIG set forth rules governing

subject.

<sup>6</sup> (U) INSD EC. It is unclear from the EC submitted whether [redacted] appropriately sequestered the materials related to the [redacted]. If it has not been already accomplished, the sequestered materials must be submitted, [redacted]

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To: Inspection  
From: Office of the General Counsel  
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 02/10/2005

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the reporting of information concerning foreign counterintelligence and international terrorism investigations. Section IX.C provided in pertinent part that:

Each full investigation of any U.S. person shall be reported within ninety (90) days of initiation to the Office of Intelligence Policy and Review, setting forth the basis for undertaking the investigation. The FBI shall furnish to the Attorney General or a designee a summary of each investigation at the end of each year the investigation continues, including specific information on any requests for assistance made by the FBI to foreign law enforcement, intelligence or security agencies. (Emphasis added.)

(U) ~~(S)~~ Section IX.C was intended to regulate the timely reporting of FBI full investigations on U.S. persons to the OIPR. As such, it was written to include both administrative and "rights protection" components. The 90-day and annual reporting requirements of Section IX.C are purely administrative in nature, while the oversight exercised by the OIPR in reviewing the required reporting ensures the protection of individual rights. As a general rule, delinquent annual or 90-day LHMs are considered to be violations of an administrative nature when they are submitted to the NSLU within 90 days of their original due date. These administrative violations are placed in the control file for periodic review by the Counsel to the IOB. When an LHM is not submitted at all, or is submitted later than 90 days from its original due date, the facts and circumstances of that particular case must be examined to determine whether the failure or substantial delay in submitting the LHM precluded meaningful oversight and review by the OIPR. If OIPR was precluded from conducting such oversight and review, then the matter must be reported to the IOB.

(U) ~~(S)~~ As previously discussed, [redacted] 90-day LHM, dated [redacted] was not received by NSLU until [redacted]. Although delayed, because the delay was less than 90 days, the

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To: Inspection  
From: Office of the General Counsel  
Re: (S) 278-HQ-C1229736-VIO, 02/10/2005

(U)

error is considered to be of administrative nature. Accordingly, the delayed submission of the 90-day LHM is not reportable to the IOB. A record of this decision should be maintained in the control file for future review by Counsel to the IOB.

(U) ~~(S)~~

As to the second issue of [REDACTED]

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[REDACTED] Section 2.5 of Executive order 12333 provides that: "[e]lectronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978, shall be conducted in accordance with that Act . . . ." Each request for the issuance of a FISC order for the pen register and trap and trace surveillance is supported by an application. As required by the FISA, requestor of the FISA provided a certification "that the information likely to be obtained is foreign intelligence information not concerning a United States person or is relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution."

(U) ~~(S)~~

As previously discussed [REDACTED]

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[REDACTED] This action was contrary to the Executive order 12333 and the FISA. Consequently, in accordance with the reporting requirements of Section 2.4 of E.O. 12863, OGC will prepare a correspondence to report this matter to the IOB.

<sup>7</sup> (U) 50 U.S.C. 1842, Section 402(c)(2).

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To: Inspection  
From: Office of the General Counsel  
Re: (S) (U) 78-HQ-C1229736-VIO, 02/10/2005

LEAD (s):

Set Lead 1: (Action)

DIRECTOR'S OFFICE

AT OPR FO, DC

(U) For action deemed appropriate.

Set Lead 2: (Action)

INSPECTION

AT WASHINGTON, DC

(U) For action deemed appropriate.

Set Lead 3: (Action)

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(S) (U) If it has not already been accomplished, [redacted]

CC: Ms. Thomas

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To: Inspection  
From: Office of the General Counsel  
Re: (S) 278-HQ-C1229736-VIO, 02/10/2005

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IOB Library

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Precedence: PRIORITY

Date: 09/13/2004

To: General Counsel

Attn: NSLB

CTLI I

From:

CDC

Contact:

DATE: 12-12-2005  
CLASSIFIED BY 65179/DMH/LP/CWC  
REASON: 1.4 (C)  
DECLASSIFY ON: 12-12-2030

Approved By:

b2

Drafted By:

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Case ID #: (U) 278-HO-C1229736  
(U) 278- 75423

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ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED EXCEPT  
WHERE SHOWN OTHERWISE

Title: (U) SSA

SA

INTELLIGENCE OVERSIGHT BOARD MATTERS

(U) RESTRICTED DOCUMENT - DISSEMINATE TO PERSON(S) WITH ROLE

Synopsis: (U) This communication brings captioned matter to the attention of FBIHQ, Office of the General Counsel (OGC).

~~(S)~~ ~~(U)~~

~~Derived From: G-3~~  
~~Declassify On: X1~~

Reference:

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Details: (U) SUMMARY

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~~(U)~~ ~~(S)~~

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(U) DETAILS

Case ID : 278-HO-C1229736  
278- 75423

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b7E

Serial : 1904  
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b7C  
b7E

(S)

(S)

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(S/NF/OC) According to [redacted] Telecommunications Specialist and Special Agent (SA) [redacted] Technically Trained Agent (TTA), three FBI employees re-checked the wiring and programming of the FBI's equipment and everything was done correctly. [redacted] Telecommunications Unit (TU)

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(S/NF/OC) On [redacted] SA [redacted] TTA went to the box where the FBI had [redacted]

(S)

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(S/NF/OC)

(S)

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(S)

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(U) SA [ ] has previously notified the Department of Justice, Office of Intelligence Policy and Review (DOJ OIPR) concerning this matter.

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(U) SAC RECOMMENDATIONS:

(U) (X) SAC [ ] recommends no administrative or disciplinary action occur in this matter. The employees involved in this matter did not intentionally intercept the data and took continuing and exhaustive steps to find the reason for the error and correct it. Even in the face of correctly connected machinery and repeated assertions by the telecommunications provider that there was no error, the employees continued to search for the reason for the apparent mistake. SAC, [ ] believes the [ ] personnel involved in this matter acted appropriately and commends them for their tenacity in rooting out the telecommunication service provider's mistake.

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LEAD(s):

Set Lead 1: (Action)

GENERAL COUNSEL

AT WASHINGTON, DC

(U) At NSLB, CTLU I, please review the circumstances described herein and advise [ ] Division as to your findings.

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Precedence: PRIORITY

Date: 03/22/2005

To: [redacted] Attn: SAC  
CDC  
Counterterrorism Attn: ITOS I / COMUS IV b2  
SSA [redacted] b6  
Inspection Attn: IIS b7C  
SA [redacted] b7E

From: General Counsel

NSLB/CTLU 1/Room 7975

Contact: [redacted]

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WHERE SHOWN OTHERWISE

Approved By: Thomas Julie F

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Drafted By: [redacted] b7C

Case ID #: (U) 278-HQ-C1229736 (Pending)

(U) 278 [redacted] 75423 (Pending) b2

b7E

Title: (U) SSA [redacted]

SA [redacted]

INTELLIGENCE OVERSIGHT BOARD MATTER

IOB 2004-85

(U)

Synopsis: (U) It is the opinion of the Office of General Counsel (OGC) that the above referenced matter must be reported to the Intelligence Oversight Board (IOB) and to the FBI Inspection Division, Internal Investigations Section. Our analysis follows.

~~(U)~~ Derived From: G-3  
Declassify On: X1

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in HCS.*  
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*512*

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Case ID : 278-HQ-C1229736

b2

Serial : 2480

278 [redacted] c75423

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Reference: (S) 278-HQ-C1229736 Serial 1904 b2  
(U) (S) 278-75423 Serial 47 b7E  
(S) [redacted]

Details: (S) Pursuant to Foreign Intelligence Surveillance  
Court (FISC) order [redacted] Division  
(hereinafter [redacted] received authority for a Pen-  
Register/Trap & Trace (PR/TT) for facilities [redacted]  
[redacted] a subject of an investigation under  
file number [redacted] (S)

(S)

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[redacted] a U.S. person (USPER),  
as that term is used in the Attorney General's Guidelines for FBI  
National Security Investigations and Foreign Intelligence  
Collection (NSIG or the Guidelines).11 The order authorized the  
PR/TT to begin on [redacted] and it was to be terminated  
on [redacted]

(S) Pursuant to another FISC order [redacted]  
[redacted] was authorized to begin full content  
[redacted] an USPER being  
investigated under file number [redacted]

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[redacted] (S)

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[redacted] (S)

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Page 3

[REDACTED]

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[REDACTED]

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[REDACTED]

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(U) ~~(S)~~ Consistent with the requirements of Executive Order (E.O.) 12863 and Section 2-56 of the National Foreign Intelligence Program Manual (NFIPM), OGC was tasked to determine whether the surveillance error described here is a matter which must be reported to the IOB. We conclude that it must. Section 2.4 of E.O. 12863, dated 09/13/1993, mandates that Inspectors General and General Counsel of the Intelligence Community components (in the FBI, the Assistant Director, Inspection Division, and the General Counsel, OGC, respectively) report to the IOB all information concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive.

(U) Title 18, United States Code, Section 2511(2)(f) states that the procedures contained in the FISA and Title III of

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the 1968 Omnibus Crime Control Act (as amended by the Electronic Communications Privacy Act) shall be the exclusive means by which electronic surveillance . . . and the interception of domestic wire and oral communications may be conducted. Additionally, Section 2.5 of E.O. 12333 provides that, electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978, shall be conducted in accordance with that Act, as well as this Order. Under Title 50, United States Code, Section 1802(b), the FISC is authorized to grant an order approving the electronic surveillance of a foreign power or an agent of a foreign power for the purposes of obtaining foreign intelligence information. Under the pertinent FISA definition, the term electronic surveillance means, the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, if such acquisition occurs in the United States... 50 U.S.C. 1801(f)(2).

(U) In this instance, it is clear that as a consequence of an error on the part of a communications carrier, [redacted] the FISC. Even though [redacted] was diligent in its discovery of the [redacted] the Foreign Intelligence Surveillance Act or Executive Order 12333. Consequently, in accordance with E.O. 12863 and Section 2-56 of the NFIPM, [redacted] to the IOB, which this Office will do. UGC will prepare an appropriate cover letter and an LHM for the Deputy General Counsel to report this matter to the IOB.

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\*\*FOOTNOTES\*\* (U)

1: A United States person is defined in section II.W of the Guidelines as an individual who is . . . a United States citizen



OR . . . a permanent resident alien . . . . This regulatory definition is based on the definition of a United States person as that term is used section 101(i) of the Foreign Intelligence Surveillance Act (FISA), 50 U.S.C. 1801 et seq. The latter states, in pertinent part, that a United States person means a citizen of the United States or an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Naturalization Act) . . . .

LEAD(s):

Set Lead 1: (Discretionary)

[REDACTED]

AT [REDACTED]

(U) ~~(S)~~ Coordinate with FBIHQ, the Counterterrorism Division, ITOS I, CONUS IV, to ensure that [REDACTED] [REDACTED] are collected, sequestered, sealed and delivered to CONUS IV for submission to the Office of Intelligence Policy and Review, Department of Justice, for destruction.

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Set Lead 2: (Discretionary)

INSPECTION

AT WASHINGTON, DC

(U) For appropriate action.

Set Lead 3: (Info)

COUNTERTERRORISM

AT WASHINGTON, D.C.

(U) For information only.

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Page 1

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DATE: 10-05-2005  
CLASSIFIED BY 65179/DMH/JW/05-CV-0845  
REASON: 1.4 (C)  
DECLASSIFY ON: 10-05-2030

BY COURIER

Mr. James Langdon  
Chairman  
Intelligence Oversight Board  
Room 5020  
New Executive Office Building  
725 17th Street, N.W.  
Washington, D.C. 20503

Dear General Scowcroft:

This letter forwards for your information a self-explanatory enclosure entitled, "Intelligence Oversight Board (IOB) Matter, IOB 2004-85." (U)

The enclosure sets forth details of investigative activity which the FBI has determined may have been contrary to the Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection and/or laws, Executive Orders, or Presidential Directives which govern FBI foreign counterintelligence and international terrorism investigations. (U)

1 - Ms. Thomas  
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1 - IOB Library  
1 - 278-HQ-C1229736-VIO

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Case ID : 278-HQ-C1229736-VIO

Serial : 774

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Should you or any member of your staff require additional information concerning this matter, an oral briefing will be arranged for you at your convenience.

Sincerely,

Julie Thomas  
Deputy General Counsel

Enclosure

- 1 - The Honorable Alberto R. Gonzalez  
Attorney General  
U.S. Department of Justice  
Room 5111
- 1 - Mr. James Baker  
Counsel, Office of Intelligence Policy and Review  
U.S. Department of Justice  
Room 6150

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INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER  
IOB 2004-85 (U)

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~~(S)~~

[REDACTED]  
[REDACTED]  
[REDACTED] As a result of this  
[REDACTED]

instead of capturing the telephone communications of another

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subject who was actually the target of the order issued by the Foreign Intelligence Surveillance Court (FISC).

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(S)

The matter is therefore reportable to the Intelligence Oversight Board under the terms of Executive Order 12863. In addition, it has been referred to the FBI's Inspection Division, Internal Investigations Section for any action that is deemed appropriate.

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~~Derived from: G-3~~  
~~Declassify on: X-1~~

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