

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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[Redacted]

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

Drafted By:

[Redacted]

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

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

*Handbook
written in Feb.
by
CJ 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/JM/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]

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

[Large redacted block]

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[Redacted]

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(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 [Redacted] 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]

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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]

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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]

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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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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.
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Enclosure

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1 - 278-HQ-C1229736-VIO

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~~UNCLASSIFIED WHEN
DETACHED FROM
CLASSIFIED ENCLOSURE~~

Case ID : 278-HQ-C1229736-VIO

Serial : 694

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

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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

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