

FEDERAL BUREAU OF INVESTIGATION
FOIPA
DELETED PAGE INFORMATION SHEET

Serial Description ~ COVER SHEET

10/21/2004

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**ORIGINAL EC
NOTIFICATIONS NOT
ON ACS...**

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DATE 08-09-2005 BY 65179/DMH/JW

Litigation #05-CV-0845

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Litigation #05-CV-0845

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Litigation #05-CV-0845

ORIGINAL
EC NOT
UPLOADED

Precedence: ROUTINE

Date: 10/21/2004

To: Director's Office
Counterintelligence
Washington Field

Attn: OPR
Attn: AD
Attn: SAC
CDC

From: General Counsel
NSLB/CILU/Room 7975
Contact: [redacted] ext. [redacted]

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Approved By: Thomas Julie

[redacted]

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Drafted By:

[redacted]

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Case ID # ~~(S)~~ (U) 278-HQ-C1229736-VIO (Pending)
~~(S)~~ (U) 105A-WF-223252 (Pending)

ALL INFORMATION CONTAINED
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WHERE SHOWN OTHERWISE

Title: ~~(S)~~ (U) INTELLIGENCE OVERSIGHT BOARD MATTER
IOB 2004-77

Synopsis: ~~(S)~~ (U) The Office of the General Counsel (OGC) considers that this matter must be reported to the Intelligence Oversight Board (IOB) and to the Office of Professional Responsibility (OPR). OGC will prepare an appropriate cover letter and a memorandum to the IOB. Our analysis follows.

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~~(S)~~ (U)

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

DATE: 08-15-2005
CLASSIFIED BY 65179/DMH/JW/05-CV-0845
REASON: 1.4 (C)
DECLASSIFY ON: 08-15-2030

Details:

~~(S)~~

[redacted]

(S)

[redacted]

[redacted]

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[redacted]

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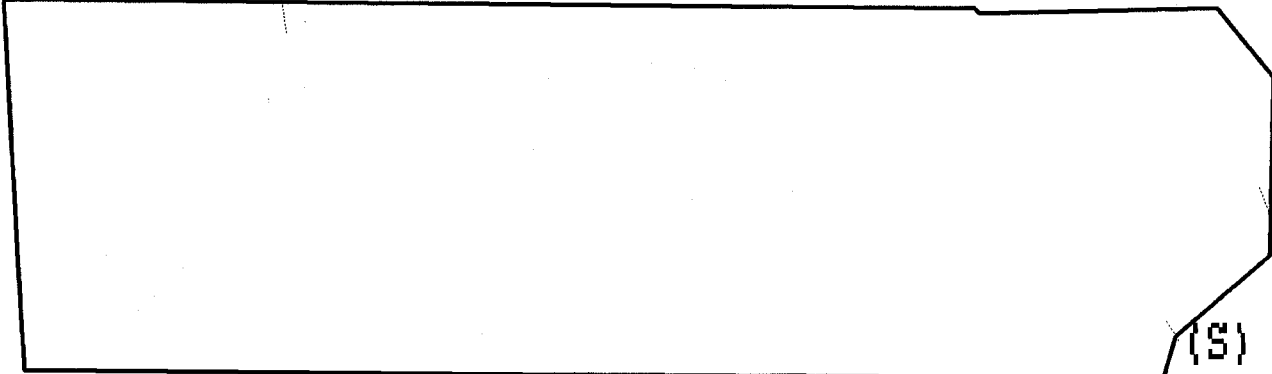
Case ID : 278-HQ-C1229736-VIO
105A-WF-223252

Serial : 600
107

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(U) The Right to Financial Privacy Act (RFPA), Title 12, United States Code, Section 3401 et seq. (12 USC 3401 et seq.) states in 3402 that "except as provided by section 3403(c) or (d), 3413, or 3414 of this title, no Government authority may have access to or obtain copies of, or the information contained in the financial records of any customer from a financial institution"

(U) 12 USC 3414 provides in part:

(a) (1) Nothing in this chapter (except sections 3415, 3417, 3418, and 3421 of this title) shall apply to the production and disclosure of financial records pursuant to requests from--

(A) a Government authority authorized to conduct foreign counter- or foreign positive-intelligence activities for purposes of conducting such activities; or

(B)

(2) In the instances specified in paragraph (1), the Government authority shall submit to the financial institution the certificate required in section 3403(b) of this title signed by a supervisory official of a rank designated by the head of the Government authority.

(U) Section 2-17 of the National Foreign Intelligence Program Manual (NFIPM) lists the FBI officials who can request financial records under the foregoing section of RFPA. According to section 2-17 of the NFIPM, such requests must be made by an Assistant Special Agent in Charge or a more senior official.

(U) 12 USC 3417 provides for civil liability of an agency or department of the United States that obtains financial records or information in violation of the RFPA. The same section deals with "disciplinary action for wilful or intentional violation" of these RFPA provisions by agents or employees of the government.

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~~(S)~~ In this instance, the conduct of SA [redacted] was wilful and intentional, even though she did not realize that she had acted in contravention of the RFPA and Bureau policy. It (U)

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Page 3

should also be noted that SA [] was at the time a probationary agent. Inasmuch as her actions nevertheless amount to "intelligence activities that . . . may be unlawful or contrary to Executive order or Presidential directive" they are reportable to the Intelligence Oversight Board (IOB) under the terms of section 2.4 of Executive Order 12863. OGC will therefore prepare a cover letter and a memorandum to report this matter to the IOB and to advise that it has been referred to the Office of Professional Responsibility. (U)

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LEAD(s):

Set Lead 1: (Action)

DIRECTOR'S OFFICE

AT OPR FO, DC

(U) For action deemed appropriate.

Set Lead 2: (Action)

COUNTERINTELLIGENCE

AT WASHINGTON, DC

(U) Please read and clear.

Set Lead 3: (Action)

WASHINGTON FIELD

AT WASHINGTON, DC

(U) For action deemed appropriate.

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BY COURIER

General Brent Scowcroft (USAF Retired)
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 2004-77." (U)

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

DATE: 08-15-2005
CLASSIFIED BY 65179/DMH/JW/05-CV-0845
REASON: 1.4 (C)
DECLASSIFY ON: 08-15-2030

~~UNCLASSIFIED WHEN
DETACHED FROM
CLASSIFIED ENCLOSURE~~

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

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

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~~Derived from: G-3
Declassify on: X25-1~~

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-2-~~

Case ID : 278-HQ-C1229736-VIO

Serial : 601

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Page 2

General Brent Scowcroft (USAF Retired)

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 John D. Ashcroft
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 2004-77 (U)

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Page 3

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~~(S)~~ Investigation of this IOB matter has determined that

(S)

(S)

~~(S)~~ Such information is relevant in national security investigations of this type. However, the proper method for obtaining bank records is through a National Security Letter under Title 12, United States Code, Section 3414(a)(1)(A). Access to financial records by government authorities through means not provided by law is prohibited under Title 12, United States Code, Section 3402. (U)

~~(S)~~

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(U) This matter has been referred to the FBI's Office of Professional Responsibility for such action as may be appropriate.

~~Derived from: G-3
Declassify on: X25-1~~

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ALL INFORMATION CONTAINED
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DATE 08-10-2005 BY 65179/DMH/JW 05-CV-0845

IP FAILED TO FILE A 90 DAY LHM
+ ANNUAL LHM THAT SHOULD HAVE BEEN
PREPARED & FORWARDED BY 8/17/03 WAS NOT
REC'D UNTIL 10/20/03. A LHM WAS
PREPARED ON 7/18/03, BUT NOT UPLOADED.

NO TEXT...

DATE: _____
CIRCUIT: _____
CIRCUIT: _____
CIRCUIT: _____

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 01/29/2004

To: Indianapolis

Attn: SAC

Director's Office

Attn: Office of Professional Responsibility (OPR)

Counterterrorism

Attn: A/AD

From: General Counsel

Counterterrorism Law Unit II

Contact: [Redacted] [Redacted]

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Approved By: Curran John F

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[Redacted]

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Drafted By:

[Redacted]

Case ID #: 278-HQ-C1229736-VIO
IP 278-0

-411

DECLASSIFIED BY 65179/DMH/JW/05-CV-0845
ON 08-10-2005

Title: (U) INTELLIGENCE OVERSIGHT BOARD MATTER (IOB)
IOB 2003 148

Synopsis: ~~(S)~~ 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 Office of Professional Responsibility (OPR), FBIHQ. OGC will prepare a cover letter and a memorandum to report this matter to the IOB. Our analysis follows.(U)

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

Reference: 315T-IP-92406

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

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OIG/DOJ Review: Very DATE: 4/18/05
FBI INVEST: [Signature] OIG/DOJ INVEST: _____
OPR UC INITIALS: _____

~~SECRET~~

To: Counterterrorism Division From: General Counsel
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 01/28/2004

~~(S)~~ **Details:** As discussed in the electronic communication (EC)¹ dated November 3, 2003, FBI Indianapolis prepared and forwarded a letterhead memorandum (LHM) for the full investigation (FI) on subject [redacted] a U.S. person, on April 17, 2002. [redacted] is a "United States person" as that term is used in the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations (FCIG).² The initiation and continuation of the FI required FBI Indianapolis and the Headquarters' substantive unit to comply with the requirements of Executive Order (EO) 12863 and the FCIG. In this regard, [redacted] became the subject of a FBI full investigation on April 17, 2002, in the Indianapolis Division. The required 90-day LHM was not filed. Additionally, the annual LHM that should have been prepared and forwarded to FBIHQ on or before April 17, 2003, was not received until October 20, 2003. It should be noted that the LHM was prepared on or about July 18, 2003, but for unknown reasons, it was not uploaded into ACS. In October of 2003, when FBI Indianapolis was notified that the annual LHM had not be received at FBIHQ, the same was forwarded. On November 3, 2003, FBI Indianapolis advised FBIHQ and the Office of the General Counsel that they had failed to comply with the 90-day and annual reporting requirements.

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(U) Because the subject of the investigation was (and remains) a "United States person" as that term is used in Section 101(i) of the Foreign Intelligence Surveillance Act of 1978 (FISA) and Section II.W of the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations (FCIG)³, continuation of the

¹ ~~(S)~~ EC from FBI Indianapolis to OGC, dated 11/03/2003 and titled "Potential IOB Matter." (U)

² ~~(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" (U)

³ ~~(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 [or] an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Naturalization Act)" See also section II.W of the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations. (U)

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To: Counterterrorism Division From: General Counsel
Re: (U) ~~(S)~~ 278-HQ-C1229736-VIO, 01/28/2004

investigation required that Indianapolis and the Headquarters' substantive unit comply with the reporting requirements of Executive Order 12863 and the FCIG. FBI Indianapolis failed to submit the 90-day LHM, due on or about July 17, 2002, and the annual LHM, due on or about April 17, 2003, to the National Security Law Branch (NSLB), OGC, for submission to the Office of Intelligence Policy and Review (OIPR), Department of Justice (DOJ), as required by the FCIG. As a result of these errors, OIPR was not advised of the status of the ongoing investigation for approximately eighteen months.(U)

(U) Section 2.4 of Executive Order (E.O.) 12863, dated September 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 E.O. 12334, dated December 4, 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 E.O. 12333, dated 12/04/1981, if such provision was designed in full or in part 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.

~~(S)~~ Section IX of the FCIG sets forth rules governing the reporting, dissemination, and retention of information concerning foreign counterintelligence and international terrorism investigations. Section IX.C provides in pertinent part that: (U)

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**

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To: Counterterrorism Division From: General Counsel
Re: ~~(U)~~(S) 278-HQ-C1229736-VIO, 01/28/2004

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.)

~~(S)~~ Section IX.C is 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 annual reporting requirements of Section IX.C is 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 LHMs are considered to be violations of an administrative nature when they are submitted to the NSLB 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 the OIPR was precluded from conducting such oversight and review, then the matter must be reported to the IOB. (U)

~~(S)~~ As previously discussed, in this instance, OIPR was not updated of the status of this ongoing investigation involving a U.S. person for approximately fifteen months. This delayed reporting clearly precluded OIPR from exercising its responsibility for oversight and approval of an ongoing foreign counterintelligence investigation of a U.S. person, which is contrary to the requirements of the FCIG. (U)

~~(S)~~ Based upon the above analysis, and consistent the reporting requirements of Section 2.4 of E.O. 12863, OGC will prepare a cover letter and an LHM to report this matter to the IOB. That correspondence will also advise the IOB that this matter will be referred to the FBI's Office of Professional Responsibility. The latter is a matter within the cognizance of the IMU. (U)

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To: Counterterrorism Division From: General Counsel
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 01/28/2004

~~(U)~~

LEAD(s):

Set Lead 1: (Discretionary)

DIRECTOR'S OFFICE

AT OPR FO, DC

~~(U)~~ ~~(S)~~ For action deemed appropriate.

Set Lead 2: (Discretionary)

COUNTERTERRORISM

~~(U)~~ ~~(S)~~ For action deemed appropriate.

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NO TEXT
AVAILABLE
FOR ORIGINAL
EC REPORTING
#03 #010

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DATE 08-10-2005 BY 65179/DMH/JW/05-CV-0845

10B S 70 WPD

(01/26/1998)

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FEDERAL BUREAU OF INVESTIGATION

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Precedence: ROUTINE

Date: 02/10/2005

To: Director's Office
Counterintelligence

Attn: OPR
Attn: UC [redacted]
Attn: SSA [redacted]

From: Office of the General Counsel
National Security Law Branch/CILU/Room 7975
Contact: [redacted] [redacted]

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Approved By: Thomas Julie F

[redacted]

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Drafted By:

[redacted]

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Case ID # (U) (S) 278-HQ-C1229736-VIO
(S) 278-HQ-1416655

Handwritten note: Please handle ensure OPR load covered

Title: (S) (U) INTELLIGENCE OVERSIGHT BOARD
IOB 2003-29

DECLASSIFIED BY 65179/DMH/JW/05-LV-0845
ON 08-10-2005

Synopsis: (S) (U) 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: X25-1~~

Reference: (S) (U) 278-HQ-1416655 Serial 2

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

Details: (U) (S) As discussed in the electronic communication (EC)¹, on 02/01/02 New York Office (NYO) submitted a letterhead

(U) (S) EC from Inspection to the General Counsel and the Director's Office, dated 04/01/03 and titled "UC [redacted]; SSA [redacted]; Counterintelligence Division [redacted]; IOB 2003 29." (INSD EC)

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To: Counterintelligence Division From: General Counsel
Re: (U) (S) 278-HQ-C1229736, 02/10/2005

memorandum (LHM) requesting initiation of a full investigation (FI), on [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).² The initiation and continuation of the FI required that NYO and the Headquarters' substantive unit comply with the requirements of Executive Order 12863 and the FCIG. In this regard, NYO submitted its initial 90-day LHM to the Headquarters' substantive unit (former NS-3A, currently CD-3A) via electronic communication (EC) dated 02/01/02. On 01/31/03, NYO submitted its annual LHM. Subsequent to this submission, on 02/14/03, the National Security Law Unit (NSLU) advised that its records did not show the receipt of the initial 90-day LHM. The Headquarters' substantive unit was unable to verify the submission of the 90-day LHM to NSLU or Office of Intelligence Policy and Review (OIPR).³ The reason why the 90-day LHM was not received by NSLU or OIPR remains unexplained. However, the consequence is clear: NYO's 90-day LHM was not forwarded to OIPR as required.^(U)

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(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

²(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.

³ (U) INSD EC.

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~~SECRET~~

To: Counterintelligence Division From: General Counsel
Re: ~~(S)~~ 278-HQ-C1229736 , 02/10/2005

~~(S)~~
(U)

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)~~ Section IX of the FCIG set forth rules governing 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 were purely administrative in nature, while the oversight exercised by the OIPR in reviewing the required reporting ensured the protection of individual rights. As a general rule, delinquent annual or 90-day LHMs were considered to be violations of an administrative nature when they were submitted to the NSLU within 90 days of their original due date. These administrative violations were placed in a control file for periodic review by the Counsel to the IOB. When an LHM was not submitted at all, or was submitted later than 90 days

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To: Counterintelligence Division From: General Counsel
Re: ~~(S)~~ 278-HQ-C1229736 , 02/10/2005

~~(U)~~

from its original due date, the facts and circumstances of that particular case were 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 was required to be reported to the IOB. (U)

~~(S)~~ As previously discussed, the reason why NYO's 90-day LHM was not received by the NSLU from the Headquarters substantive unit remains unexplained. As a result of the lack of submission, OIPR was not advised of the status of this ongoing investigation involving a U.S. person for over a year. This delayed reporting clearly precluded OIPR from exercising its oversight and review of an ongoing foreign counterintelligence investigation of a U.S. person, and was contrary to the requirements of the then existing FCIG. Consequently, in accordance with the reporting requirements of Section 2.4 of E.O. 12863, OGC will prepare correspondence to report this matter. (U)

LEAD (s):

Set Lead 1: (Action)

COUNTERINTELLIGENCE

AT WASHINGTON, DC

(U) For action deemed appropriate.

Set Lead 2: (Action)

DIRECTOR'S OFFICE

AT OPR, DC

(U) For action deemed appropriate.

CC: Ms. Thomas



IOB Library

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To: Counterintelligence Division From: General Counsel
Re: ~~(S)~~ 278-HQ-C1229736 , 02/10/2005

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Page 1

DECLASSIFIED BY 65179/DMH/JW/05-CV-0845
ON 08-10-2005

BY COURIER

General Brent Scowcroft (USAF Retired)
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, Counterintelligence Division, IOB Matter 2003-29.
(U)

This enclosure sets forth details of investigative activity which the FBI has determined was conducted contrary to the then existing Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations and/or laws, Executive Orders, or Presidential

Case ID : 278-HQ-C1229736-V10

Serial : 706

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Page 2

Directives which govern FBI foreign counterintelligence and international terrorism investigations. This matter has also been referred to our Office of Professional Responsibility for a determination of whether any administrative action is warranted.

(U)

Enclosure

- 1 - Ms. Thomas
- 1 -
- 1 - IOB Library
- 1 - 278-HQ-C1229736-V10

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~~UNCLASSIFIED WHEN~~

~~DETACHED FROM
CLASSIFIED ENCLOSURE~~

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 Gonzales
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

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Page 3

Room 6150

INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
COUNTERINTELLIGENCE DIVISION

2003-29 (U)

(U)

~~(S)~~ Investigation of this IOB matter has determined that on February 1, 2002, the New York Office of the Federal Bureau of Investigation ("FBI") requested initiation of a full investigation (FI) on [redacted] who was a United States person as that term was used in the then existing Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations (FCIG).¹¹ Thus, the initiation and continuation of the FI required that the New York Office and the Headquarters' substantive unit comply with the requirements of Executive Order 12863 and the FCIG. The New York Office submitted a letterhead memorandum (LHM) to the Headquarters' substantive unit (former NS-3A, currently CD-3A) requesting the

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---- Working Copy ----



Page 4

initiation of this FI. However, the Headquarters' substantive unit did not forward this LHM to the National Security Law Unit nor to the Office of Intelligence Policy and Review. As a consequence of the error, for over a year, OIPR was precluded from exercising oversight and control of this ongoing investigation, which was contrary to the requirements of Section IX.C of the then existing FCIG.

~~Derived from : G-5
Declassify on: X25-1~~

~~SECRET~~

****FOOTNOTES****

(U)
11: (S) A United States person is defined in Section II.W of the FCIG as an individual who is . . . ia' United States citizen . . . or . . . ib' 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.

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be [redacted] *gr*
SSA [redacted]

10B MATTER

263-0-

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OIG/DOJ Review: *[Signature]* DATE: 12/22/04
FBI INVEST.: OIG/DOJ INVEST.:
OPR UC INITIALS:

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[redacted]

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-10-2005 BY 65179/DMH/JW/05-CV-0845

NOT UPLOADED
LOSA-WF-223252
SERIAL # 104

*This is a reportable 10B
matter, but in the OPR
context I view her actions
as deficient in the
performance area
(New Agent
didn't understand/know
Rules)
This should go into the
Complaint d/b as
10B issue
+ Performance issue*

Lead assigned to SSA in ACS clear lead.

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FEDERAL BUREAU OF INVESTIGATION

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Precedence: ROUTINE

Date: 10/21/2004

To: Director's Office
Counterintelligence
Washington Field

Attn: OPR
Attn: AD
Attn: SAC
CDC

From: General Counsel
NSLB/CILU/Room 7975

Contact: [redacted] ext. [redacted]

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Approved By: Thomas Julie
[redacted]

Drafted By: [redacted]

Case ID #: ~~(S)~~ 278-HQ-C1229736-VIO (Pending) - 600
~~(U)~~ ~~(S)~~ 105A-WF-223252 (Pending)

Title: ~~(S)~~-(U) INTELLIGENCE OVERSIGHT BOARD MATTER
IOB 2004-77

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

Synopsis: ~~(S)~~-(U) The Office of the General Counsel (OGC) considers that this matter must be reported to the Intelligence Oversight Board (IOB) and to the Office of Professional Responsibility (OPR). OGC will prepare an appropriate cover letter and a memorandum to the IOB. Our analysis follows.

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

DATE: 08-15-2005
CLASSIFIED BY 65179/DMH/JW/05-CV-0845
REASON: 1.4 (C)
DECLASSIFY ON: 08-15-2030

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b7E

Details: ~~(S)~~ [redacted] ~~(S)~~

[redacted] ~~(S)~~

[redacted]

[redacted] ~~(S)~~

~~(S)~~ [redacted]

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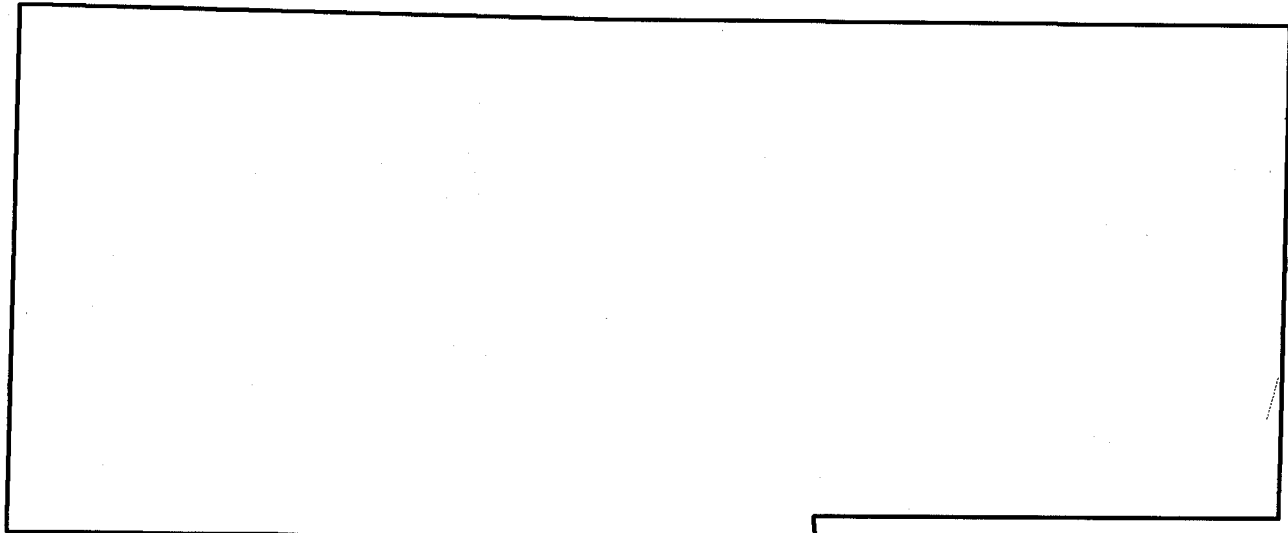
A.SAC Heimbach
SSA
SA
DOB
11/3/04

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To: Director's Office From: General Counsel
Re: (U) ~~(S)~~ 278-HQ-C1229737-VIO, 10/21/2004



(S)

(S)

(U) The Right to Financial Privacy Act (RFPA), Title 12, United States Code, Section 3401 et seq. (12 USC § 3401 et seq.) states in §3402 that "[e]xcept as provided by section 3403(c) or (d), 3413, or 3414 of this title, no Government authority may have access to or obtain copies of, or the information contained in the financial records of any customer from a financial institution"

(U) 12 USC §3414 provides in part:

(a)(1) Nothing in this chapter (except sections 3415, 3417, 3418, and 3421 of this title) shall apply to the production and disclosure of financial records pursuant to requests from--

(A) a Government authority authorized to conduct foreign counter- or foreign positive-intelligence activities for purposes of conducting such activities; or

(B)

(2) In the instances specified in paragraph (1), the Government authority shall submit to the financial institution the certificate required in section 3403(b) of this title signed by a supervisory official of a rank designated by the head of the Government authority.

(U) Section 2-17 of the National Foreign Intelligence Program Manual (NFIPM) lists the FBI officials who can request

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To: Director's Office From: General Counsel
Re: ~~(S)~~(U) 278-HQ-C1229737-VIO, 10/21/2004

financial records under the foregoing section of RFPA. According to section 2-17 of the NFIPM, such requests must be made by an Assistant Special Agent in Charge or a more senior official (U)

(U) 12 USC §3417 provides for civil liability of an agency or department of the United States that obtains financial records or information in violation of the RFPA. The same section deals with "disciplinary action for wilful or intentional violation" of these RFPA provisions by agents or employees of the government.

(U) ~~(S)~~ In this instance, the conduct of SA [] was wilful and intentional, even though she did not realize that she had acted in contravention of the RFPA and Bureau policy. It should also be noted that SA [] was at the time a probationary agent. Inasmuch as her actions nevertheless amount to "intelligence activities that . . . may be unlawful or contrary to Executive order or Presidential directive" they are reportable to the Intelligence Oversight Board (IOB) under the terms of section 2.4 of Executive Order 12863. OGC will therefore prepare a cover letter and a memorandum to report this matter to the IOB and to advise that it has been referred to the Office of Professional Responsibility.

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~~SECRET~~

To: Director's Office From: General Counsel
Re: ~~(S)~~ (U) 278-HQ-C1229737-VIO, 10/21/2004

LEAD(s):

Set Lead 1: (Action)

DIRECTOR'S OFFICE

AT OPR FO, DC

(U) For action deemed appropriate.

Set Lead 2: (Action)

COUNTERINTELLIGENCE

AT WASHINGTON, DC

(U) Please read and clear.

Set Lead 3: (Action)

WASHINGTON FIELD

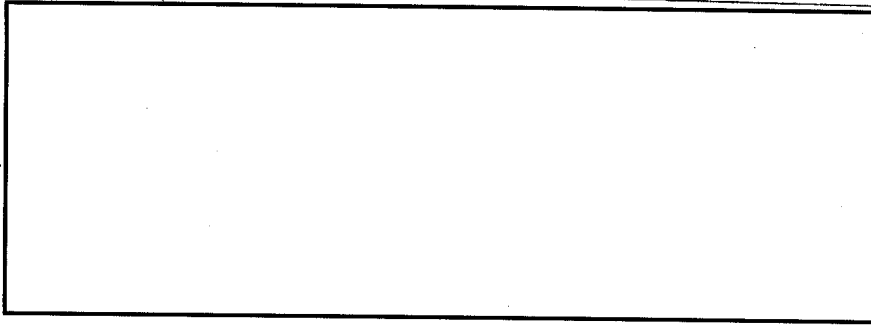
AT WASHINGTON, DC

(U) For action deemed appropriate.

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-10-2005 BY 65179/DMH/JW/05-CV-0845



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(NO TEXT) AVAIL FOR SERIAL 41

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 1/22/2004

To: Counterterrorism

Director's Office

Kansas City

Attn: AD John S. Pistole
A/SSA [redacted]
ITOS I, CONUS II, Team 8
Office of Professional
Responsibility (OPR)
SSA [redacted]
SA [redacted]

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From: General Counsel
National Security Law Branch/Room 7975
Contact: [redacted] Ext. [redacted]

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Approved By: Kelley Patrick W
[redacted]

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Drafted By: [redacted]

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320

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

Title: ~~(S)~~ (U) INTELLIGENCE OVERSIGHT BOARD
MATTER 2003-153

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

Synopsis: ~~(S)~~ (U) It is the opinion of the Office of the General Counsel (OGC) that the late submission of a 90-day letterhead memorandum (LHM) must be reported to the Intelligence Oversight Board (IOB). OGC will prepare and deliver the required correspondence to the IOB. Our analysis follows.

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

DATE: 08-12-2005
CLASSIFIED BY 65179/DMH/JW/05-CV-0845
REASON: 1.4 (C)
DECLASSIFY ON: 08-12-2030

Reference: ~~(S)~~ (U) 315B-KC-84651 Serial 41

Administrative: (U) This communication contains one or more footnotes. To read the footnotes, download and print the document in WordPerfect 8.0.

~~SECRET~~

OIG/DOJ Review: Vony DATE: 4/18/05
FBI INVEST: (12) OIG/DOJ INVEST: _____
OPR UC INITIALS: _____

~~SECRET~~

To: Counterterrorism From: General Counsel
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 1/22/2004

Details: ~~(S)~~ As noted in the referenced electronic communication (EC),

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(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 "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 (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 E.O. 12333, dated 12/04/1981, if such provision was designed to ensure the protection of the individual rights of U.S. persons. Violations

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 [or] an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Naturalization Act)" See also Section II.W of the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counter-intelligence Investigations.

~~SECRET~~

~~SECRET~~

To: Counterterrorism From: General Counsel
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 1/22/2004

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.

~~(S)~~ Section IX of the FCIG sets forth the rules governing the reporting, dissemination, and retention of information concerning foreign counterintelligence and international terrorism investigations. Section IX.C provides in pertinent part: (U)

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, classification marking omitted).

(U) ~~(S)~~ Section IX.C of the FCIG is intended to regulate the timely reporting of FBI full investigations on U.S. persons to the Office of Intelligence Policy and Review (OIPR), Department of Justice. 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. However, when a 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

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To: Counterterrorism From: General Counsel
Re: (U) ~~(S)~~ 278-HQ-C1229736-VIO, 1/22/2004

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by the OIPR. If the OIPR was precluded from conducting such oversight and review, then the matter must be reported to the IOB.

(U) ~~(S)~~

[Redacted]

This is a violation of Section IX.C of the FCIG which must be reported to the IOB

(U) ~~(S)~~ In accordance with the reporting requirements of Section 2.4 of E.O. 12863, OGC will prepare the correspondence required to report this matter to the IOB.

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To: Counterterrorism From: General Counsel
Re: (U)(S) 278-HQ-C1229736-VIO, 1/22/2004

LEAD (s)

Set Lead 1:

COUNTERTERRORISM DIVISION

AT WASHINGTON, DC

(U) For action deemed appropriate.

Set Lead 2: (Action)

DIRECTOR'S OFFICE

AT OPR FO, DC

(U) For action deemed appropriate.

Set Lead 3: (Action)

KANSAS CITY

AT KANSAS

(U) For action deemed appropriate.

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~~SECRET~~

FEDERAL BUREAU OF INVESTIGATION HEADQUARTERS (FBIHQ)
IOB MATTER 2004-21 (U)

~~(S)~~ By electronic communication (EC) dated February 11, 2004, the Counterintelligence Division reported a possible IOB error [redacted]

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[redacted] In this regard, the Counterintelligence Division reported that [redacted]

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(S)

~~(S)~~ [redacted]

[redacted]

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[redacted]

(S)

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[redacted] Thus, in accordance with the reporting requirements of Section 2.4 of E.O. 12863, this mistake must be reported to the IOB.

~~(S)~~ Derived From : G-3
~~Declassify On: X25-1~~

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-10-2005 BY 65179/DMH/JW/05-CV-0845

NO TEXT
ACCESS DENIED

Precedence: ROUTINE

Date: 10/22/2004

To: Counterintelligence

Attn: Section Chief

Directors Office

Attn: Office of Professional Responsibility

SAN FRANCISCO

Attn: SAC

b2

From: General Counsel

National Security Affairs/Room 7975

b6

Contact: [redacted] [redacted]

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Approved By: Thomas Julie F

[redacted]

b6

Drafted By: [redacted] :rss

b7C

Case ID #: ~~(S)~~(U) 278-HQ-1425173

Title: ~~(S)~~(U) INTELLIGENCE OVERSIGHT BOARD (IOB)
IOB MATTER 2003-56

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

Synopsis: ~~(S)~~(U) It is the opinion of the Office of the General Counsel (OGC) that this matter need not be reported to the Intelligence Oversight Board (IOB), but, rather, that a record of this decision should be maintained in the investigative control file for review by the Counsel to the IOB.

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

DATE: 08-11-2005
CLASSIFIED BY 65179/DMH/JW/05-CV-0845
REASON: 1.4 (C) (D)
DECLASSIFY ON: 08-11-2030

Reference: ~~(U)~~(S) 278-HQ-1425173

[redacted]

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

Details: (U) Referenced electronic communications from the Inspection Division (ID) to OGC, National Security Law Branch (NSLB), dated May 28, 2003, advised OGC of a possible IOB violation involving actions exceeding the authorized scope of otherwise permitted activity OGC has reviewed the facts of the captioned matter and has determined that reporting to the IOB is not warranted. Our analysis follows.

~~(S)~~ As set forth in the referenced ECs, San Francisco Division was conducting a Full Field NFIP Investigation of a

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[redacted]

~~(S)~~

Case ID : 278-HQ-1425173

Serial : 3

[Redacted]

(S)

SA [Redacted] SA [Redacted] under the supervision of SSA [Redacted]

[Redacted]

No NSL had been issued.

(S)

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Upon discovery of the mistake, an appropriate NSL was prepared covering the period 01/10/01-04/30/03.

(U) Also following discovery of this mistake, additional training and advice was provided to San Francisco investigative personnel regarding the proper use of NSL and the restrictions pertaining to [Redacted] without a NSL.

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(U) ~~(S)~~ Section 2-56 of the National Foreign Intelligence Program Manual requires OGC to determine whether the facts related above must be reported to the IOB. Based on the analysis set forth below, it is OGC's determination that they need not be in this instance.

(U) Section 2.4 of Executive Order (E.O.) 12863, dated September 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.

~~(S)~~ Title 18, United States Code, Section 2709, Counterintelligence access to Telephone Toll and Transactional Records states that:

- (b) Required certification. --The Director of the Federal Bureau of Investigation, or his designee . . . may-
 - (1) request the name, address, length of service, and local and long distance toll billing records of a person or entity if the Director . . . certifies in writing to the wire or electronic communication service

provider to which the request is made that the name, address, length of service, and toll billing records sought are relevant to an authorized investigation ...

(U) In the case of a US Person, such failure to comply would likely constitute an IOB violation. In the instant case, however, the subject of the investigation was not a US Person but rather a [redacted]

[redacted]

(S)

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As such, the sole determination we must make is whether the FBI's failure to conform to its internal administrative requirements -i.e., the National Foreign Intelligence Program Manual (NFIPM)- is reportable as a matter of policy, to the IOB.

(S) As previously discussed, in this instance, probationary Special Agent [redacted] met on numerous occasions with his asset [redacted]

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[redacted] Both SA [redacted] and his supervisor were

(S)

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operating under the mistaken belief that the information provided was covered under an existing FISA. Upon learning of the mistake, a NSL was retrospectively issued to cover the period in question. It is clear that the error committed did not impinge upon the individual rights of a US Person. Although the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigation (FCIG) have been modified as of October 31, 2003, the underlying principal remains the same, and consequently, because only violations of the FCIG which are designed to safeguard the rights of U.S. persons are required to be reported to the IOB, it is our opinion that this matter need not be reported to the IOB. Consistent with our prior opinions, a record of this decision should be maintained in the control file for future review by Counsel to the IOB. (U)

Lead(s):

Set Lead 1: (Action)

COUNTERINTELLIGENCE DIVISION

AT WASHINGTON, DC

(U) For action deemed appropriate.

Set Lead 2: (Action)

DIRECTOR'S OFFICE

AT OPR FO, DC

~~SECRET~~

----- Working Copy -----

Page 4

(U) For action deemed appropriate.

Set Lead 3: (Action)

SAN FRANCISCO

AT SAN FRANCISCO, CALIFORNIA

(U) For action deemed appropriate.

1 - [REDACTED]

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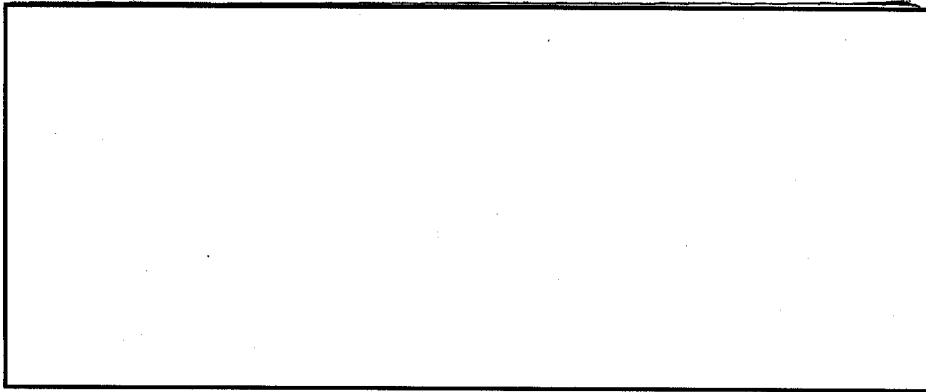
FOOTNOTES (U)

11: (S) OGC EC to INSD, dated May 28, 1999 and titled SSA
[REDACTED]; SA [REDACTED] Washington
Field Office; IOB Matter 97-15.

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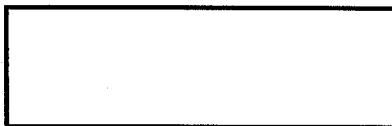
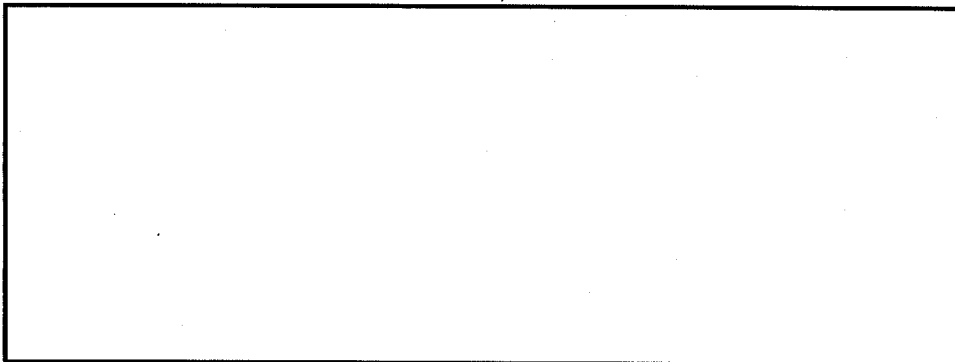
~~SECRET~~



NO TEXT (NOT UPLOADED)

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-10-2005 BY 65179/DMH/JW/05-CV-0845



(NO TEXT)

~~SECRET~~

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 11/17/2003

To: Springfield
Director's Office

Attn: SAC, CDC
Office of Professional
Responsibility

From: General Counsel
National Security Law Branch (NSLB)/Room 7974

b2

Contact: [Redacted] Ext. [Redacted]

b6

Approved By: Kelley Patrick W

b7C

[Redacted]

DECLASSIFIED BY 65179/DMH/JW/05-CV-0845
ON 08-11-2005

Drafted By: [Redacted]

b6

Case ID #: ~~(S)~~(U) 278-HQ-1416800 -3

b7C

Title: ~~(S)~~(U) INTELLIGENCE OVERSIGHT BOARD MATTER
IOB MATTER 2003-31

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

(U) ~~Derived From : G-3~~
~~Declassify On: K25-1~~

Reference: ~~(S)~~ 278-HQ-C1229736-VIO Serial 81 (U)

Administrative: (U) This communication contains one or more footnotes. To read the footnotes, download and print the document in WordPerfect 8.0.

Details: (U) An electronic communication (EC) from the Inspection Division (INSD) to OGC, dated 04/01/2003, requested that OGC review the facts of the referenced EC to determine whether the matter described should be reported to the Intelligence Oversight Board (IOB). In our opinion, it should. Our analysis follows.

~~SECRET~~

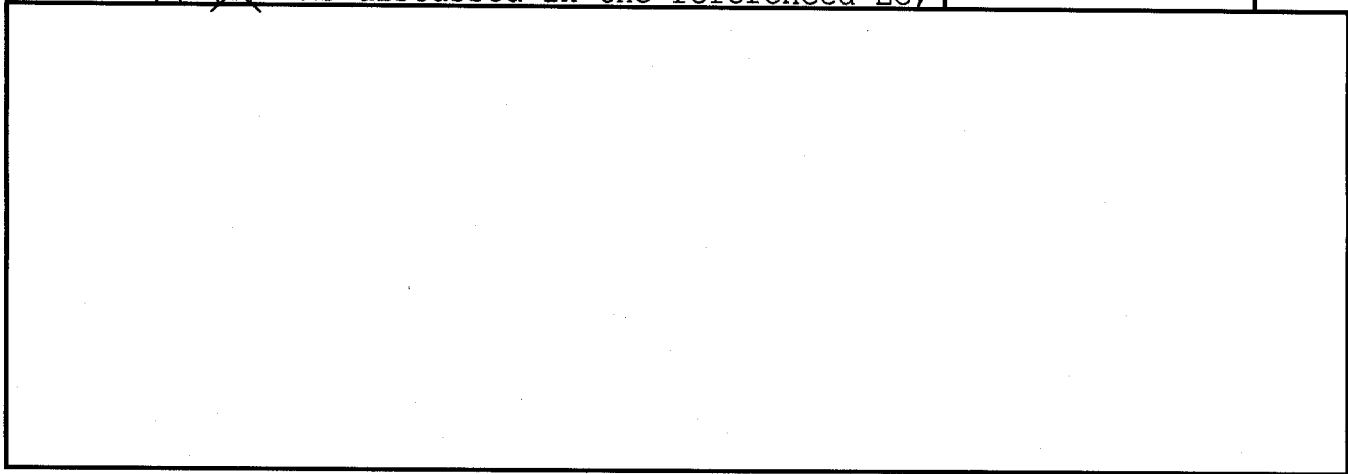
OIG/DOJ Review: Very DATE: 4/18/05
FBI INVEST: [Signature] OIG/DOJ INVEST: _____
OPR UC INITIALS: _____

~~SECRET~~

To: Springfield From: General Counsel
Re: (U) ~~(S)~~ 278-HQ-1416800, 11/17/2003

b7A

(U) ~~(S)~~ As discussed in the referenced EC, [redacted]



(U) ~~(S)~~ Because the unknown subject was (and remains) a "United States person", continuation of the investigation required that Springfield comply with the requirements of Executive Order 12863 and the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations (FCIG).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 "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 (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

¹ (U) Related per telephone call from SA [redacted] to AGC [redacted] on 05/16/03.

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(U) ~~(S)~~ See Section III.C.2(a) of the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations.

³ (U) At the time of this investigation, the FCIG were in effect.

~~SECRET~~

~~SECRET~~

To: Springfield From: General Counsel
Re: (U) ~~(S)~~ 278-HQ-1416800, 11/17/2003

regulations approved by the Attorney General, in accordance with E.O. 12333, dated 12/04/1981, if such provision was designed in full or in part to ensure the protection of the individual rights of a U.S. person. 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)~~ Section IX of the FCIG sets forth the rules governing the reporting, dissemination, and retention of information concerning foreign counterintelligence and international terrorism investigations. Section IX.C provides in pertinent part:

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, classification marking omitted).

(U) ~~(S)~~ Section IX.C of the FCIG is intended to regulate the timely reporting of FBI full investigations on U.S. persons to the OIPR. As such, it was designed to include both administrative and "rights protection" components. The 90-day and annual reporting time 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. However, 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 the OIPR

~~SECRET~~

~~SECRET~~

To: Springfield From: General Counsel
Re: ~~(U)~~ ~~(S)~~ 278-HQ-1416800, 11/17/2003

was precluded from conducting such oversight and review, then the matter must be reported to the IOB.

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



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~~(U)~~ ~~(S)~~ In accordance with the reporting requirements of Section 2.4 of E.O. 12863, OGC will prepare a cover letter and a memorandum for the Deputy General Counsel to report this matter to the IOB.

~~SECRET~~

~~SECRET~~

To: Springfield From: General Counsel
Re: ~~(S)~~ 278-HQ-1416800, 11/17/2003
(U)

LEAD (s)

Set Lead 1: (Action)

SPRINGFIELD DIVISION

AT QUAD CITY RA

(U) For action consistent with this opinion.

Set Lead 2: (Action)

DIRECTOR'S OFFICE

AT OPR FO, DC

(U) For action deemed appropriate.

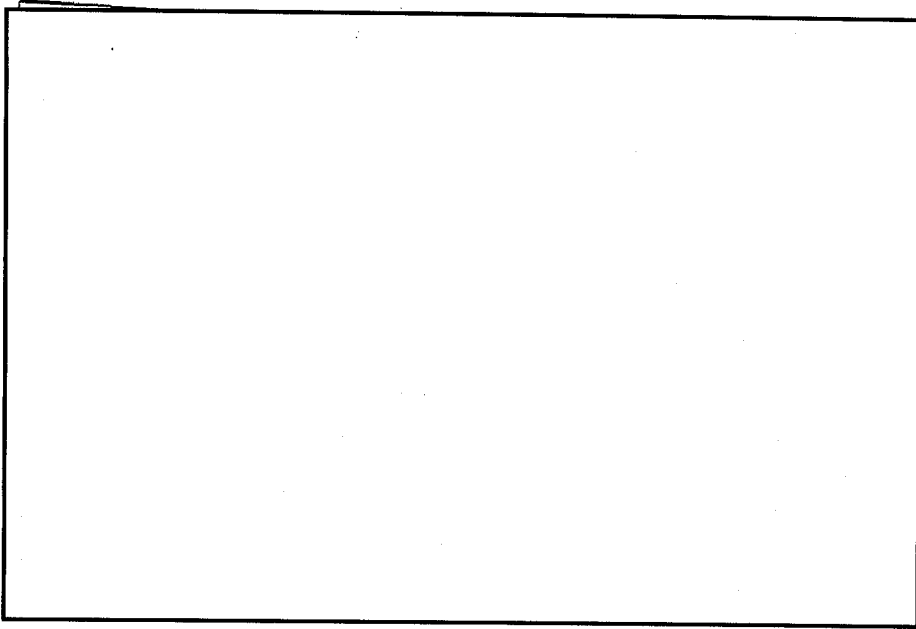
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HEREIN IS UNCLASSIFIED
DATE 08-11-2005 BY 65179/DMH/JW/05-CV-0845

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 12/05/2003

To: Pittsburgh
Director's Office

Attn: SAC Kenneth T. McCabe
CDC Jeffrey B. Killeen
Attn: Office of Professional
Responsibility

From: Office of the General Counsel
National Security Law Branch/CILU/Room #7975
Contact: (A) UC [redacted]

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Approved By: Kelley Patrick W
Curran John F

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[redacted]

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Drafted By: [redacted] vim

DECLASSIFIED BY 65179/DMH/JW/05-CV-0845
ON 08-11-2005

Case ID #: ~~(S)~~(U) 278-HQ-1425174 - 3

Title: ~~(S)~~(U) INTELLIGENCE OVERSIGHT BOARD (IOB)
IOB MATTER 2003-57

Synopsis: ~~(S)~~(U) It is the opinion of the Office of the 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 to report this matter to the IOB. Our analysis follows.

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

Reference: ~~(S)~~(U) 278-HQ-1425174 Serial 2

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

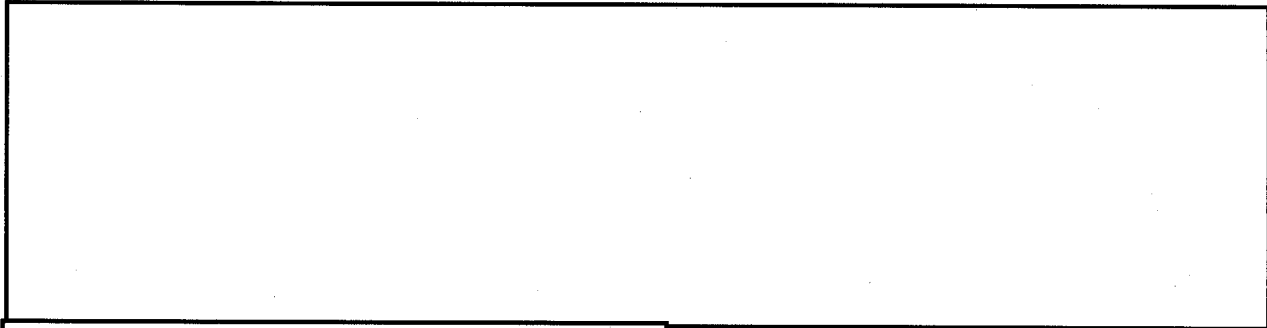
Details: ~~(S)~~(U) As discussed in the referenced electronic communication (EC), on 03/30/2000, [redacted]

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OIG/DOJ Review Van DATE: 4/18/05
FBI INVEST. (m) OIG/DOJ INVEST.: _____
OPR UC INITIALS: _____

To: Pittsburgh From: Office of the General Counsel
Re: ~~(S)~~ (U) 278-HQ-1425174, 12/05/2003



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(U)

(U) Section 2.4 of EO 12863, dated 09/13/1993, mandates that Inspectors General and General Counsels 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 an EO 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.

~~(U)~~(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 [or] an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Naturalization Act)" See also Section II.W of the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations.

² (U) Since that time, the Attorney General has issued new guidelines for FBI National Security Investigations and Foreign Intelligence Collection, dated October 31, 2003. However, since the actions occurred prior to the issuance of the new guidelines, the old guidelines are cited herein.

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To: Pittsburgh From: Office of the General Counsel
Re: ~~(S)~~ 278-HQ-1425174, 12/05/2003

~~(U)~~

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)~~ With regard to the continuation of an FBI PI, Section III.B.6 of the FCIG provides in pertinent part that:

Preliminary inquiries shall be completed within 120 days of the date of initiation.

The Office of origin SAC may personally authorize extensions of a preliminary inquiry for a period of not more than 90 days up to a total of one year when justified by facts or information obtained during the course of the inquiry. . . .

FBI Headquarters may authorize additional extensions for periods of not more than 90 days on the same basis. All extensions shall be in writing and include the justification for the extension.

(Emphasis added.)

~~(U)~~ ~~(S)~~ Although this provision of the Attorney General Guidelines is primarily administrative in nature, it was designed in part to protect the rights of U.S. persons by limiting the length of time that the FBI can conduct a PI without periodic oversight by the proper authorities. Pursuant to the aforementioned agreement between the FBI and IOB, PI overruns are not reported to the IOB if they are both inadvertent and de minimus in time. To determine whether a possible violation of the FCIG is "inadvertent" and "de minimus in time," all the facts relevant to the incident must be considered.

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

[Redacted]

[Redacted]

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[Redacted] This activity was, thus, inconsistent with the requirements of the FCIG. Consequently, in accordance with the reporting requirements of Section 2.4 of EO 12863, OGC will prepare a cover letter and an LHM to report this matter to the IOB. As a mitigating circumstance, it is recognized that the source provided valuable information during the overrun relative to a counterterrorism matter.

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~~SECRET~~

To: Pittsburgh From: Office of the General Counsel
Re(U) ~~(S)~~ 278-HQ-1425174, 12/05/2003

~~SECRET~~

~~SECRET~~

To: Pittsburgh From: Office of the General Counsel
Re: ~~(S)~~ ~~(U)~~ 278-HQ-1425174, 12/05/2003

LEAD(s):

Set Lead 1: (Info)

PITTSBURGH

AT PITTSBURGH

(U) For information.

Set Lead 2: (Discretionary)

DIRECTOR'S OFFICE

AT OPR FO, DC

(U) For action deemed appropriate.

CC: SAC Pittsburgh
Mr. Kelley
Mr. Curran

IOB Library

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DATE 08-11-2005 BY 65179/DMH/JW/05-CV-0845

DN OPENED A PI ON 6/13/02. INITIAL PI
EXPIRED 10/10/02, BUT NOT FORMALLY EXTENDED
UNTIL 1/11/03. BETWEEN EXPIRATION OF INITIAL
PI AND THE FORMAL EXTENSION 1/11/03,
INV. WAS CONDUCTED BY DN.

- APPEARS TO BE INADVERTENT *WJ RSP*

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 1/16/04

To: Director's Office
Counterterrorism
Denver

Attn: OPR
Attn: AD
Attn: SAC
CDC

From: General Counsel
National Security Law Branch/Room 7975
Contact: [redacted] ext. [redacted]

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Approved By: Curran John F
Lammert Elaine N

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Drafted By: [redacted]

391

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

Case ID #: ~~(S)~~(U) 78-HQ-C1229736-VIO (Pending)

Title: ~~(S)~~(U) POSSIBLE INTELLIGENCE OVERSIGHT BOARD MATTER
2003-142

Synopsis: ~~(S)~~(U) It is the opinion of the Office of General Counsel (OGC) that this matter must be reported to the Intelligence Oversight Board (IOB) and to the Office of Professional Responsibility (OPR), FBIHQ. OGC will prepare and deliver the required correspondence to the IOB. Our analysis follows.

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

DATE: 08-15-2005
CLASSIFIED BY 65179/DMH/JW/05-CV-0845
REASON: 1.4 (C)
DECLASSIFY ON: 08-15-2030

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

OIG/DOJ Review: Vay DATE: 4/18/05
FBI INVEST.: [initials] OIG/DOJ INVEST.: _____
OPR UC INITIALS: _____

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To: Director's Office From: General Counsel
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 1/16/04

~~(U)~~

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Details: ~~(S)~~ As noted in the electronic communication (EC) referenced below,¹ on June 13, 2002, the Denver Division initiated a preliminary inquiry (PI) on [redacted] who is a "United States person" as that term is used in Section 101(i) of the Foreign Intelligence Surveillance Act of 1978 (FISA).² Thus, [redacted] of the PI required that Denver comply with the requirements of the Attorney General Guidelines for FBI Foreign Intelligence Collections and Foreign Counterintelligence Investigations (FCIG). The initial PI expired on October 10, 2002, but was not formally extended by Denver on January 11, 2003. This extension expired on April 10, 2003. Between the expiration of the initial PI on October 10, 2002 and the extension on January 11, 2003, Denver conducted an investigation with respect to [redacted] specifically, on December 20, 2002, a source was contacted for information [redacted] within the Denver Division.³ (S)

(U) Section 2.4 of Executive Order (E.O.) 12863, dated 09/13/1993, mandates that Inspectors General and General Counsels 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 E.O. 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), the language has been

¹ ~~(S)~~ (U) JEC from the Denver Division to INSD, dated 10/20/03 and titled "SSA [redacted] SA [redacted]; Denver Division [;] IOB [;]. Hereinafter cited as "Denver EC."

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² ~~(S)~~ (U) 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 [or] an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Naturalization Act)...." See also Section II.W of the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations.

³ Denver EC.

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To: Director's Office From: General Counsel
Re: ~~(S)~~ (U) 278-HQ-C1229736-VIO, 1/16/04

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 E.O. 12333, dated 12/04/1981, if such provision was designed 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.

~~(S)~~ (U) With regard to the continuation of an FBI preliminary inquiry, Section III.B.6 of the FCIG⁴ provides, in pertinent part that

Preliminary inquiries shall be completed within 120 days of the date of initiation.
The Office of origin SAC may personally authorize extensions of a preliminary inquiry for a period of not more than 90 days up to a total of one year when justified by facts or information obtained during the course of the inquiry.... FBI Headquarters may authorize additional extensions for periods of not more than 90 days on the same basis. All extensions shall be in writing and include the justification for the extension.

(Emphasis added, classification marking omitted).

Although this provision of the Attorney General Guidelines is primarily administrative in nature, it was designed in part to protect the rights of U.S. persons by limiting the length of time that the FBI can conduct a PI without periodic oversight by the proper authorities. Pursuant to the aforementioned agreement between the FBI and IOB, PI overruns are not reported to the IOB if they are both inadvertent and de minimis in time. To determine whether a possible violation of the FCIG is "inadvertent" and "de minimis in time," all the facts relevant to the incident must be considered.

⁴At the time of this investigation, the FCIG were in effect.

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To: Director's Office From: General Counsel
Re: ~~(S)~~(U) 278-HQ-C1229736-VIO, 1/16/04

~~(S)~~(U) In the instant matter, while the PI overrun between the expiration date and the date of the renewal appears to have been inadvertent, it was not de minimis in time; investigative activity continued for three months before the renewal, during which time a source was contacted. Consequently, based on the above analysis, and in accordance with the reporting requirements of Section 2.4 of E.O. 12863, OGC will prepare the correspondence required to report this matter to the IOB.

LEAD(s):

Set Lead 1: (Action)

DIRECTOR'S OFFICE

AT OPR FO, DC

(U) For action deemed appropriate.

Set Lead 2: (Action)

COUNTERTERRORISM

AT WASHINGTON, DC

(U) For Action Deemed Appropriate.

Set Lead 3: (Action)

Denver

(U) For action deemed appropriate.

1 -Mr. Curran
1 -Ms. Lammert
1 -
1 -IOB Library

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To: Director's Office From: General Counsel
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 1/16/04
~~(U)~~

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DATE 08-11-2005 BY 65179/DMH/JW/05-CV-0845

NIPC WAS CONDUCTING A MAINTENANCE
OF E-MAIL. ~~THE~~ 3 E-MAIL PROVIDERS
FORWARDED DATA AFTER EXPIRATION OF
THE FISC ORDER.

UPON REVIEW OF THIS INFO NIPC
DETERMINED THE MISTAKE & IMMEDIATELY
NOTIFIED THE PROVIDERS

- ERROR BY THE PROVIDERS

NOT
UPLOADED

~~SECRET~~

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 01/15/2004

To: Director's Office
Counterterrorism

Attn: OPR
Attn: AD

b2

From: General Counsel
Counter Terrorism Law Unit I / Rm. 7975

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Contact:

b7C

Approved By: Curran John F
Lammert Elaine N

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Drafted By: asc

Case ID #: ~~(S)~~ ~~(U)~~ 78-HQ-C1229736-VIO

333

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

Title: ~~(S)~~ ~~(U)~~ INTELLIGENCE OVERSIGHT BOARD MATTER
IOB 2003 131

Synopsis: ~~(S)~~ ~~(U)~~ 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 Office of Professional Responsibility (OPR), FBIHQ. OGC will prepare a cover letter and an enclosure for the Deputy General Counsel to report this matter to the IOB.

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

DATE: 08-15-2005
CLASSIFIED BY 65179/DMH/JW/05-CV-0845
REASON: 1.4 (C)
DECLASSIFY ON: 08-15-2030

Reference: ~~(S)~~ ~~(U)~~ 78-HQ-C1229736-VIO Serial 112

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

Details: (U) Referenced communication from CTD to OGC, dated 07/3/02 (received 10/7/03), requested that OGC review the facts of the captioned matter to determine whether it must be reported to the IOB. In our opinion, it must. Our analysis follows.

~~(S)~~ As discussed in the referenced electronic communication (EC), on 6/20/02, at approximately 4:30 pm EDT, the Special Technologies and Applications Unit (STAU) of the National Infrastructure Protection Center (NIPC) was conducting a

~~SECRET~~

OIG/DOJ Review: Varney DATE: 4/18/05
FBI INVEST: MD OIG/DOJ INVEST: _____
OPR UC INITIALS: _____

~~SECRET~~

To: Director's Office From: General Counsel
Re: ~~(S)~~ (U) 78-HQ-C1229736-VIO Serial 112, 01/05/2004

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voluntary audit of Foreign Intelligence Surveillance Court (FISC)

[Redacted]

(S)

~~(S)~~ Upon review of the information received by STAU, it was determined that the

[Redacted]

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(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, "[e]lectronic 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

~~(U)~~ (S) It cannot be determined from the referenced EC whether [Redacted]

[Redacted]
[Redacted] If that has not yet been done, it should be done now.

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~~SECRET~~

To: Director's Office From: General Counsel
Re: ~~(S)~~ (U) 78-HQ-C1229736-VIO Serial 112, 01/05/2004

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).

(U) ~~(S)~~ In this instance, it is clear that as a consequence of an error on the part of the communications carriers, the FBI (unintentionally) conducted an electronic surveillance which was unauthorized. The carrier's error must be reported to the IOB. OGC will prepare an appropriate cover letter and an enclosure for the Deputy General Counsel to report this matter to the IOB.

~~SECRET~~

~~SECRET~~

To: Director's Office From: General Counsel
Re: ~~(S)~~ 278-HQ-C1229736-VIO Serial 112, 01/05/2004
~~(U)~~

LEAD(s):

Set Lead 1: (Action)

DIRECTOR'S OFFICE

AT OPR FO, DC

(U) For action deemed appropriate.

Set Lead 2: (Info)

COUNTERTERRORISM

AT WASHINGTON, DC

(U) Please read and clear.

CC: Mr. Curran
Ms. Lammert

IOB Library

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DATE 08-11-2005 BY 65179/DMH/JW/05-CV-0845

LAST LOCATED 51
ORIGINAL REPORTING 1
EC 01

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 01/28/2004

To: Detroit

Attn: SAC

Director's Office

Attn: Office of Professional Responsibility (OPR)

Counterterrorism Division

Attn: A/AD

From: General Counsel

Counterterrorism Law Unit II

Contact: [Redacted]

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Approved By: Curran John F

[Redacted]

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Drafted By:

[Redacted]

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Case ID #:

278-HQ-C1229736-VIO
66-DE-A5102

- 335

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

Title: (U) INTELLIGENCE OVERSIGHT BOARD MATTER (IOB)
IOB 2003 145

Synopsis: ~~(S)~~ (U) 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 Office of Professional Responsibility (OPR), FBIHQ. OGC will prepare a cover letter and a memorandum to report this matter to the IOB. Our analysis follows.

(U)

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~~Derived From :~~

~~Declassify On:~~

DATE: 08-15-2005
CLASSIFIED BY 65179/DMH/JW/05-CV-0845
REASON: 1.4 (C)
DECLASSIFY ON: 08-15-2030

Reference: 315G-DE-92951, Serial 140, 141

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

~~SECRET~~

OIG/DOJ Review: Vary DATE: 4/18/05
FBI INVEST.: (M) OIG/DOJ INVEST.: _____
OPR UC INITIALS: _____

To: Counterterrorism Division From: General Counsel
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 01/28/2004

~~(U)~~ ~~(S)~~ Details: ~~(S)~~ As discussed in the electronic communication (EC)¹ on October 31, 2003, FBI Detroit prepared and forwarded a letterhead memorandum (LHM) for the full investigation (FI) on subject [redacted] a U.S. person, on May 11, 1998.

[redacted] is a "United States person" as that term is used in the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations (FCIG).² The initiation and continuation of the FI required FBI Detroit and the Headquarters' substantive unit to comply with the requirements of Executive Order (EO) 12863 and the FCIG. In this regard, [redacted] became the subject of a FBI full investigation on May 11, 1998, in the New York Division. The New York Division prepared and submitted the FBI HQ annual LHMs on May 23, 2000 and May 1, 2001. The next required annual LHM should have been filed with FBIHQ in May, 2002. The investigation was transferred to FBI Detroit on October 17, 2001. On October 31, 2003, FBI Detroit advised FBIHQ and the Office of the General Counsel that they had failed to comply with the annual reporting requirements.

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(U) Because the subject of the investigation was (and remains) a "United States person" as that term is used in Section 101(i) of the Foreign Intelligence Surveillance Act of 1978 (FISA) and Section II.W of the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations (FCIG)³, continuation of the investigation required that Detroit and the Headquarters' substantive unit comply with the reporting requirements of Executive Order 12863 and the FCIG. Due to delay in forwarding a hard copy of the investigation to FBI Detroit following notification of the investigation being transferred, and an

~~(U)~~ ~~(S)~~ ¹ EC from FBI Detroit to INSD and OGC, dated 10/31/2003 and titled "Intelligence Oversight Board (IOB) Matter."

~~(U)~~ ~~(S)~~ ² 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"

~~(U)~~ ~~(S)~~ ³ 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 [or] an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Naturalization Act)" See also section II.W of the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations.

~~SECRET~~

To: Counterterrorism Division From: General Counsel
Re: ~~(U)~~(S) 278-HQ-C1229736-VIO, 01/28/2004

administrative order, Detroit failed to submit the third annual letterhead memorandum (LHM), due on or about May 2, 2002, to the National Security Law Unit (NSLU), OGC, for submission to the Office of Intelligence Policy and Review (OIPR), Department of Justice (DOJ), as required by the FCIG. As a result of the error, OIPR was not advised of the status of the ongoing investigation for approximately fifteen months. (U)

(U) Section 2.4 of Executive Order (E.O.) 12863, dated September 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 E.O. 12334, dated December 4, 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 E.O. 12333, dated 12/04/1981, if such provision was designed in full or in part 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) Section IX of the FCIG sets forth rules governing the reporting, dissemination, and retention of information concerning foreign counterintelligence and international terrorism investigations. Section IX.C provides 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**

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~~SECRET~~

To: Counterterrorism Division From: General Counsel
Re: ~~(U)~~ ~~(S)~~ 278-HQ-C1229736-VIO, 01/28/2004

any requests for assistance made by the FBI to foreign law enforcement, intelligence or security agencies. (Emphasis added.)

~~(U)~~ ~~(S)~~ Section IX.C is 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 annual reporting requirements of Section IX.C is 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 LHMs are considered to be violations of an administrative nature when they are submitted to the NSLB 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 the OIPR was precluded from conducting such oversight and review, then the matter must be reported to the IOB.

~~(U)~~ ~~(S)~~ As previously discussed, in this instance, OIPR was not updated of the status of this ongoing investigation involving a U.S. person for approximately fifteen months. This delayed reporting clearly precluded OIPR from exercising its responsibility for oversight and approval of an ongoing foreign counterintelligence investigation of a U.S. person, which is contrary to the requirements of the FCIG.

~~(U)~~ ~~(S)~~ Based upon the above analysis, and consistent the reporting requirements of Section 2.4 of E.O. 12863, OGC will prepare a cover letter and an LHM to report this matter to the IOB. That correspondence will also advise the IOB that this matter will be referred to the FBI's Office of Professional Responsibility. The latter is a matter within the cognizance of the IMU.

~~SECRET~~

~~SECRET~~

To: Counterterrorism Division From: General Counsel
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 01/28/2004

~~(U)~~

LEAD(s):

Set Lead 1: (Discretionary)

DIRECTOR'S OFFICE

AT OPR FO, DC

~~(U)(S)~~ For action deemed appropriate.

Set Lead 2: (Discretionary)

COUNTERTERRORISM

~~(S)~~ For action deemed appropriate.

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Page 1

BY COURIER

General Brent Scowcroft (USAF Retired)
Chairman
Intelligence Oversight Board
Room 5020
New Executive Office Building
725 17th Street, N.W.
Washington, D.C. 20503

Dear General Scowcroft:

Enclosed for your information is a self-explanatory memorandum, entitled "Intelligence Oversight Board (IOB) Matter, IOB 2003 145." (U)

This memorandum sets forth details of investigative activity which the FBI has determined was conducted contrary to the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations and/or laws, Executive Orders, or Presidential Directives which govern FBI foreign counterintelligence and international terrorism investigations. (U)

Enclosure

1 -
1 - 278-HQ-C1229736-VIO

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

~~UNCLASSIFIED WHEN
DETACHED FROM
CLASSIFIED ENCLOSURE~~

DATE: 08-15-2005
CLASSIFIED BY 65179/DMH/JW/05-CV-0845
REASON: 1.4 (C)
DECLASSIFY ON: 08-15-2030

~~Classified by: 39645, NSA/OGC
Reason: 1.5 (c)~~

Case ID : 278-HQ-C1229736-VIO

Serial : 336

~~SECRET~~

~~SECRET~~

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Page 2

Declassify on: X1

~~SECRET~~

General Brent Scowcroft (USAF Retired)

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,

Patrick W. Kelley
Deputy General Counsel

- 1 - The Honorable John D. Ashcroft
Attorney General
U.S. Department of Justice
Room 5111
- 1 - Mr. H. Marshall Jarrett
Counsel, Office of Professional Responsibility
U.S. Department of Justice
Room 4304
- 1 - Mr. James Baker
Counsel for Intelligence Policy, OIPR
U.S. Department of Justice

~~SECRET~~

~~SECRET~~

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Page 3

~~SECRET~~

INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
IOB 2003 145 (U)

(S)

Investigation of this IOB matter has determined that, on May 11, 1998, the New York Field Office of the Federal Bureau of Investigation ("FBI") requested initiation of a full investigation (IT) of [redacted] who was a "United States person" as that term is used in the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations (FCIG). Thus the initiation and continuation of the IT required FBI New York and the Headquarters substantive unit to comply with the requirements of Executive Order 12863 and the FCIG. FBI New York submitted its initial 90-day letterhead memorandum and two subsequent annual memoranda in a timely fashion. However, after the investigation was transferred to FBI Detroit, the annual memorandum was filed approximately fifteen months later than required. As a result of the delinquent LHM, OIPR was not properly advised of the initiation of the FI in accordance with Section IX.C of the FCIG. This delayed reporting clearly precluded OIPR from exercising its responsibility for oversight and review of an ongoing foreign counterintelligence investigation of a U.S. person, contrary to the requirements of the FCIG. This matter has been referred to the FBI's Office of Professional Responsibility for review and action deemed appropriate.

(S)

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

~~SECRET~~

NEEDS
ORIGINAL
EC REPORTING
JOB FROM
CI TO OBL

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-11-2005 BY 65179/DMH/JW/05-CV-0845

Precedence: ROUTINE

Date: 02/16/2005

To: Counterintelligence

Attn: AD David W. Szady

Inspection

Attn: Internal Investigations Section

From: Office of the General Counsel

National Security Law Branch/CILU/Room 7975

Contact: [Redacted]

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Approved By: Thomas Julie F

Classification per OGA letter dated 08-16-2005

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

Drafted By: [Redacted]

b7C

Case ID #: ~~(S)~~ ~~(U)~~ 78-HQ-C1229736-VIO

Title: ~~(S)~~ ~~(U)~~ INTELLIGENCE OVERSIGHT BOARD
MATTER 2004-21

handle & confirm req.
[Signature]
5/12

Synopsis: ~~(S)~~ ~~(U)~~ It is the opinion of the Office of the 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.

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

~~Derived From : G-3~~
~~Declassify On: X25-1~~

DATE: 08-12-2005
CLASSIFIED BY 65179/DMH/JW/05-CV-0845
REASON: 1.4 (C)
DECLASSIFY ON: 08-12-2030

Details: ~~(S)~~ By electronic communication (EC) dated February 11, 2004, the Counterintelligence Division reported a possible IOB error in conjunction with [Redacted]

[Redacted] In this regard, the Counterintelligence Division reported that [Redacted]

[Redacted]

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[Redacted]

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[Redacted]

(S)



(S)

(U) Section 2.4 of Executive Order (E.O.) 12863, dated September 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. Exec. Order No. 12863, 58 Fed. Reg. 48441 (Sept. 13, 1993). This language was adopted from E.O. 12334, dated December 4, 1981, when the IOB was known as the President's Intelligence Oversight Board (PIOB).

(U) 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 Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection, or other guidelines or regulations approved by the Attorney General in accordance with E.O. 12333, dated December 4, 1981, if such provisions were specifically intended to ensure the protection of the individual rights of U.S. persons.

(U) Under Title 50, United States Code, Section 1822, the FISC is authorized to grant an order approving the physical search 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 "physical search" means, any physical intrusion within the United States into premises or property . . . that is intended to result in a seizure, reproduction, inspection, or alteration of information, material, or property, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes. 50 U.S.C. 1801(f)(2).

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(U) Further, under section 2.4 of E.O. 12333, only the FBI had the authority to conduct an unconsented physical search of  Section 2.4 of E.O. 12333 provides in pertinent part that:

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Agencies within the Intelligence Community shall use the least intrusive collection techniques feasible within the United States or directed against United States persons abroad. Agencies are not authorized to use such techniques as . . . unconsented physical searches . . . unless they are in accordance with procedures established by the head of the agency and approved by the Attorney General. Such procedures

shall protect constitutional and other legal rights and limit use of such information to lawful governmental purposes. These procedures shall not authorize:

(b) Unconsented physical searches in the United States by agencies other than the FBI, except for:

- (1) Searches by counterintelligence elements of the military services directed against military personnel within the United States or abroad for intelligence purposes . . . ;
- and

[Redacted]

(S)

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Exec. Order No. 12333, 46 Fed. Reg. 59941 (Dec. 4, 1981) (emphasis added).

~~(S)~~ As provided in section 2.4 of E.O. 12333, while the FBI had the authority to conduct an unconsented physical search of

[Redacted]

(S)

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[Redacted]

Thus, in accordance with the reporting requirements of Section 2.4 of E.O. 12863, this mistake must be reported to the IOB. OGC will prepare an appropriate cover letter and an enclosure for the Deputy General Counsel to report this matter to the IOB.

LEAD(s) :

Set Lead 1: (Action)

INSPECTION

AT WASHINGTON, DC

(U) For action deemed appropriated.

Set Lead 2: (Action)

COUNTERINTELLIGENCE

AT WASHINGTON, DC

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~~(S)~~ If it has not already been accomplished, ensure that

[Redacted]

(S)

CC: Ms. Thomas

[Redacted]

IOB Library

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****FOOTNOTES****

[Redacted]

(S)

Thus, the New York Division will not be notified of this IOB matter.

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~~SECRET~~

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Page 1

BY COURIER

General Brent Scowcroft (USAF Retired)
Chairman
Intelligence Oversight Board
Room 5020
New Executive Office Building
725 17th Street, NW
Washington, D.C. 20503

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

DATE: 08-12-2005
CLASSIFIED BY 65179/DMH/JW/05-CV-0845
REASON: 1.4 (C)
DECLASSIFY ON: 08-12-2030

Dear General Scowcroft:

This letter forwards for your information a self-explanatory enclosure, entitled Intelligence Oversight Board (IOB) Matter 2004-21."

This enclosure sets forth details of investigative activity which the FBI has determined was conducted contrary to the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations and/or laws, Executive Orders, or Presidential Directives which govern FBI foreign counterintelligence and international terrorism investigations. This matter has also been referred to our Internal Investigations Section, Inspection Division, for a determination of whether any administrative action is warranted.
(U)

Enclosure

1 -
1 - 278-HQ-C1229736-VIO

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~~UNCLASSIFIED WHEN
DETACHED FROM
CLASSIFIED ENCLOSURE~~

Case ID : 278-HQ-C1229736-VIO

Serial : 694

~~SECRET~~

~~SECRET~~

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Page 2

~~Derived from : G-3
Declassify on: X25-1~~

~~SECRET~~

General Brent Scowcroft (USAF Retired)

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 F. Thomas
Deputy General Counsel

- 1 - The Honorable Alberto Gonzales
Attorney General
U.S. Department of Justice
Room 5111

- 1 - Mr. James Baker
Counsel for Intelligence Policy, OIPR
U.S. Department of Justice

INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
COUNTERINTELLIGENCE DIVISION

~~SECRET~~

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-12-2005 BY 65179/DMH/JW/05-CV-0845

NEEDS
ORIGINAL PERSET
EC AND
OPINION FROM
OIG



U.S. Department of Justice

Federal Bureau of Investigation

~~SECRET~~

Washington, D. C. 20535-0001

February 11, 2004

BY COURIER

General Brent Scowcroft (USAF Retired)
Chairman
Intelligence Oversight Board
Room 5020
New Executive Office Building
725 17th Street, Northwest
Washington, D.C.

DECLASSIFIED BY 65179/DMH/JW/05-CV-0845
ON 08-12-2005

Dear General Scowcroft:

Enclosed for your information is a self-explanatory memorandum, entitled "Intelligence Oversight Board (IOB) Matter, Pittsburgh Division, IOB Matter 2002-57" (U)

This memorandum sets forth details of investigative activity which the FBI has determined was conducted contrary to the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations and/or laws, Executive Orders, or Presidential Directives which govern FBI foreign counterintelligence and international terrorism investigations. This matter has also been referred to our Office of Professional Responsibility for a determination of whether any administrative action is warranted. (U)

Enclosure

~~UNCLASSIFIED WHEN
DETACHED FROM
CLASSIFIED ENCLOSURE~~

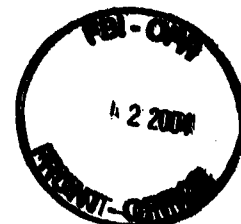
- 1 - Mr. Szady
- ① - OPR (IOB 2002-57)
- 1 - 278-HQ-1400430-4
- 1 -

- Asst. Dir. _____
- Chief of Staff _____
- Ident. Div. _____
- Intell. Div. _____
- Lab. _____
- National Sec. _____
- OPR _____
- Off. of Public & Cong. Affs. _____
- Training _____
- Off. of EROA _____
- Director's Office _____

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~~Derived from : G-3
Declassify on: X 25-1~~

~~SECRET~~



MAIL ROOM □

FBI/DOJ

~~SECRET~~

General Brent Scowcroft (USAF Retired)

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,

Patrick W. Kelley
Deputy General Counsel

1 - Honorable John D. Ashcroft
Attorney General
U.S. Department of Justice
Room 5111

1 - Mr. H. Marshall Jarrett
Counsel, Office of Professional Responsibility
U.S. Department of Justice
Room 4303

1 - Mr. James Baker
Counsel, Office of Intelligence Policy and Review
U.S. Department of Justice
Room 6150

APPROVED:	Cr. In Dir. _____	Asst. Dir. _____	Adm. Serv. _____
	Sec. _____	Legal Coun. _____	Off. of EEO _____
	Finance _____	Ident. & Insp. _____	Rec. Mgmt. _____
	Director _____	Gen. Counsel _____	Off. of Public & _____
Deputy Director _____	Info. Res. _____	Personnel _____	Cong. Affs. _____

*LDK
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~~SECRET~~

INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
PITTSBURGH DIVISION
IOB MATTER 2002-57 (U)

Inquiry has determined that in conducting a preliminary inquiry (PI) of a United States person, the Federal Bureau of Investigation (FBI) failed to comply with the requirements for the continuation of a PI as prescribed in Section III.B.6 of the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations (FCIG). In this regard, the Pittsburgh Division opened a PI on a sensitive asset on 03/21/02 to determine his/her suitability as an asset for foreign counterintelligence matters. The initial 120-day PI was not extended but contact between the asset and the Special Agent continued. The Agent discovered the error on 09/26/02. In mitigation of the errors, Pittsburgh advised that the only investigative actions taken following the expiration of the initial 120-day authorization were a series of electronic mail (e-mail) communications. One e-mail concerned the scheduling of a security briefing, while the remaining e-mails were social in nature. Because the subject was (and remains) a "United States person" as that term is used in Section 101(i) of the Foreign Intelligence Surveillance Act of 1978, continuation of the investigation required that Pittsburgh comply with the requirements of Executive Order 12863 and the FCIG. In this matter, while the PI overrun appears to have been inadvertent, it was not de minimis in time. The PI was never properly extended, and investigative activity occurred for approximately two months after the PI had expired. Therefore, this report is being made to the Intelligence Oversight Board. ~~(S)~~ (U)

~~Derived from : G-3~~
~~Declassify on: X 25-1~~

APPROVED:

Crim. Inv.	_____	Inspection	_____	Training	_____
SJS	_____	Laboratory	_____	Off. of EEO	_____
Finance	_____	National Sec.	_____	Affairs	_____
Director	_____	Gen. Counsel	<u>K</u>	Off. of Public &	_____
Deputy Director	_____	Info. Sys.	_____	Cong. Affs.	_____
		Personnel	_____		

~~SECRET~~

LDK
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Access Denied-

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-12-2005 BY 65179/DMH/JW/05-CV-0845

~~SECRET~~

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Precedence: ROUTINE

Date: 08/26/2004

To: Director's Office
Counterintelligence
Washington Field

Attn: OPR
Attn: AD
Attn: SAC/CI
CDC

From: General Counsel
Counterintelligence Law Unit/Room 7975
Contact: [Redacted]

Approved By: Curran John F

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Drafted By: [Redacted]

Case ID #: (U) 278-HQ-C1229736-VIO (Pending)
~~(S)~~ (U) 65J-WF-A1419323 (Pending)

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

Title: ~~(S)~~ (U) INTELLIGENCE OVERSIGHT BOARD MATTER
IOB 2004-58

Synopsis: (S) The Office of the General Counsel (OGC) considers that this matter must be reported to the Intelligence Oversight Board (IOB) and to the Office of Professional Responsibility (OPR). Our analysis follows.

~~(S)~~ (U)

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

DATE: 08-12-2005
CLASSIFIED BY 65179DMH/JW/05-CV-0845
REASON: 1.4 (C)
DECLASSIFY ON: 08-12-2030

Details: ~~(S)~~

[Redacted]

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[Redacted] (U)

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[Redacted] (U)

(U) ~~(S)~~

[Redacted]

[Redacted]

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(U) Even though the violation was technical, it is nonetheless reportable to the IOB under the provisions of Section 2.4 of E.O. 12863. Consequently, OGC will prepare a cover letter and a memorandum to report this matter to the IOB. The correspondence will advise the IOB that the matter will be referred to the FBI's OPR.

LEAD(s):

Set Lead 1: (Action)

DIRECTOR'S OFFICE

AT OPR FO, DC

(U) For action deemed appropriate.

Set Lead 2: (Info)

~~SECRET~~

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Page 3

COUNTERINTELLIGENCE

AT WASHINGTON, DC

(U) Please read and clear.

Set Lead 3: (Action)

WASHINGTON FIELD

AT WASHINGTON, DC

(U) For action deemed appropriate.

~~SECRET~~

~~SECRET~~

----- Working Copy -----

BY COURIER

General Brent Scowcroft (USAF Retired)
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 2004-58." (U)

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

Enclosure

ALL INFORMATION CONTAINED
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WHERE SHOWN OTHERWISE

~~UNCLASSIFIED WHEN
DETACHED FROM
CLASSIFIED ENCLOSURE~~

DATE: 08-15-2005
CLASSIFIED BY 65179/DMH/JW/05-CV-0845
REASON: 1.4 (C)
DECLASSIFY ON: 08-15-2030

~~Classified by: 39431, FBI/OGC
Reason: 1.5(c)
Declassify on: X25-1~~

- 1 - Mr. Curran
- 1 -
- 1 - IOB Library
- 1 - 278-HQ-C1229736-VIO

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~~SECRET~~

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Page 2

General Brent Scowcroft (USAF Retired)

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,

John F. Curran
Deputy General Counsel

- 1 - The Honorable John D. Ashcroft
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 2004-58 (U)

~~(S)~~ Investigation of this IOB matter has determined that

[Redacted]

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~~(S)~~ [Redacted]

(S)

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(U) Nevertheless, a technical violation of E.O. 12333 occurred. This matter has been referred to the FBI's Office of Professional Responsibility for any action that is deemed appropriate.

~~Derived from: G-3
Declassify on: X25-1~~

~~SECRET~~

~~SECRET~~