

Precedence: ROUTINE

Date: 03/09/2004

To: Cyber

Attn: SSA [redacted]

C3IU/Room 5931

General Counsel

Attn: NSLB

From: [redacted]

Contact: SA [redacted]

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Approved By: [redacted]

DATE: 11-15-2007
CLASSIFIED BY: 65179 DMH/KSR/DK
REASON: 1.4 (C)
DECLASSIFY ON: 11-15-2032

Drafted By: [redacted]

Case ID #: 288B [redacted] 132986 (Pending)
278-HQ-C1229736-VIO (Pending)

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File: (S) [redacted]

UNSUB(S);
CI/CT - TNII

(U) President's Intelligence Oversight Board

Synopsis: (U) To report potential Intelligence Oversight Board (IOB) violation by an Electronic Communications/Service Provider who provided data exceeding the scope of the authorized request. The data as provided by the provider is sealed and enclosed for CyD/C3IU to deliver to OIPR for appropriate disposition by the USFISC.

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FORMATION CONTAINED
IS UNCLASSIFIED EXCEPT
SHOWN OTHERWISE

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(S)

(U)

(X)

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

Case ID : 288 [redacted] 132986
278-HQ-C1229736-VIO
278 [redacted] C136372

Serial [redacted]
419
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Administrative: (U) Ref 3/8/2004 e-mail with SSA [redacted]

Enclosure(s): (S) Enclosed for C3IU is one sealed CDROM containing data [redacted]

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Details: (S//OC,NF) Intelligence provided in this communication has been acquired by techniques authorized in the Foreign Intelligence Surveillance Act (FISA). Therefore, the intelligence provided has been obtained through methods of intelligence gathering which are considered sensitive and singular in nature. No overt investigative steps should be taken without first receiving advice and consent from FBIHQ and [redacted]

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(U) ~~(S)~~/NF Per 50 U.S.C. 1806(b) of FISA, recipients are also reminded that there are to be no further disseminations or use of FISA-derived material in any criminal proceeding without prior approval from the Attorney General. Information may not be disseminated to any foreign government without prior Attorney General approval.

(S) [redacted]

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(S//OC,NF) [redacted]

(S//OC,NF) [redacted]

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(S//NF) [redacted]

[redacted] October 3, 2003, [redacted] issued a National Security Letter (NSL), pursuant to 18 USC 2709, to [redacted] requesting the following:

(S)

Name, address, length of service, and electronic communication transactional records, to include existing transaction/activity logs and all e-mail header information (not to include message content and/or subject fields), [redacted]

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(U)

~~(S//NF)~~ In addition, the letter contained the following caveat:

This National Security Letter does not request, and you should not provide, information pursuant to this request that would disclose the content of any electronic communication as defined in Title 18, United States Code, Section 2510(8).

~~(S//NF)~~ The letter was sent to the [redacted] Division and delivered to [redacted] On 2/11/2004, [redacted] IA [redacted] sent [redacted] a CDROM which contained the data provided by [redacted] in response to the NSL.

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~~(S//NF)~~ On Sunday 3/7/2004, SA [redacted] reviewed the data on the CDROM and found that, in addition to the requested logs, it appeared to contain content, [redacted]

[redacted] SA [redacted] immediately terminated analysis of the data and contacted ADC [redacted] Per ADC [redacted] instruction, the website logs, which were contained in the folder LOGS and which were authorized by the NSL, were extracted and saved to a separate CDROM. The original CDROM from [redacted] was then sealed and was not accessed again.

(U) On 3/8/2004, SSA [redacted] Cyber/C3IU, was notified and requested that the CDROM be sent to him for forwarding to OIPR. The CDROM is enclosed for forwarding to OIPR for an appropriate judicial disposition.

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(U) Per a 3/8/2004 communication from the National Security Law Branch (NSLB) regarding revised procedures for handling possible IOB violations, this information is being provided to NSLB for reporting to the IOB if deemed appropriate.

LEAD(s):

Set Lead 1: (Action)

CYBER

AT CTCI, DC

(U) Deliver sealed CDROM to OIPR for appropriate judicial disposition.

Set Lead 2: (Discretionary)

~~SECRET~~
NF

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

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GENERAL COUNSEL

AT WASHINGTON, DC

(U) Based upon the foregoing, generate a report to IOB if deemed appropriate.

~~SECRET~~

NSL VIO-34880

Precedence: ROUTINE

Date: 02/10/2004

To: Office of the Director

Attn:

OGC/NSLE

SSA

CIS/C3IU

Cyber

From:

Contact: SA

Approved By:

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

Drafted By:

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

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

(Pending)

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DATE: 11-08-2007

CLASSIFIED BY 65179 DMH/KSR/DK

REASON: 1.4 (C)

DECLASSIFY ON: 11-08-2032

Title: ~~(S)~~ INTELLIGENCE OVERSIGHT BOARD
(IOB) MATTER

Synopsis: ~~(S)~~ To report possible IOB violation.

~~(U)~~

~~(S)~~

Derived From: G-3

Declassify On: X1

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Reference: ~~(U)~~ ~~(S)~~

~~(S)~~

Details: ~~(S)~~ During the investigation of case # [redacted]
an NSL was issued to [redacted], for email account.

The email address [redacted]

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~~(S)~~

An

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NSL was sent to [redacted], on 10/16/2003. Due to delays in

processing the NSL, the results were not received until late

January. While reviewing [redacted] response to the NSL, SA [redacted]

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discovered that, in addition to the requested transactional data,

some e-mail content was included. Upon discovering [redacted]

error, SA [redacted] returned the NSL response to its envelope, and

ceased his analysis of the material. SA [redacted] then reported

Case ID : 278-HQ-C1229736-VIO

Serial : 370

INSPECTION

~~SECRET~~

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NSL VIO-34881

the matter to [redacted] SSA [redacted] who sought guidance from [redacted] [redacted] FBIHQ/OGC/NSLB. As per NSLB, this communication has been prepared.

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LEAD(s):

Set Lead 1: (Info)

OGC (NSLB)

AT WASHINGTON, DC

(U) ~~(S)~~ Read and Clear.

Set Lead 2: (Action)

CYBER

(U) AT WASHINGTON, DC

~~(S)~~ As per guidance provided by [redacted] OGC/NSLB, prepare LHM and hand carry to DOJ/OIPR.

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Precedence: ROUTINE

Date: 03/04/2004

To: Counterterrorism

Attn: ITOS 1, Copus 3, Team 12,
SSA [redacted]

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Office of General Council

Attn: NSLB, Room 7975,
[redacted]

[redacted]

Attn: CDC

From

Contact: SA [redacted]

Approved By:

[redacted]

DATE: 11-08-2007
CLASSIFIED BY: 65179 DMH/KSR/DK
REASON: 1.4 (C)
DECLASSIFY ON: 11-08-2032

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Classified By: (U)
Case ID #: (S) 278-HQ-1229736-VIO (Pending)

Title: (S) SSA [redacted]
(U) SA [redacted]
[redacted] DIVISION;
IOB

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

Synopsis: (U) (S) Reporting of possible violation of the Attorney
General Guidelines (AGGs) for FBI National Security
Investigations and Foreign Intelligence Collection, which may be
a reportable violation to the Intelligence Oversight Board (IOB).

Details: (S) [redacted]
[redacted]
[redacted] SAC [redacted] renewed authorization of
[redacted]
[redacted] was administratively
closed by case agent, via Electronic Communication (EC) dated
[redacted]. Due to
administrative backlog and the subsequent three day holiday
weekend, captioned matter was not administratively closed in ACS
[redacted] the [redacted] Division, [redacted] IMA
responsible for closing [redacted] in ACS discovered the
investigation had one outstanding lead to [redacted]
Division for service of a National Security Letter (NSL) for
subscriber information and telephone toll records.

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(U) Due to administrative oversight, [redacted] Division,
[redacted] failed to discontinue this outstanding lead to the [redacted]

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Case ID : 278-HQ-C1229736-VIO

Serial : 401
NSL VIO-34883

Division prior to drafting the closing EC. [redacted] the outstanding lead to [redacted] Division was discontinued in ACS by [redacted] Division, but no further direct notification to [redacted] Division was made. At that time, [redacted] Division incorrectly assumed the lead had been discontinued and no further investigation was being conducted.

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(S)

~~(S)~~ On 03/03/2004, [redacted] Division contacted [redacted] Division, and notified that they had served an NSL in support of [redacted] captioned [redacted] were in receipt of telephone toll records, but a check of ACS had revealed that the matter had been administratively closed by [redacted] Division.

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~~(S)~~ Subsequent checks of ACS revealed that a routine lead was set by [redacted] Division to [redacted] Division to serve the NSL on 11/07/2003 (set in ACS), and assigned at [redacted] Division on 11/10/2003 (routine lead coverage within 60 days). [redacted] Division served the NSL to the telephone provider [redacted] on 11/14/2003, but [redacted] did not provide the requested telephone records until 02/27/2004. The date that [redacted] Division obtained the records was after [redacted] administrative closure of this investigation. [redacted] Division is forwarding the collected telephone records to [redacted] Division. Upon receipt of information from [redacted] no [redacted] personnel will open and/or review the enclosed material. The material will remain in a sealed envelope and be archived within the closed investigative file.

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LEAD(s):

Set Lead 1: (Info)

COUNTERTERRORISM

AT WASHINGTON, DC

(U)

~~(S)~~ For ITOS 1, Conus 3, Team 12: Read and clear.

Set Lead 2:

COUNTERTERRORISM

(U) AT WASHINGTON, DC

~~(S)~~ For Office of General Council (OGC), NSLB: Referred as possible IOB violation, for appropriate action.

Set Lead 3: (Info)

[redacted]
[redacted]
(U) AT [redacted]

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~~(S)~~ Read and clear.

NSL VIO-34884

NSL VIO-34885

Precedence: PRIORITY

Date: 04/16/2004

To: General Counsel

Attn: [redacted], NSLB

From: Cyber

C3IU/CIS/room 5931

Contact: SSA [redacted]

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Approved By [redacted]

Drafted By: [redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

b1 Case ID #: ~~(S)~~ 278-HQ-C1229736-VIO (Pending)
b2 (U) ~~(S)~~ [redacted] (Pending)
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DATE: 11-14-2007
CLASSIFIED BY: 65179 DMH/KSR/DK
REASON: 1.4 (C)
DECLASSIFY ON: 11-14-2032

Title: (S) [redacted]

ET AL

(U) Synopsis: ~~(S)~~ To report potential Intelligence Oversight Board (IOB) matter in connection with captioned investigation.

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

Enclosure: (U) One (1) copy of an LHM addressed to Mr. James Baker, OIPR/DOJ, regarding reported IOB matter.

Details: (S/NF/OR) [redacted]

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(S/NF/OR) [redacted]

[redacted]

(S/NF/OR) [redacted]

[redacted] on October 3, 2003, [redacted] issued a National Security Letter (NSL), pursuant to [redacted]

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Case ID : 278-HQ-C1229736-VIO

Serial : 434
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18 USC 2709, to [redacted] The NSL requested name, address and header information and advised not to include the content or subject line information of electronic communications.

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(S) consistent with 18 USC 2510(8) a [redacted]

(S/NF/OR) The NSL was sent to the [redacted] Division and delivered to [redacted] On 2/11/2004, [redacted] IA [redacted] sent [redacted] a CDROM which contained the data provided by [redacted] in response to the NSL.

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(S/NF/OR) On Sunday 3/7/2004, SA [redacted] reviewed the data on the CDROM and found that, in addition to the requested logs, it appeared to contain content, [redacted]

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(S) [redacted] SA [redacted]

immediately terminated analysis of the data and contacted ADC [redacted] Per ADC [redacted] instruction, the website logs, which were contained in the folder "LOGS" and which were authorized by the NSL, were extracted and saved to a separate CDROM. The original CDROM from [redacted] was then sealed and was not accessed again. The sealed envelope was sent to FBI Headquarters.

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(S) ~~(S)~~ Consistent with Bureau policy, attached is a copy of the LHM to OIPR regarding this matter. The sealed manilla envelope with the CDROM was enclosed and sequester of its contents was requested of OIPR.

LEAD(s):

Set Lead 1: (Info)

GENERAL COUNSEL

AT NSLB

(S) Read and clear.

~~SECRET~~

~~SECRET~~

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Precedence: ROUTINE

Date: 03/23/2004

To: [Redacted]

Attn: ASAC [Redacted]
SSA [Redacted]
SA [Redacted]
ACDC [Redacted]

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Cyber Division
Director's Office

Attn: C3IU
Attn: Office of Professional Responsibility

From: General Counsel
National Security Law Branch/Rm. 7974
Contact: [Redacted]

Approved By: Curran John F
[Redacted]

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HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

Drafted By:

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

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(U) Title: ~~(S)~~ INTELLIGENCE OVERSIGHT BOARD
(IOB) MATTER 2004 [Redacted]

Synopsis: (U) ~~(S)~~ It is the opinion of the Office of General Counsel (OGC) that the above referenced matter must be reported to the IOB and to the FBI's Office of Professional Responsibility (OPR). OGC will prepare and deliver the required correspondence to the IOB. Our analysis follows.

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

DATE: 11-08-2007
CLASSIFIED BY: 65179 DMH/KSR/DK
REASON: 1.4 (c)
DECLASSIFY ON: 11-08-2032

(U) Reference: ~~(S)~~ 278-HQ-C1229736-VIO Serial 370
~~(S)~~ [Redacted]

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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Details: ~~(S)~~ By electronic communication (EC) dated 02/10/04 (cited below) il, [Redacted] Field Office [Redacted] reported a possible IOB error in conjunction with an ongoing [Redacted] Cyber

Case ID : 278-HQ-C1229736-VIO
[Redacted]

Serial : 445
[Redacted]

~~SECRET~~

NSL VIO-34888

~~SECRET~~

(S)

investigation [redacted]

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On October 16, 2003 a National Security Letter (NSL) was sent to [redacted] This NSL requested subscriber information records for the targets e-mail address. Due to delays in processing the NSL, the results were not received from [redacted] until late January.

(U) (S) While reviewing [redacted] response to the NSL, SA [redacted] discovered that, in addition to the requested transactional data, some e-mail content, i.e. message text, was included. Upon discovering [redacted] error, SA [redacted] returned the NSL response to its envelope, and ceased his analysis of the material.

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(U) (S) On February 25, 2004, a letterhead memorandum was sent to the Office of Intelligence Policy and Review (OIPR), Department of Justice (DOJ), with the sealed e-mail message content for submission to the FISC for eventual destruction. Consistent with the requirements of Executive Order (E.O.) 12863 and Section 2-56 of the National Foreign Intelligence Program Manual (NFIPM), OGC was tasked to determine whether the surveillance error described here is a matter which must be reported to the IOB. It must.

(U) Section 2.4 of E.O. 12863, dated 09/13/1993, mandates that Inspectors General and General Counsel of the Intelligence Community components (in the FBI, the Assistant Director, Inspection Division, and the General Counsel, OGC, respectively) report to the IOB all information concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive. In this instance, as the [redacted] Field Office has reported, the content of the e-mail account collected in response to an FBI NSL was obtained without the authorization required by law. Consequently, in accordance with E.O. 12863 and Section 2-56 of the NFIPM, the error must be reported to the IOB, which this Office will do.

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Lead(s) :

Set Lead 1: (Adm)

[Redacted]

AT [Redacted]

(U) Read and clear.

Set Lead 2: (Action)

CYBER DIVISION

AT WASHINGTON, DC

(U) Acknowledge that the unauthorized "take" described in the [Redacted] Field EC 278-HQ-C1229736-VIO Serial 370 was submitted to the FISC for destruction, via the Office of Intelligence Policy and Review, Department of Justice.

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Set Lead 3: (Action)

DIRECTORS OFFICE

AT OPR, FO, DC

(U) For review and action deemed appropriate.

- 1 - Mr. Curran
- 1 - UG [Redacted]
- 1 - [Redacted]
- 1 - NSL IOB Library

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~~SECRET~~

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****FOOTNOTES****

il: (U) See EC from the [redacted] Field Office to the General Counsel, dated 02/10/04, Case ID# 278-HQ-C1229736-VIO Serial 370, titled "Intelligence Oversight Board Matter," hereinafter cited as [redacted] EC."

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~~SECRET~~

NSL VIO-34891

BY COURIER

General Brent Scowcroft (USAF Retired)
Chairman
Intelligence Oversight Board
New Executive Office Building
Washington, D.C.

DATE: 11-08-2007
CLASSIFIED BY: 65179 DMH/KSR/DK
REASON: 1.4 (C)
DECLASSIFY ON: 11-08-2032

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Dear General Scowcroft:

This letter forwards for your information a self-explanatory enclosure entitled Intelligence Oversight Board (IOB) Matter, [redacted] Division, IOB Matter 2004 [redacted] (U)

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

ALL INFORMATION CONTAINED
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WHERE SHOWN OTHERWISE

Enclosure

- 1 - [redacted]
- 1 - Mr. Curran
- 1 - SSA [redacted]
- 1 - OPR
- 1 - 278-HQ-C1229736-VIO-

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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,

John F. Curran
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, Office of Intelligence Policy and Review
U.S. Department of Justice
Room 6150

INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER

[redacted] FIELD DIVISION

IOB MATTER 2004 [redacted] (U)

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(S)

~~(S)~~ [redacted] Field Office [redacted]
of the Federal Bureau of Investigation (FBI) [redacted]

[redacted]

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(S)

[Redacted]

On October 16, 2003, a National Security Letter (NSL) [Redacted] was sent to [Redacted] requesting transactional information for the listed account. Upon review of the material provided by [Redacted] in response to the NSL, the case agent noted that, along with transactional information, [Redacted] had sent e-mail message content. Upon discovering [Redacted] error, the case agent immediately ceased review of the material, placed it into a sealed envelope, and reported the matter to his supervisor. The sealed envelope was sent to the Office of Intelligence Policy and Review for sequestration with the Foreign Intelligence Surveillance Court.

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(U) As required by FBI policy, the error has also been reported to the FBI's Office of Professional Responsibility.

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

SECRET

Precedence: ROUTINE

Date: 05/12/2004

To: Inspection

Attn: Inspection Management Unit
Room 7837

General Counsel

Attn: National Security Law Unit

Fr [Redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

Contact: SA [Redacted]

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Approved By: [Redacted]

DATE: 11-14-2007
CLASSIFIED BY: 65179 DMH/KSR/DK
REASON: 1.4 (C)
DECLASSIFY ON: 11-14-2032

Drafted By:

Case ID #: (U) 278-HQ-C1229736-VIO (Pending)
(S) [Redacted] (Pending)

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Title: (U) SSA [Redacted]
SA [Redacted]
[Redacted] DIVISION;
IOB

Synopsis: (U) This communication reports a potential
Intelligence Oversight Board matter.

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

Enclosure(s): ~~(S)~~ Original electronic communication from [Redacted]
to [Redacted] dated 4/30/2004 with information from [Redacted]
[Redacted] attached.

(U) ~~(S)~~ Details: The purpose of this electronic communication is to
report a potential IOB matter involving a National Security
Letter requested by SA [Redacted] FBI- [Redacted] as well
as to satisfy the requirements set forth by the 3/8/2004
electronic communication regarding the revised procedures for the
submission of potential intelligence oversight board reports.

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~~(S)~~ 1. Identification of the substantive investigation
in which the questionable activity occurred: [Redacted]

(S)

Case ID : 278-HQ-C1229736-VIO Serial : 464
[Redacted]
(S) 278 [Redacted] C136372 35

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(S) 2. [redacted]
[redacted]

(U) ~~(S)~~ 3. Identification of the subject's status as a United States person or non-U.S. person: NONUSPER

(U) ~~(S)~~ 4. Legal authority: Executive Order 12333, dated December 4, 1981, and pursuant to Title 18, United States Code, Section 2709 (as amended, October 26, 2001).

~~(S)~~ 5. Statement of error: On 03/09/2004, a National Security Letter (NSL) electronic communication request was submitted by SA [redacted] FBI [redacted]. The request was addressed to [redacted]

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(S) [redacted] The NSL requested the name, address, length of service, and local and long distance toll billing records for the phone number [redacted]

(S) [redacted] Due to a typographical error, the telephone number on the accompanying National Security Letter was erroneously typed [redacted]

(S) ~~(S)~~ The 04/30/2004, the enclosed electronic communication from [redacted] to [redacted] with along with the information from [redacted] was mailed to [redacted] regarding telephone number [redacted]

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(S) On 05/06/2004, the envelope was opened and the error was discovered.

(S) A CD sent by [redacted] has been enclosed in a 1A envelope to the file.

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Precedence: ROUTINE

Date: 06/30/2004

To: Director's Office
Counterterrorism

Attn: OPR
UC, CONUS III
SAC; CDC
SAC; CDC

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[Redacted]

From: General Counsel
National Security Law Branch
Counterterrorism Law Unit I/Room 7975
Contact: [Redacted]

Approved By: Curran John F

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

Drafted By: [Redacted]

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

DATE: 11-08-2007
CLASSIFIED BY: 65179 DMH/KSR/DK
REASON: 1.4 (C)
DECLASSIFY ON: 11-08-2032

b2 Title: ~~(S)~~ INTELLIGENCE OVERSIGHT BOARD
MATTER 2004 [Redacted]

Synopsis: ~~(S)~~ It is the opinion of the Office of the General Counsel (OGC) that the above referenced matter does not need to be reported to the Intelligence Oversight Board (IOB). Our analysis follows.

(U) ~~(S)~~ Derived From: ~~FBI SCS G-1, October 1, 1997~~
Declassify On: ~~June 29, 2029~~

References: ~~(S)~~ 278-HQ-C1229736-VIO Serial 401

(S) Details: ~~(S)~~ As discussed in the referenced electronic communication (EC) [Redacted] as that term is defined in Section 1801(i) of the Foreign Intelligence Surveillance Act of 1978, 50 U.S.C. Section 1801 et seq. [Redacted] Due to administrative backlog and the subsequent three day holiday weekend, captioned matter was not administratively closed in ACS until [Redacted]

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(S) [Redacted] On 11/07/2003, [Redacted] set a routine lead to the [Redacted] Division [Redacted] to serve a National Security Letter (NSL) in this case. [Redacted] served the NSL to the telephone provider [Redacted] on 11/14/2003, but [Redacted] did not provide the requested telephone records to [Redacted] until 02/27/2004, after the [Redacted] administrative closure [Redacted] of this investigation.

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Case ID : 278-HQ-C1229736-VIO Serial : 502 b1

(S) [Redacted] 278 [Redacted] C63856-VIO 6 b2
b7E

(U) ~~(S)~~ On 03/03/2004, [redacted] notified [redacted] that they had received the telephone toll records requested by [redacted] NSL, but a check of ACS revealed that [redacted] had closed the investigation. [redacted] subsequently forwarded the collected telephone records to [redacted]. Without reviewing the telephone records, [redacted] sealed the telephone records in an envelope and archived the sealed envelope within the closed investigation file.

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(U) ~~(S)~~ Section 2-56 of the National Foreign Intelligence Program Manual (NFIPM) requires OGC to determine whether the facts related above are required to be reported to the IOB. For the reasons discussed below, this matter need not be reported to the IOB.

(U) Section 2.4 of Executive Order (E.O.) 12863, dated September 13, 1993, mandates that Inspectors General and General Counsels of the Intelligence Community components (in the FBI, the Assistant Director, Inspection Division, 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 Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations (FCIG), if or other guidelines or regulations approved by the Attorney General in accordance with E.O. 12333, dated December 4, 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) ~~(S)~~ [redacted] of The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG) authorize the use of National Security Letters [redacted] Pursuant to this authority, on 11/07/2003, [redacted] lawfully issued a NSL for [redacted] that requested telephone records in this case. On 11/14/2003, [redacted] properly served the NSL on [redacted] subsequent failure to cancel this lead at the time they closed the case was an administrative error that did not affect the lawfulness of the previously served NSL. [redacted] properly sealed and archived the telephone records received from the NSL because the case was no longer open at the time of their receipt.

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(U) ~~(S)~~ The late receipt of the telephone records in this

case constitutes an administrative error, not a substantive violation of law or regulation designed to protect the individual rights of U.S. persons. As discussed above, under longstanding agreement between the FBI and the IOB, administrative errors are not reportable to the IOB. [redacted] slow response in this case did not affect the lawfulness of the NSL. [redacted] has already sealed and archived the records in question. Additionally, none of these records were reviewed or used by [redacted] in its investigation. Under these circumstances, it is OGC's opinion that the late receipt of these telephone records by [redacted] on [redacted] behalf is not an error that must be reported to the IOB.

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(U) A copy of our opinion should be retained in the Counterterrorism Division control file for review by Counsel to the IOB, if requested.

****FOOTNOTES****

(3)
ii: ~~(S)~~ The FCIG was superseded on October 31, 2003, by the Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG).

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) Read and clear.

Set Lead 3: (Action)

[redacted]

AT [redacted]

(U) Read and clear.

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Set Lead 4: (Action)

[Redacted]

AT

[Redacted]

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(U) Read and clear.

1 - Mr. Curran

1 -
1 -

[Redacted]

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b7C

Precedence: ROUTINE

Date: 06/11/04

To: Director's Office Attn: OPR

Counterterrorism Attn: AD

[Redacted] Attn: SAC
CDC

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From: General Counsel
National Security Law Branch/Room 7947
Contact: [Redacted]

Approved By: Curran John F

Drafted By: [Redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

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

b2

Title: (U) (S) INTELLIGENCE OVERSIGHT BOARD
MATTER 2004 [Redacted]

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). OGC will prepare and deliver the required correspondence to the IOB. Our analysis follows.

References: (1) (U) (S) 278-HQ-C1229736-VIO Serial 419

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

(U) ~~(S)~~

~~Derived From: G-3
Declassify On: X1-25~~

DATE: 11-09-2007
CLASSIFIED BY: 65179 DMH/KSR/DK
REASON: 1.4 (c)
DECLASSIFY ON: 11-09-2032

Details: (S) The [Redacted] Division [Redacted]

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[Redacted] On 10/03/03, [Redacted] issued a National Security Letter (NSL) to an internet service provider requesting the name, address, length of service, and electronic communication transactional records for a website. The NSL authority did not include a request for email content.

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(S) [Redacted]

Case ID : 278-HQ-C1229736-VIO

Serial : 503

(S) [Redacted]

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On October 3, 2003, [Redacted] issued a National Security Letter to [Redacted] requesting the following:

(S) Name, address, length of service, and electronic communication transactional records, to include existing transaction/activity logs and all e-mail header information (not to include message content and/or subject fields), for [Redacted] (Emphasis added).

(S) [Redacted] The NSL contained the appropriate warning to [Redacted]

b4
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This National Security Letter does not request, and you should not provide, information pursuant to this request that should disclose the content of any electronic communications as defined in Title 18, United States Code, Section 2510(8).

(S) [Redacted] Division delivered the NSL to [Redacted] and subsequently forwarded [Redacted] response (1 CDROM) to [Redacted] on 2/11/04. Upon review, [Redacted] discovered that [Redacted] response appeared to go beyond the NSL request by including content. [Redacted] extracted, and saved to a separate CDROM, the website logs authorized by the NSL. [Redacted] then sealed the original CDROM and forwarded it to Cyber, FBI Headquarters for delivery to the Office of Intelligence Policy and Review.

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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 2709, provides the mechanism for obtaining counterintelligence access to transactional records. It states in part that a wire or electronic communication service provider shall comply with a request for subscriber information and ... electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation. The production of email content by the service provider is not authorized under the statute.

(U) ~~(S)~~ In this instance, as a result of the errors by the communications carrier, it appears the FBI unintentionally

obtained email content. Thus, the information was not authorized under Title 18, United States Code, Section 2709. Although [redacted] [redacted] took the appropriate preliminary steps to sequester the unauthorized information to prevent its use or further dissemination, in accordance with the reporting requirements of Section 2.4 of E.O. 12863, the matter must be reported to the IOB. OGC will prepare the correspondence required to report this matter to the IOB.

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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)

CYBER DIVISION

AT WASHINGTON, DC

(U)

~~(S)~~ If it has not already accomplished, coordinate with the [redacted] Division, to ensure that all information related to the unauthorized production is collected, sequestered, sealed and delivered to FBIHQ for submission to the Office of Intelligence Policy and Review, Department of Justice.

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Set Lead 3: (Action)

[redacted]

(U)

~~(S)~~ Coordinate with FBIHQ, to ensure that all information related to the unauthorized production is collected, sequestered, sealed and delivered to FBIHQ for submission to the Office of Intelligence Policy and Review, Department of Justice.

- 1 - Mr. Curran
- 1 - [redacted]
- 1 - [redacted]
- 1 - IOB Library

b6
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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

DATE: 11-14-2007
CLASSIFIED BY: 65179 DMH/KSR/DK
REASON: 1.4 (C)
DECLASSIFY ON: 11-14-2032

BY COURIER

General Brent Scowcroft (USAF Retired)
Chairman
Intelligence Oversight Board
New Executive Office Building
Washington, D.C.

Dear General Scowcroft:

Enclosed for your information is a self-explanatory enclosure, entitled "Intelligence Oversight Board (IOB) Matter, CONUS I, International Terrorism Operations Section, Federal Bureau of Investigation Headquarters (FBI HQ), 2004- b2

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. (U)

Enclosure

- 1 - Mr. Pistole
- 1 -
- 1 - b6
- 1 - 278-HQ-C1229736-VIO b7C

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,

John F. Curran
Deputy General Counsel

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

INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
CONUS I, INTERNATIONAL TERRORISM OPERATIONS SECTION
FEDERAL BUREAU OF INVESTIGATION HEADQUARTERS (FBIHQ)
2004- [] (U)

b2

(S)

Investigation of this IOB matter has determined that, on 10/08/02, the [] Division []

[]

[] On 10/03/03,

[] issued a National Security Letter to the internet service provider [] requesting the name, address, length of service, and electronic communication transactional

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(S)

~~SECRET~~

---- Working Copy ----

Page

3

records for a website. The National Security Letter did not request email content. [redacted] inadvertently provided email content information in its response (CDROM), which is not authorized under Title 18, United States Code, Section 2709 or Executive Order 12333. [redacted] discovered the problem, and immediately took steps to sequester the unauthorized data collection to prevent its use or further dissemination. [redacted] [redacted] extracted the information which was authorized by the National Security Letter and then sealed the CDROM for delivery to the FISC. In accordance with the reporting requirements of Section 2.4 of Executive Order 12863, the error must be reported to the IOB. This matter has been referred to the FBI's Office of Professional Responsibility for action deemed appropriate(S).

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Derived from : G-3
Declassify on: X1

~~SECRET~~

~~SECRET~~

NSL VIO-34906

Precedence: DEADLINE 07/15/2004

Date: 07/06/2004

To: General Counsel Attn: National Security Law Branch

Counterintelligence Attn: CD-2C, Room 4066
SSA [redacted]

Attn: A/Chief Division Counsel
SA [redacted]

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From [redacted]

Contact: SA [redacted]

Approved By: [redacted]

Drafted By: [redacted]

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

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

Synopsis: ~~(S)~~ To report a possible Intelligence Oversight Board (IOB) matter.

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

(S)

[redacted]

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Reference: ~~(S)~~ (a) 66F-HQ-A1247863 Serial 149
(S) (b) [redacted]
(c) [redacted]

Details: (U) ~~(S)~~ In accordance with the instructions outlined in reference (a), information on the following possible IOB matter is forwarded to FBIHQ.

CASE BACKGROUND (U)

(U) ~~(S)~~ The substantive case file number in which the

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b7E

Case ID : 278-HQ-C1229736-VIO Serial : 535
[redacted]
(S) 278 [redacted] -C136372 38

possible IOB violation occurred in [redacted] The case title is:

~~(S)~~ [redacted]

(S) [redacted]

[redacted]

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(S)

[redacted]

(U)

POSSIBLE IOB VIOLATION BACKGROUND ~~(S)~~

(S) On 07/02/2004, writer was informed by Intelligence Operations Specialist (IOS) [redacted] that the results of a National Security Letter (NSL) served at [redacted] included the phone billing records for an unrelated party. [redacted]

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(S) [redacted] See reference (b). Further investigation determined that these records were unintentionally and erroneously requested due to a typographic error in the original NSL. See reference (c). The number that should have been requested was [redacted]

(U)

~~(S)~~ On 07/06/2004, writer consulted with [redacted] Assistant Chief Division Counsel (A/CDC). Writer was informed by the A/CDC that the material received constituted an IOB violation and should be reported. Under separate Electronic Communication (EC), writer forwarded said material to CD-2C for sequestration with the FISC.

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LEAD (s):

Set Lead 1: (Action)

GENERAL COUNSEL

AT WASHINGTON, DC

(U)

~~(S)~~ Division 9, General Counsel, National Security Law Branch, is requested to take whatever action is necessary to record the incident with Intelligence Oversight Board.

Set Lead 2: (Info)

COUNTERINTELLIGENCE

AT WASHINGTON, DC

(U) For CD-2C, read and clear.

Set Lead 3: (Info)

[Redacted]

AT

[Redacted]

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(U) For the Assistant Chief Division Counsel, read and clear.

Precedence: ROUTINE

Date: 06/11/2004

To: Counterterrorism

Attn: AD

Attn: SAC, CDC

[Redacted]

From: General Counsel

National Security Law Branch/Room 7975

Contact: [Redacted]

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Approved By: Curran John F

[Redacted]

DATE: 11-14-2007
CLASSIFIED BY: 65179 DMH/KSR/DK
REASON: 1.4 (C)
DECLASSIFY ON: 11-14-2032

Drafted By:

Case ID #: ~~(S)~~ 278-HQ-C1229736-VIO (Pending)
(U) ~~(S)~~ 278-HQ-1426014 (Pending)

Title: ~~(S)~~ POSSIBLE INTELLIGENCE OVERSIGHT BOARD MATTER
(U) IOB MATTER 2003- [Redacted]

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Synopsis: ~~(S)~~ 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 investigation control file for review by the Counsel to the IOB.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

(U) ~~(S)~~

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

Reference: (U) ~~(S)~~ 278- [Redacted] C45386 Serial 67

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Details: (S) [Redacted]

[Large Redacted Block]

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(S) [Redacted] field office obtained [Redacted]

[Redacted] information pursuant to the FISC orders on the two subjects [Redacted]

[Redacted]

Case ID : 278-HQ-C1229736-VIO
278-HQ-1426014

Serial : 536
3

(s)

[redacted]
[redacted] then requested and was provided [redacted]

[redacted] According to the [redacted] EC, [redacted] had [redacted]

[redacted]

[redacted]

uploaded the request for subscriber information and, within one half-hour [redacted]

[redacted] Division

has not historically utilized FISA [redacted]

[redacted] rather had developed this [redacted]

[redacted] in criminal cases only. After one month [redacted]

[redacted] the computer specialist consulted [redacted] Security Officer for advice. Following this consultation, the practice was discontinued. [redacted] has stated that all of the information it received [redacted] was publicly-available information, and was information that it could have obtained itself from public source records [redacted]

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(U) Section 2.4 of Executive Order (E.O.) 12863, dated September 13, 1993, requires the General Counsel for the Intelligence Community, including the General Counsel for the FBI, to report to the IOB intelligence activities that they have reason to believe are contrary to statute, executive order or presidential directive. By longstanding agreement between the FBI and the IOB, this language has been interpreted to require the reporting of any violation of the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations (FCIG), 16 or other guidelines and regulations approved by the Attorney General in accordance with E.O. 12333, dated December 4, 1981, if such guidelines were intended to ensure the protection of the individual rights of a U.S. person.

(U) ~~(S)~~ Applying those principles to this case, we do not believe that there was a violation of the FCIG, or other guidelines or regulations. Section 405(a)(2) of the FISA statute states that:

No information acquired from a pen register or trap and trace device installed and used pursuant to this title may be used or disclosed by Federal officers or employees expect for lawful purposes.

Subsection (b) goes on to state that:

No information acquired pursuant to this title shall be disclosed for law enforcement purposes unless such disclosure is

accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

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The FCIG authorized the examination of publicly available records and other documentary sources of information [redacted]

(U) ~~(S)~~ Clearly [redacted] disclosed the telephone numbers obtained [redacted] to the telephone company for a lawful purpose. Agents and analysts rely upon subscriber information as a valuable investigative tool in foreign counterintelligence investigations. [redacted] did not obtain the subscriber information from [redacted] through service of a criminal subpoena, since the information was publicly available. Had they done so, the FISA statute would have required the advance authorization of the Attorney General. Additionally, the FCIG enabled [redacted] to examine publicly-available information under the authority of the investigations it had opened on the two aforementioned subjects.

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(U) ~~(S)~~ For a variety of reasons, [redacted] was correct in instructing the computer specialist to discontinue [redacted]. The [redacted] better method for obtaining subscriber information [redacted] is to utilize either National Security Letters (NSLs) or criminal subpoenas. The Electronic Communication Privacy Act (ECPA) is the statutory authority utilized in issuing NSLs to telephone companies for subscriber information when the FBI has an authorized investigation to protect against international terrorism or clandestine intelligence activities.17 Section 2709(c) of Title 18, U.S. Code, prohibits any officer, employee, or agent of the company served from disclosing that the FBI has sought or obtained access to information or records. Additionally, companies are requested in the standard language of the NSL to provide the requested information personally to a representative of the FBI. [redacted] engaged in poor security practices [redacted]

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[redacted]
[redacted] According to the [redacted] EC, [redacted]

[redacted] Because NSLs were not used, [redacted] could cite to no statutory authority in requesting that [redacted] not publicly disclose the fact that the FBI was interested in certain telephone numbers.

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(U) Despite the fact that [redacted] engaged in poor security practices and should in the future utilize either NSLs or criminal subpoenas to obtain subscriber information, OGC does

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NSL VIO-34912

not find that there was a violation which needs to be reported to the IOB. Consistent with our prior opinions in such cases, a record of this decision should be maintained in the control file for future review by Counsel to the IOB.

****FOOTNOTES****

i1: ^(U) ~~(S)~~ EC from [redacted] to the Inspection and Security Divisions, dated 05/12/2003, and titled "Computer Specialist [redacted] Division; IOB # [redacted] hereinafter cited as [redacted] EC."

i2: (U) The FISA is codified at 50 U.S.C. 1801 et seq.

i3: [redacted] EC.

i4: [redacted] EC.

i5: [redacted] EC.

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[redacted]

i7: The provision which allows for the issuance of NSLs is codified at 18 U.S.C. 2709.

LEAD(S):

Set Lead 1: (Info)

COUNTERTERRORISM

AT WASHINGTON, DC

(U) For information.

Set Lead 2: (Action)

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[redacted]

AT [redacted]

(U) For action deemed appropriate.

cc: [redacted]
IOB Library

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b7C

Precedence: PRIORITY

Date: 09/01/2004

To: General Counsel

Attn: National Security Law Branch
Room 7975

From: [Redacted]

Contact: [Redacted]

Approved By: [Redacted]
Drafted By: [Redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

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Case ID #: (U) 278-HQ-C1229736-VIO
(U) 278-[Redacted]-C63856-VIO

DATE: 11-14-2007
CLASSIFIED BY: 65179 DMH/KSR/DK
REASON: 1.4(C,D)
DECLASSIFY ON: 11-14-2032

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Title: (U) PRESIDENT'S INTELLIGENCE OVERSIGHT
BOARD (IOB);
POTENTIAL IOB ERROR OR VIOLATION

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(S) [Redacted]

Synopsis: (U) Report from [Redacted] of potential IOB violation.

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

Reference: (S) [Redacted]
(S) [Redacted]
(S) [Redacted]
(S) [Redacted]
(S) [Redacted]

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Enclosure(s): ~~(S)~~ Enclosed for OGC/NSLB are copies of the
above-referenced serials, and a copy of the 06/17/2004 Memo from
[Redacted] Division.

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Details: ~~(S)~~ This EC reports a potential IOB matter to OGC/NSLB,
as instructed per EC dated 03/08/2004, see 66F-HQ-A1247863 Serial
149. Immediately upon discovering this potential IOB violation
on 08/19/2004, CDC [Redacted] notified Unit Chief [Redacted]
OGC/NSLB.

(S)

1. Substantive Investigation: [Redacted]

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Case ID : 278-HQ-C1229736-VIO
278-[Redacted]-C63856-VIO

Serial : 573
5

(S)

SECRET

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2. Subject: [redacted]

3. Subject's Status: US Person

(S)

[redacted]

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5. Statement of Error Committed: On 08/19/2004 FBI [redacted] Division, received a Memo dated 06/17/2004 from a [redacted] [redacted] Division Investigative Analyst (IA). The Memo indicated that the National Security Letter (NSL) which [redacted] had requested that [redacted] deliver to [redacted] required a change in verbiage.

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Upon reviewing the NSL request [redacted] and cover EC [redacted] determined that the Paralegal Specialist who drafted the request for Case Agent SA [redacted] [redacted] had inadvertently cited to Title 15, United States Code (U.S.C.), Section () 1681v of the Fair Credit Reporting Act (FCRA) instead of 1681u. In accordance with Public Law 107-56 (USA Patriot Act) and FBI policy, the use of 1681v to obtain consumer reports is limited to international terrorism (IT) investigations. However, as indicated previously, the request made by [redacted] which prompted [redacted] notification was in an [redacted] immediately discontinued further processing of the request to [redacted]. In the same EC, [redacted] also had requested that [redacted] Division deliver an NSL to [redacted] and [redacted] Division deliver an NSL to [redacted] also based upon 1681v. Therefore, [redacted] immediately attempted to discontinue these leads which inadvertently cited to 1681v.

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Unfortunately, both [redacted] Divisions had already delivered the NSLs and provided the results to [redacted] (see Serial [redacted] and Serial [redacted]). The results in their entirety from both [redacted] were immediately sealed and are enclosed.

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After further discussion with SA [redacted] the current Case Agent, it was learned that upon her receipt of the results from [redacted] a copy of the results were disseminated to Task Force member [redacted], a member of the FBI [redacted] Division's Foreign Counterintelligence Task Force. Contact was immediately made with [redacted] on 08/19/2004 and he was instructed to return all resulting documentation provided to him by SA [redacted] returned this documentation on 08/20/2004, advising that he had not utilized this information. This documentation was immediately sealed on 08/20/2004 and is enclosed.

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A review of the [redacted] Legal Unit's entire NSL file and Automated Case Support (ACS) since the enactment of Public Law

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~~SECRET~~

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Page 3

107-56 revealed that 15 U.S.C. 1681v has not been cited in any other FCI investigation.

LEAD(s):

Set Lead 1: (Discretionary)

GENERAL COUNSEL

AT WASHINGTON, DC

(U) For information of OGC/NSLB and for any further action deemed appropriate by OGC/NSLB.

~~SECRET~~

NSL VIO-34916

Precedence: ROUTINE

Date: 09/15/2004

To: Director's Office
Counterintelligence

Attn: OPR
Attn: AD
Attn: SAC
Attn: SAC
CDC



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From: Office of the General Counsel
NSLB/CILU/Rm 7975

Contact:

Approved By: Curran John F

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

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Drafted By:



DATE: 11-14-2007
CLASSIFIED BY 65179 DMH/KSR/DK
REASON: 1.4 (C)
DECLASSIFY ON: 11-14-2032

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

Title: (U) INTELLIGENCE OVERSIGHT BOARD MATTER
IOB 2004

b2

Synopsis: (U) The Office of the General Counsel considers that this matter warrants a report to the Intelligence Oversight Board and to the Office of Professional Responsibility. Our analysis follows.

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

Details: (S)



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~~(S)~~ On 5/21/2004, the SAC authorized the issuance of National Security Letters (NSLs) seeking credit reports about the subject from the three major credit reporting companies. The letters, which cited Title 15, United States Code, Section 1681v (15 USC 1681v), requested "a copy of a consumer report and all other information contained in your files for the below listed consumer i.e., the subject." All three NSLs included a

Case ID : 278-HQ-C1229736-VIO

Serial : 595

(S)



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NSL VIO-34917

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certification by the SAC, purportedly "in accordance with 15 USC 1681v(b)," that "the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities etc."

(U) ~~(S)~~ The letters were duly delivered to two of the three companies, both of which provided the requested credit information. The third letter, which had been sent to the [redacted] office for delivery to [redacted] was returned unexecuted to [redacted] by a [redacted] intelligence analyst who noticed that it referred to 15 USC 1681v instead of 15 USC 1681u.

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~~(S)~~ After learning of the error, the [redacted] office determined that the two credit reports had already been disseminated to a member of the [redacted] Counterintelligence Task Force in connection with the investigation. The reports were retrieved, sealed, and forwarded to Headquarters together with a report of the incident. (See [redacted])

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(U) The section of law cited in the three NSLs, 15 USC 1681v, was added by the USA Patriot Act, P.L. 107-56. It provides in part that "a consumer reporting agency shall furnish a consumer report of a consumer and all other information in a consumer's file to a government agency authorized to conduct investigations of, or intelligence or counterintelligence activities and analysis related to, international terrorism when presented with a written certification by such government agency that such information is necessary for the agency's conduct of such investigation, activity or analysis." (Emphasis added.)

(U) By way of contrast, 15 USC 1681u is an older statute that applies to both counterintelligence and counterterrorism investigations. In connection with an authorized investigation of such cases, the FBI may use an NSL to obtain the names and addresses of all financial institutions at which a consumer maintains or has maintained an account. If additional information is needed, such as a consumer report, a designated Bureau official is required to seek an ex parte court order directing the consumer reporting agency to furnish the report to the FBI.

(U) To obtain the ex parte order, the FBI must show "that the consumer report is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment to the Constitution of the United States."

(U) ~~(S)~~ The Office of the General Counsel issued instructions regarding the differences between 15 USC 1681u and 15 USC 1681v, together with sample forms, in an EC dated 10/1/2003. (See 66F-HQ-A1255972, serial 32.)

(U) The [redacted] office cited the wrong section of the Fair Credit Reporting Act in three NSLs that requested credit reports of a U.S. person in connection with a counterintelligence investigation. Moreover, the letters included a certification that was misleading although not untrue. (The certification stated, correctly, that the information was needed in connection with an authorized investigation to protect against international terrorism or clandestine intelligence activities. Section 1681v, however, refers only to international terrorism.) Two of the three letters resulted in the production of credit information that would not have been available solely through an NSL if the correct section had been cited.

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(U) In weighing the gravity of this matter, the Office of the General Counsel notes that [redacted] citation of 15 USC 1681v does not appear to have been a deliberate effort to circumvent the requirements of section 1681u. Once apprised of the error, [redacted] immediately took appropriate action to recover and seal the information that it obtained based of the error and to report the matter to Headquarters. The question of intent is relevant because 15 USC 1681u(j) suggests that Congress did not consider disciplinary action by an agency to be warranted unless "the circumstances surrounding the violation raise questions of whether or not an employee of the agency or department acted wilfully or intentionally with respect to the violation. . . ."

(U) We are also mindful of the fact that the [redacted] office could have obtained exactly the same result (i.e., the subject's credit report) if it had followed the two step process set forth in 15 USC 1681u, namely, an NSL followed by an ex parte application for a court order. The proof required for such an order is minimal and the facts in this case would have justified it.

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(U) Nevertheless, in preserving a distinct provision for obtaining credit information in counterintelligence cases, Congress apparently intended to apply a different standard to this type of case. By using Section 1681v rather than Section 1681u for a counterintelligence case, the [redacted] office contravened the intent of Congress, albeit inadvertently. The matter should therefore be referred to the Intelligence Oversight Board and to the Office of Professional Responsibility. OGC will prepare a cover letter and a memorandum to report this matter to the IOB.

(U) The action of Intelligence Analyst [redacted] in detecting this error and calling it to the attention of the [redacted] office is to be commended.

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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)

[Redacted]

AT

[Redacted]

(U) For action deemed appropriate

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Set Lead 4: (Discretionary)

[Redacted]

AT

[Redacted]

(U) For action deemed appropriate.

~~SECRET~~

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

~~SECRET~~

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

DECLASSIFIED BY 65179 DMH/KSR/DK
ON 11-14-2007

Dear General Scowcroft:

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

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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)

UNCLASSIFIED WHEN
DETACHED FROM
CLASSIFIED ENCLOSURE

- 1 - Mr. Curran
- 1 - [redacted]
- 1 - [redacted]
- 1 - IOB Library
- 1 - 278-HQ-C1229736-VIO

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

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-2-

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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

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

UNCLASSIFIED WHEN
DETACHED FROM
CLASSIFIED ENCLOSURE

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SECRET

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

~~SECRET~~

NSL VIO-34922

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(U) ~~(S)~~ Investigation of this IOB matter has determined that the [redacted] Field Office obtained consumer credit reports from two credit reporting companies in connection with an authorized counterintelligence investigation using a National Security Letter (NSL) that referred to Title 15, United States Code, Section 1681v, when in fact that section only permits the use of NSLs to request credit reports for authorized counterterrorism cases. Title 15, United States Code, Section 1681u, allows the FBI to use an NSL to obtain certain information from credit reporting agencies in authorized counterintelligence cases, specifically, the names and addresses of financial institutions at which the subject of the investigation maintains an account. In order for the FBI to obtain a credit report in a counterintelligence case, it must apply for an ex parte court order under the terms of Title 18, United States Code, Section 1681u(c).

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(U) ~~(S)~~ The credit reports that were procured from credit reporting companies by citing 15 U.S.C. 1681v were not properly obtained. Although the error in statutory citation appears to have been inadvertent, and the [redacted] office immediately retrieved and sealed the credit reports once the error was discovered, this matter has been referred to the FBI's Office of Professional Responsibility for such action as may be appropriate.

~~Derived from: G-2~~~~Declassify on: X25-1~~~~SECRET~~~~SECRET~~

NSL VIO-34923

Precedence: DEADLINE 11/06/2004

Date: 11/02/2004

To: General Counsel

Attn: NSLP

SAC
ASAC
CDC

From:

SSA

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

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proved By:
b6
b7C

Drafted By:

DATE: 11-14-2007
CLASSIFIED BY: 65179 DMH/KSR/DK
REASON: 1.4 (C,D)
DECLASSIFY ON: 11-14-2032

Case ID #: (U) 278-HQ-C1229736-VIO (Pending)
(U) 278- [] -C71404 (Pending)

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Title: (U) []
POSSIBLE INTELLIGENCE OVERSIGHT BOARD
(IOB) VIOLATION
[] DIVISION

b2 Synopsis: (U) Report of possible IOB violation for []
b7E Division.

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

Reference: (U) 278-HQ-C1229736 Serial 355
(U) 278-HQ-C1229736 Serial 1347

(U) Details: ~~(S)~~ On 10/18/2004, the following case was reassigned
to SA [] due to the transfer of SA [] to the

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(S)

(S)

(S) Upon review of this case file by writer, and
subsequent review by SA [] and SSA [] it
was discovered that an individual with a similar name to []

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[] and that an NSL for telephone records had also been

Case ID : 278-HQ-C1229736-VIO
278- [] -C71404

Serial : 612

requested for this individual. The following is a summary documenting when a possible IOB violation occurred:

(S)

[Redacted]

[Redacted]

(S)

[Redacted]

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(S)

[Redacted]

[Large Redacted Block]

(S)

[Redacted]

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[Redacted] at the request of SA [Redacted]

[Redacted] It was determined [Redacted] was not

(S)

the individual [redacted]
[redacted]
[redacted] SA [redacted] documented
[redacted] to accurately identify case
subject.

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(S) While SA [redacted] served a sixty day temporary
duty assignment during early 2004. SA [redacted] drafted NSLs
for the [redacted] investigation. [redacted] dated 01/12/2004, is
drafted by SA [redacted] and is an NSL requesting subscriber
and toll billing records for [redacted] at telephone numbers
[redacted]
[redacted] is the personal telephone for [redacted]
[redacted] not case subject [redacted]
[redacted] SA
[redacted] was not aware that [redacted] was not the individual
[redacted] and the NSL was subsequently served
and toll and subscriber records obtained as documented in Serial
[redacted], dated 02/29/2004.

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(U) ~~(S)~~ This communication documents [redacted] finding of
a possible IOB violation for the service of an NSL for telephone
records belonging to an individual other than case subject. It
should be noted that these records have not been uploaded into
any FBI database or system.

LEAD(s) :

Set Lead 1: (Info)

GENERAL COUNSEL

AT WASHINGTON, DC

(U) For your information.

Precedence: DEADLINE 11/06/2004

Date: 11/02/2004

To: General Counsel

Attn: NSLR

SAC
ASAC
CDC

From

SSA

(S)

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Approved By:

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b2
b7E

Drafted By:

Case ID #: (U) 278-HQ-C1229736-VIO (Pending)
(U) 278- [] C71404 (Pending)

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b7C

Title: (U)

[]
POSSIBLE INTELLIGENCE OVERSIGHT BOARD
(IOB) VIOLATION
[] DIVISION

b2
b7E

Synopsis: (U) Report of possible IOB violation for []
Division.

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

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

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Reference: (U) 278-HQ-C1229736 Serial 355
(U) 278-HQ-C1229736 Serial 1347

Details: ~~(S)~~ On 10/18/2004, the following case was reassigned
to SA [] due to the transfer of SA [] to the
[]

(S)

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~~(S)~~ Upon review of this case file by writer and
subsequent review by SA [] and SSA [] it
was discovered that an individual with a similar name to []

(S)

[] and that an NSL for telephone records had also been

Case ID : 278-HQ-C1229736-VIO
278- [] C71404

Serial : 612

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SECRET

DATE: 11-14-2007
CLASSIFIED BY 65179 DMH/KSP/DK
REASON: 1.4 (C)
DECLASSIFY ON: 11-14-2032