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Page 1

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WHERE SHOWN OTHERWISE

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

BY COURIER

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

Dear General Scowcroft:

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

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

- 1 - Ms. Thomas
  - 1 -
  - 1 -
  - 1 - IOB Library
  - 1 - 278-HQ-C1229736-VIO
- b6  
b7C

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DETACHED FROM  
CLASSIFIED ENCLOSURE~~

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Case ID : 278-HQ-C1229736-VIO

Serial : 774

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

Sincerely,

Julie Thomas  
Deputy General Counsel

Enclosure

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

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

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~~(S)~~

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

instead of capturing the telephone communications of another

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

~~X~~ [Redacted]

(S)

~~X~~ [Redacted]

(S)

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~~X~~ [Redacted]

(S)

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

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

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Page 1

Precedence: PRIORITY

Date: 03/22/2005

To: [redacted]

Attn: SAC  
CDC

Counterterrorism

Attn: JTOS I / COMUS IV  
SSA [redacted]

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Inspection

Attn: IIS  
SC [redacted]

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From: General Counsel

NSLB/CTLU 1/Room 7975

Contact: [redacted]

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WHERE SHOWN OTHERWISE

Approved By: Thomas Julie F

[redacted]

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Drafted By:

[redacted]

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

(U) 278 [redacted] 75423 (Pending)

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DATE: 09-27-2005  
CLASSIFIED BY: 65179/DMH/JW/05-CV-0845  
REASON: 1.4 (C)  
DECLASSIFY ON: 09-27-2030

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Title: (U) SSA [redacted]

SA [redacted]

INTELLIGENCE OVERSIGHT BOARD MATTER

IOB 2004-85

(U)

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

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

Case ID : 278-HQ-C1229736  
278 [redacted] 75423

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Serial : 2480  
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in PCL.*  
[Handwritten initials and stamps]

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

Details: (S) Pursuant to Foreign Intelligence Surveillance Court (FISC) order [redacted] Division

(hereinafter [redacted] received authority for a Pen-Resistant Force (PR/TF) for facilities [redacted] a subject of an investigation under

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

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

[redacted] (S)

[redacted] (S)

(S)

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[Redacted]

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[Redacted]

(S)

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[Redacted]

(S)

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b5

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

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

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

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

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

11: ~~(S)~~ A United States person is defined in section II.W of the Guidelines as an individual who is . . . is a United States citizen

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

LEAD(s):

Set Lead 1: (Discretionary)

[Redacted]

AT [Redacted]

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

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Set Lead 2: (Discretionary)

INSPECTION

AT WASHINGTON, DC

(U) For appropriate action.

Set Lead 3: (Info)

COUNTERTERRORISM

AT WASHINGTON, D.C.

(U) For information only.

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