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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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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

Room 6150

INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
COUNTERINTELLIGENCE DIVISION

2003-29 (U)

~~(S)~~ (U) 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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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 : O-3
Declassify on: X25-1
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****FOOTNOTES****

11: ~~(S)~~ ^(U) 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.

IOB 570, 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]

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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

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

DECLASSIFIED BY 59179/DMH/JW/05-LV-0845
ON 08-10-2005

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

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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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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



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

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