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# FEDERAL BUREAU OF INVESTIGATION

**Precedence:** ROUTINE

**Date:** 03/13/2007

**To:** Charlotte

**Attn:** SAC  
CDC

Counterterrorism

**Attn:** ITOS 1, CONUS 2, Team 8

Inspection

**Attn:** IIS

**From:** Office of General Counsel/  
NSLB/CTLU I  
**Contact:** UC [Redacted]

**Approved By:** Thomas Julie F. [Signature]

**Drafted By:** [Redacted]

**Case ID #:** (S) 278-HQ-C1229736-VIO (Pending) <sup>3205</sup>

**Title:** (S) INTELLIGENCE OVERSIGHT BOARD  
IOB MATTER 2007-[Redacted]

**Synopsis:** (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 Inspection Division. OGC will prepare and deliver the required correspondence to the IOB. Our analysis follows.

~~Derived From : G-3  
Declassify On: 03/07/2032~~

**Reference:** (S) 278-HQ-C1229736-VIO Serial 2180

**Details:** (S) [Redacted]

(S) [Redacted]

[Redacted]

(S) As a result of the [Redacted] investigation  
07/07/2005 [Redacted]

[Redacted]

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**OIG/DOJ REVIEW:** [Redacted] **DATE:** 4/19/07  
**FBI INVESTIGATION:** [Redacted]  
**OIG/DOJ INVESTIGATION:** [Redacted]

DATE: 05-29-2007  
CLASSIFIED BY 65179 DMH/KSR/JW  
REASON: 1.4 (C)  
DECLASSIFY ON: 05-29-2032

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED EXCEPT  
WHERE SHOWN OTHERWISE

(U) To: Charlotte From: Office of General Counsel  
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 03/13/2007

(S) [Redacted]

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(S) [Redacted]

(S) ~~(U)~~ On or about 07/13/2005, SA [Redacted] coordinated with United States Attorney's Office (USAO), Eastern District of North Carolina (EDNC), Chief of Criminal, [Redacted] to obtain a Grand Jury subpoena [Redacted]

(S) [Redacted] After receiving the subpoena, SA [Redacted] went to [Redacted] and met with [Redacted] SA [Redacted] served the subpoena and had some records in hand when he received a call from SSRA [Redacted]. SSRA [Redacted] had been notified by FBIHQ, ITOS I, CONUS II, Team 6, that the field office was not to utilize a Grand Jury subpoena but must obtain a National Security Letter (NSL). Therefore, SA [Redacted] returned the records [Redacted]

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(S) ~~(U)~~ SSRA [Redacted] advised FBIHQ that their SAC, [Redacted] was TDY out of the Division and therefore FBIHQ would need to complete an EC addressed to General Counsel requesting an NSL be approved at FBIHQ. SSRA [Redacted] was then instructed by FBIHQ, ITOS I, CONUS II, that Charlotte would be required to draft the NSL, due to time constraints, and then obtain approval from a neighboring division's SAC. SA [Redacted] then drafted an NSL to obtain [Redacted] and forwarded the NSL to SSRA [Redacted] for review. The NSL was then forwarded by SSRA [Redacted] to SAC [Redacted] Atlanta Division, for approval.

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(S) ~~(U)~~ On or about 07/14/2005, JTTF Task Force Agent [Redacted] served the NSL [Redacted] requesting [Redacted] [Redacted] TFA [Redacted] does not recall the individual's name to whom the NSL was given. TFA [Redacted] was advised [Redacted] that the NSL was not the appropriate

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b1 (S) [redacted]  
b6 documentation [redacted] declined  
b7C to honor the NSL.

b6 (U) SSRA [redacted] then contacted Acting CDC [redacted]  
b7C [redacted] Charlotte Division, for guidance concerning the matter  
b1 and the questioned legality of the NSL for [redacted]  
(S) CDC [redacted] then conferred with legal counsel [redacted] and FBIHQ,  
OGC, concerning the matter. SSRA [redacted] also contacted ASAC  
[redacted] Charlotte Division, who in turn was also in  
contact with FBIHQ.

b1 (S) (U) Subsequently, SSRA [redacted] was advised by FBIHQ  
b3 that a Grand Jury subpoena would be obtained [redacted]  
b6 [redacted] which was the office of origin  
b7C on [redacted] matter, and the Grand Jury subpoena would be  
b2 (S) forwarded to the Raleigh RA for service on [redacted]  
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(S) ~~(S)~~ On 07/15/2005, the Raleigh RA received a copy of  
the Grand Jury subpoena [redacted]  
[redacted] SA [redacted] and  
SA [redacted] served [redacted] with the Grand Jury subpoena [redacted]  
[redacted] After [redacted]  
resistance to comply, SA [redacted] advised [redacted] that he had  
been served. SSRA [redacted] was in contact with ASAC [redacted]  
advising [redacted] reluctance to honor the Grand Jury subpoena  
and at this time [redacted] contacted the [redacted]  
concerning the matter. Approximately one hour later, [redacted]  
contacted the Raleigh RA and advised that the records were  
waiting for FBI retrieval.

(U) The President, by Executive Order 12334, dated 12/04/1981, established the President's Intelligence Oversight Board (PIOB). On 09/13/1993, by Executive Order 12863, the President renamed it the Intelligence Oversight Board (IOB) and established the Board as a standing committee of the President's Foreign Intelligence Advisory Board. Among its responsibilities, the IOB has been given authority to review the FBI's practices and procedures relating to foreign intelligence and foreign counterintelligence collection.

(U) Section 2.4 of Executive Order 12863 mandates that Inspectors General and General Counsel of the Intelligence Community components (in the FBI, the Assistant Director, Inspection Division (INSD), and the General Counsel, Office of the General Counsel (OGC), respectively) report to the IOB intelligence activities that they have reason to

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believe may be unlawful or contrary to Executive Order or Presidential Directive. 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 (NSIG), effective 10/31/2003, or other guidelines or regulations approved by the Attorney General in accordance with EO 12333, dated 12/04/1981, if such provision was designed to ensure the protection of individual rights. Violations of provisions that merely are administrative in nature and not deemed to have been designed to ensure the protection of individual rights are generally not reported to the IOB. The FBI Inspection Division is required, however, to maintain records of such administrative violations for three years so that the Counsel to the IOB may review them upon request. The determination as to whether a matter is "administrative in nature" must be made by OGC. Therefore, such administrative violations must be reported as potential IOB matters.

(U) ~~(S)~~ NSLs are a specific type of investigative tool that allows the FBI to obtain certain limited types of information without court intervention: (1) telephone and email communication records from telephone companies and internet service providers (Electronic Communications Privacy Act, 18 U.S.C. § 2709); (2) records of financial institutions (which is very broadly defined) (Right to Financial Privacy Act, 12 U.S.C. § 3414(a)(5)(A)); (3) a list of financial institutions and consumer identifying information from a credit reporting company (Fair Credit Reporting Act, 15 U.S.C. §§ 1681u(a) and (b)); and (4) full credit report in an international terrorism case (Fair Credit Reporting Act, 15 U.S.C. § 1681v). NSLs may be issued in conformity with statutory requirements, including 18 U.S.C. § 2709. [redacted]

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(U) ~~(S)~~ In this instance, Charlotte served an NSL requesting records outside the permissible scope of an NSL. OGC notes that, according to Charlotte, Charlotte acted upon the advice and direction of FBIHQ, Charlotte personnel sought legal advice prior to the service of the NSL, and no records were obtained in response to the NSL. These mitigating factors should be considered when judging the performance of Charlotte personnel. However, the circumstances as a whole must be reported to the IOB since the service of the NSL in this case was not in compliance with ECPA and the NSIG.

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**LEAD(s) :**

**Set Lead 1: (Info)**

CHARLOTTE

AT CHARLOTTE, NC -

(U) For information.

**Set Lead 2: (Info)**

COUNTERTERRORISM

AT WASHINGTON, DC

(U) For information.

**Set Lead 3: (Action)**

INSPECTION

AT WASHINGTON, DC

(U) For review and action deemed appropriate.

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**cc:**

Ms. Thomas

IOB Library

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INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER  
CHARLOTTE DIVISION  
IOB MATTER 2007- [ ] (U)

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(S) The Charlotte Division ("Charlotte") of the Federal Bureau of Investigation ("FBI") reported via electronic communication dated February 21, 2007, that a National Security Letter was served requesting records that were beyond the permissible scope of a National Security Letter. Specifically, the FBI sought to obtain [ ] from a state university for an individual with ties to the July 2005 London bombings. [ ] are outside the scope of records that may be obtained with a National Security Letter. The state university recognized this error and refused to produce any records in response to the National Security Letter. Accordingly, no records were obtained as a result of the service of this National Security Letter. The FBI rescinded the National Security Letter, and instead served a Federal Grand Jury subpoena for [ ]. The state university complied with the Federal Grand Jury subpoena and produced [ ]

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(U) (S) The FBI's service of a National Security Letter requesting educational records was in violation of The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection, even though no records were obtained in response to the National Security Letter. Thus, the matter is being reported to the IOB.

(U) This matter has been reported to the FBI's Inspection Division for appropriate action.

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