

Memorandum

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To : NSLB Attorneys Date 11/30/2006

From : Julie F. Thomas
Deputy General Counsel

Subject : Guidance for Drafting IOB Opinions

(U) This memorandum will provide guidance to NSLB in determining whether a potential IOB matter is reportable or nonreportable and in drafting of IOB opinions.¹ Of course, each IOB matter is fact specific, and it may be necessary, on occasion, to deviate from this guidance. However, this guidance should be applied in most situations. Attached to this memorandum are the following documents: (1) an EC dated 11/16/2006 to all divisions setting forth the revised procedures for the submission of reports of potential IOB matters (11/16/2006 EC); (2) sample IOB opinion for nonreportable IOB matter; and (3) sample IOB opinion for reportable IOB matter, including an LHM and letter to the IOB. This memorandum does not discuss what potential IOB matters are reportable to OGC. Rather, the 11/16/2006 EC sets forth such matters and should be referenced when advising the field as to what must be reported to OGC/INSD.

DATE: 07-09-2007
CLASSIFIED BY 65179/DNH/KSR/RW
REASON: 1.4 (c)
DECLASSIFY ON: 07-09-2032

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

The U.S. Department of Justice, Office of the Inspector General's (OIG) Report to Congress on Implementation of Section 1001 of the USA PATRIOT Act, dated 03/08/2006, included a section reviewing the FBI's reporting of potential IOB violations. In that report, OIG noted that "it appeared that some factually similar incidents led to reports to the IOB, while others did not." OIG intends to continue monitoring our IOB process, therefore, it is imperative that our IOB opinions are consistent.

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NSL VIO-10204

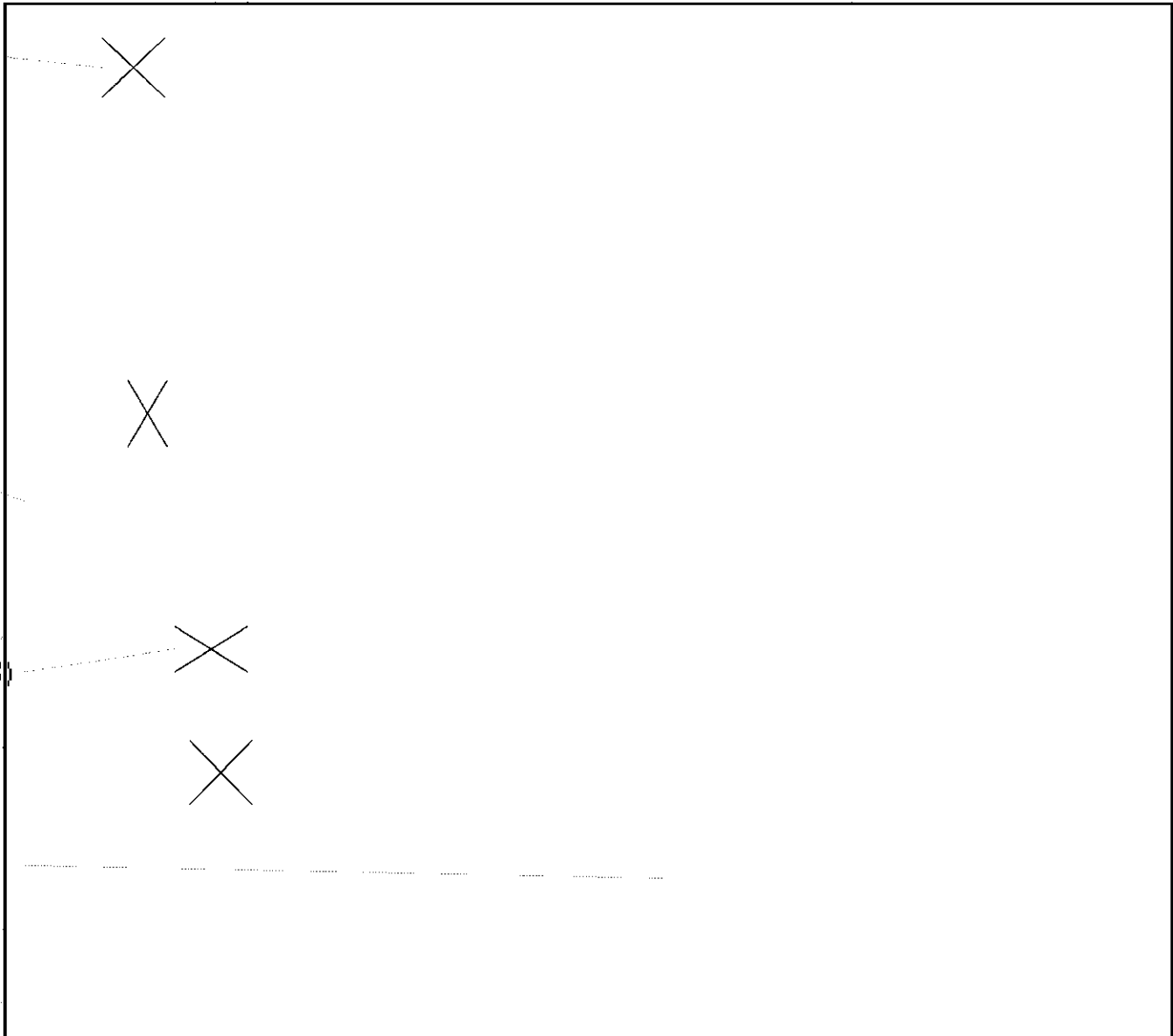
OIG REQ-PAR (12-13-06) ITEM#2

FBI0000001

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Memorandum from Julie F. Thomas to NSLB Attorneys
Re: Guidance for Drafting IOB Opinions, 11/30/2006

I. DETERMINING WHETHER THE POTENTIAL IOB MATTER IS REPORTABLE OR NONREPORTABLE



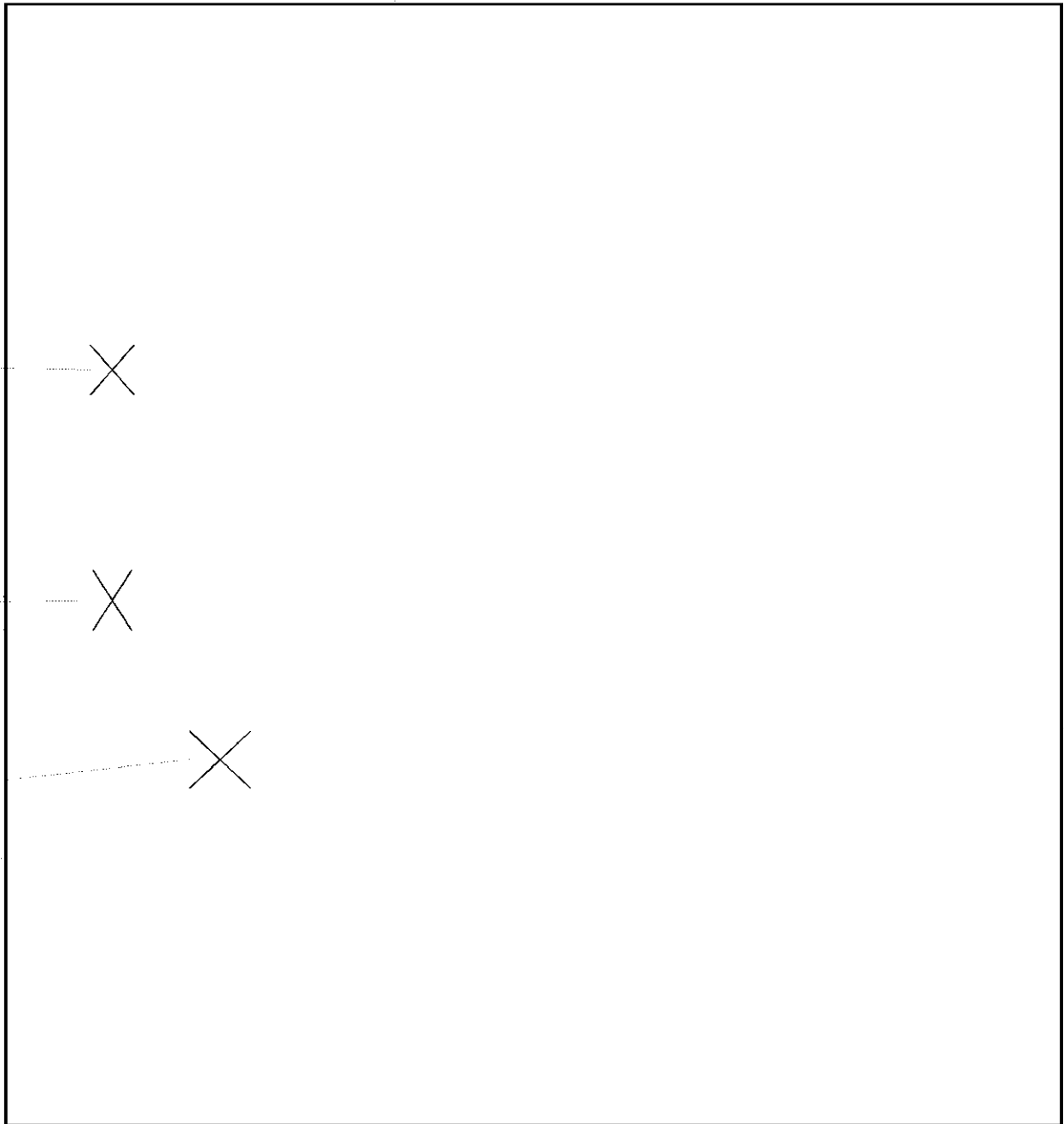
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Memorandum from Julie F. Thomas to NSLB Attorneys
Re: Guidance for Drafting IOB Opinions, 11/30/2006



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Memorandum from Julie F. Thomas to NSLB Attorneys
Re: Guidance for Drafting IOB Opinions, 11/30/2006

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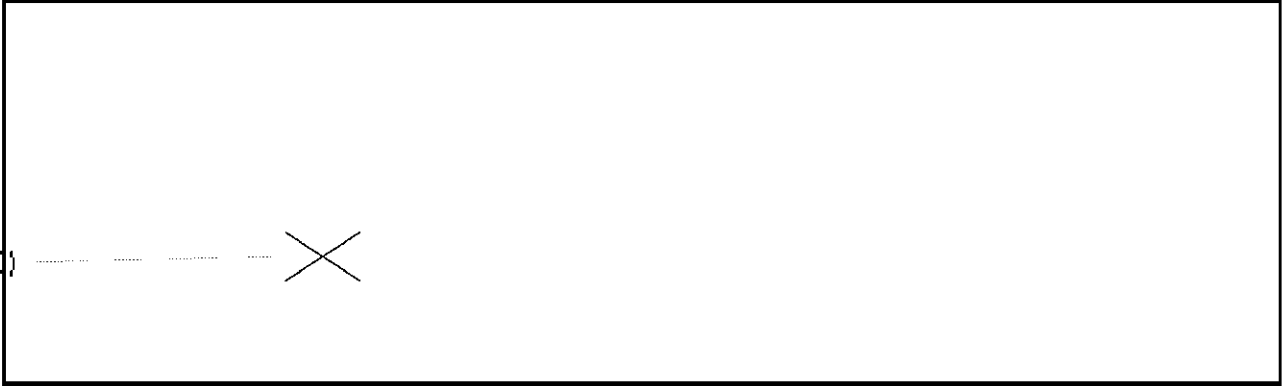
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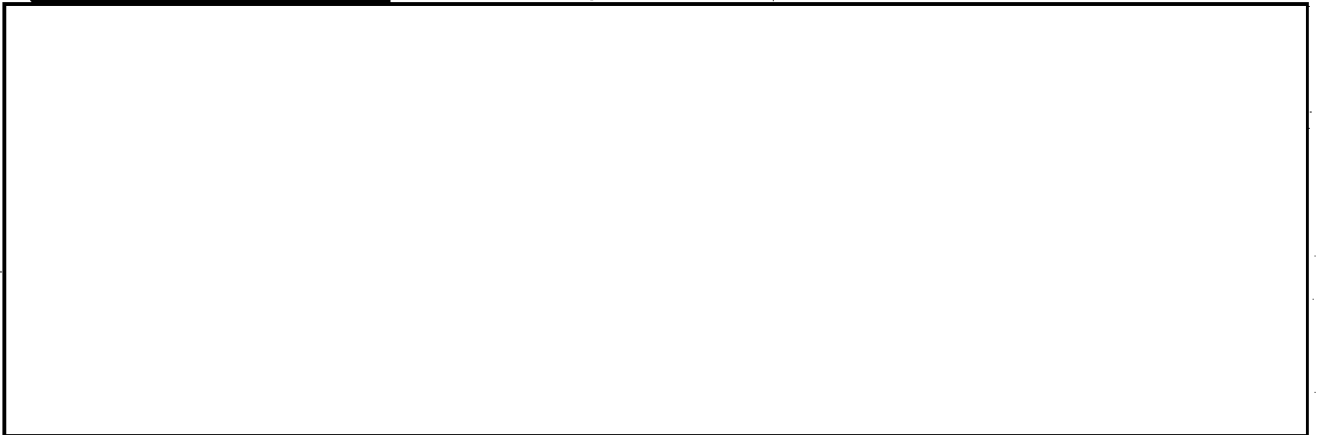
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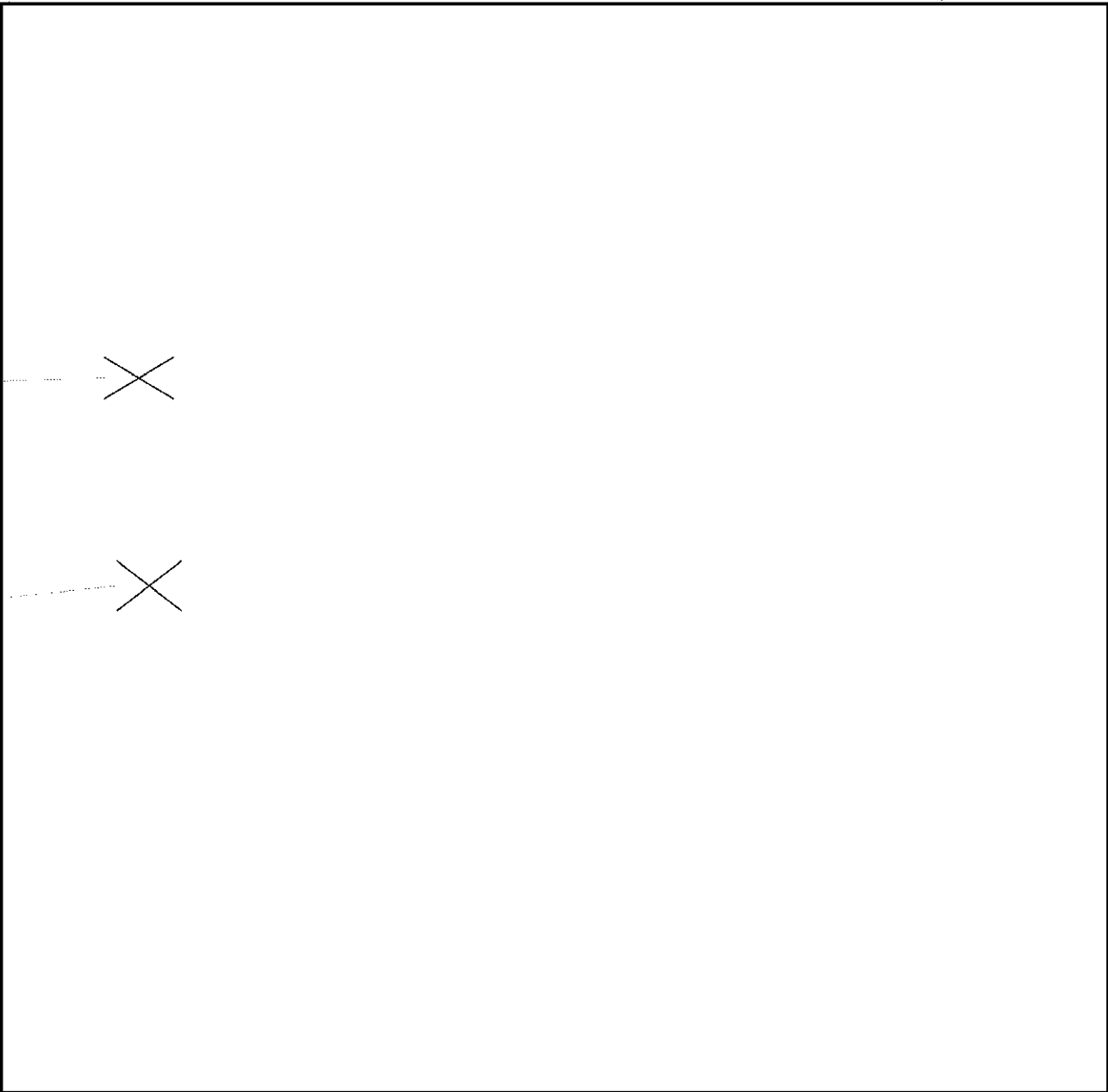
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B. National Security Letters



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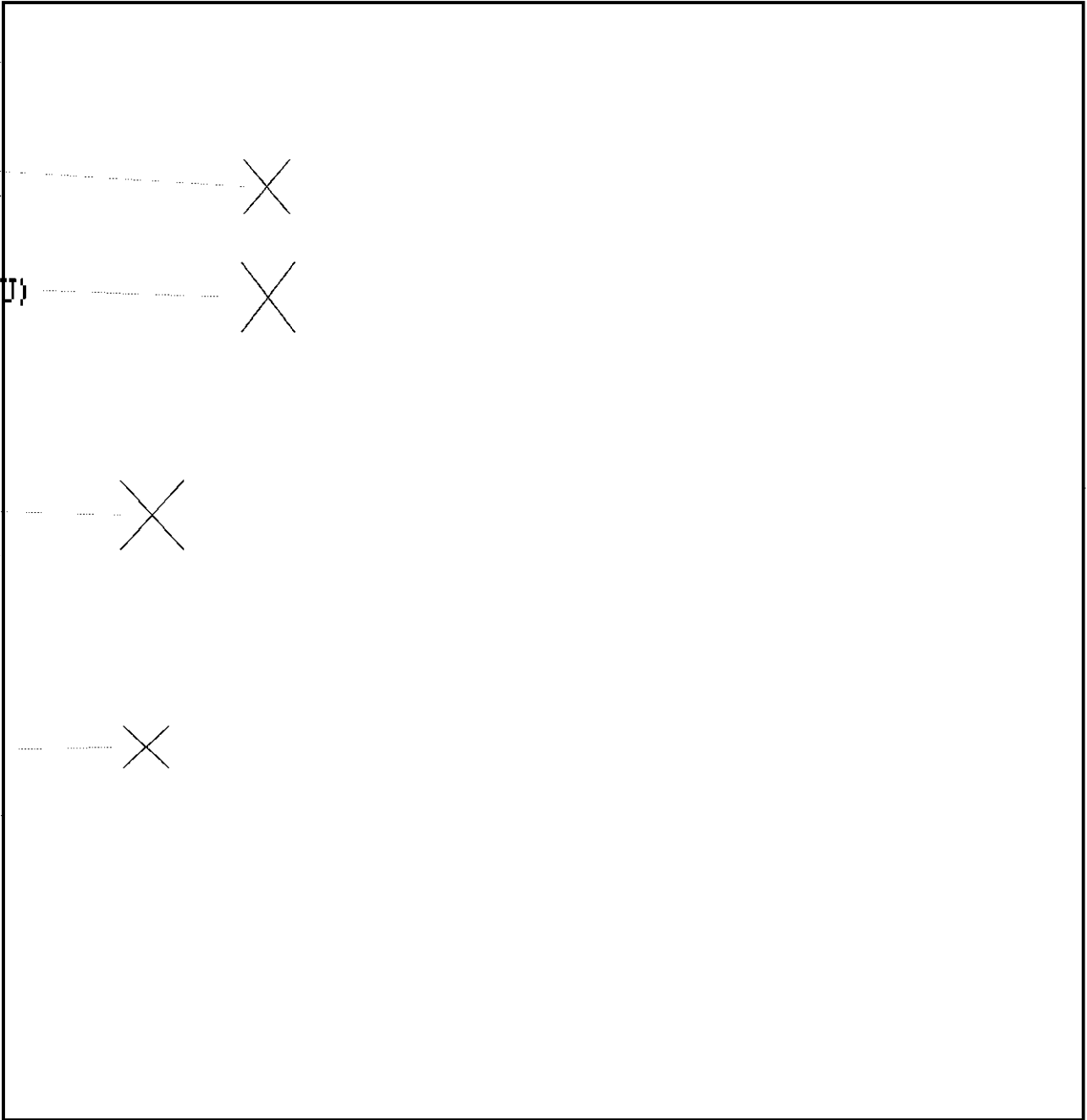
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OIG REQ-PAR (12-13-06) ITEM#2

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OIG REQ-PAR (12-13-06) ITEM#2

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OIG REQ-PAR (12-13-06) ITEM#2

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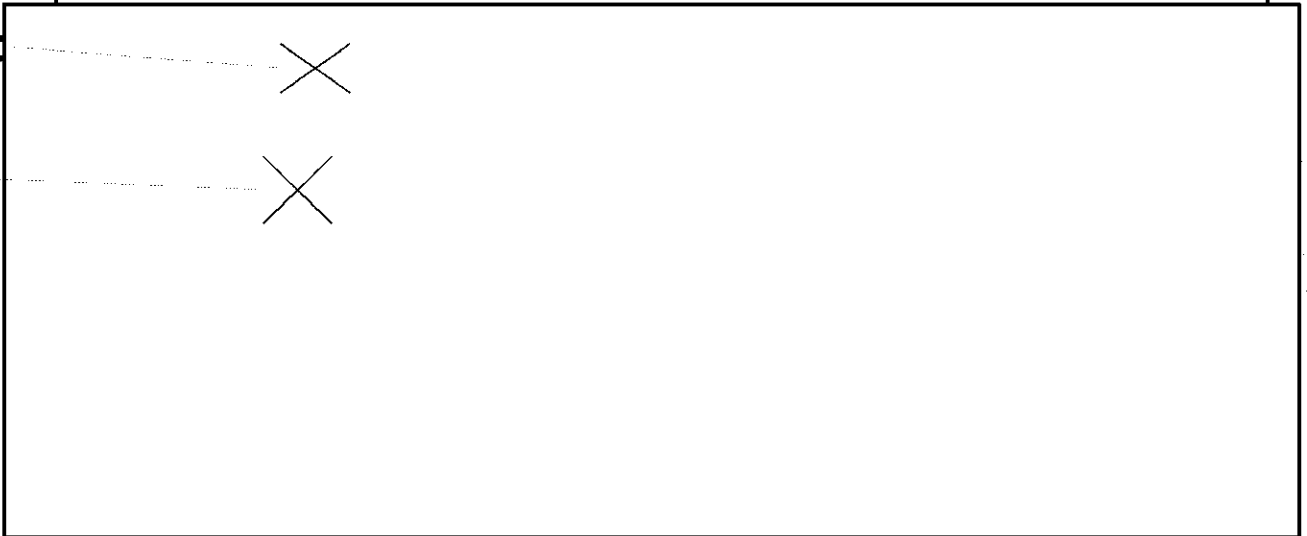
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Re: Guidance for Drafting IOB Opinions, 11/30/2006

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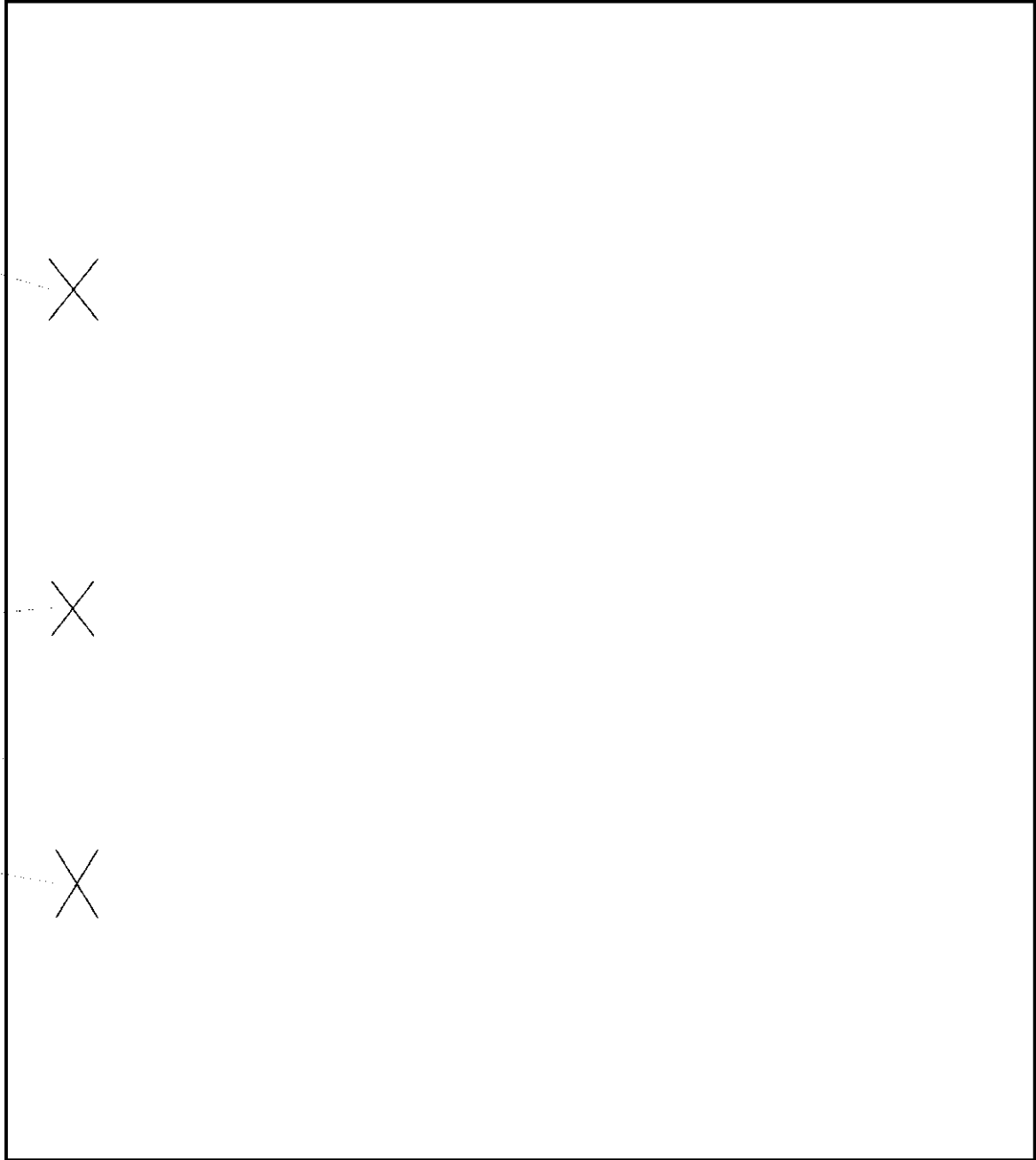
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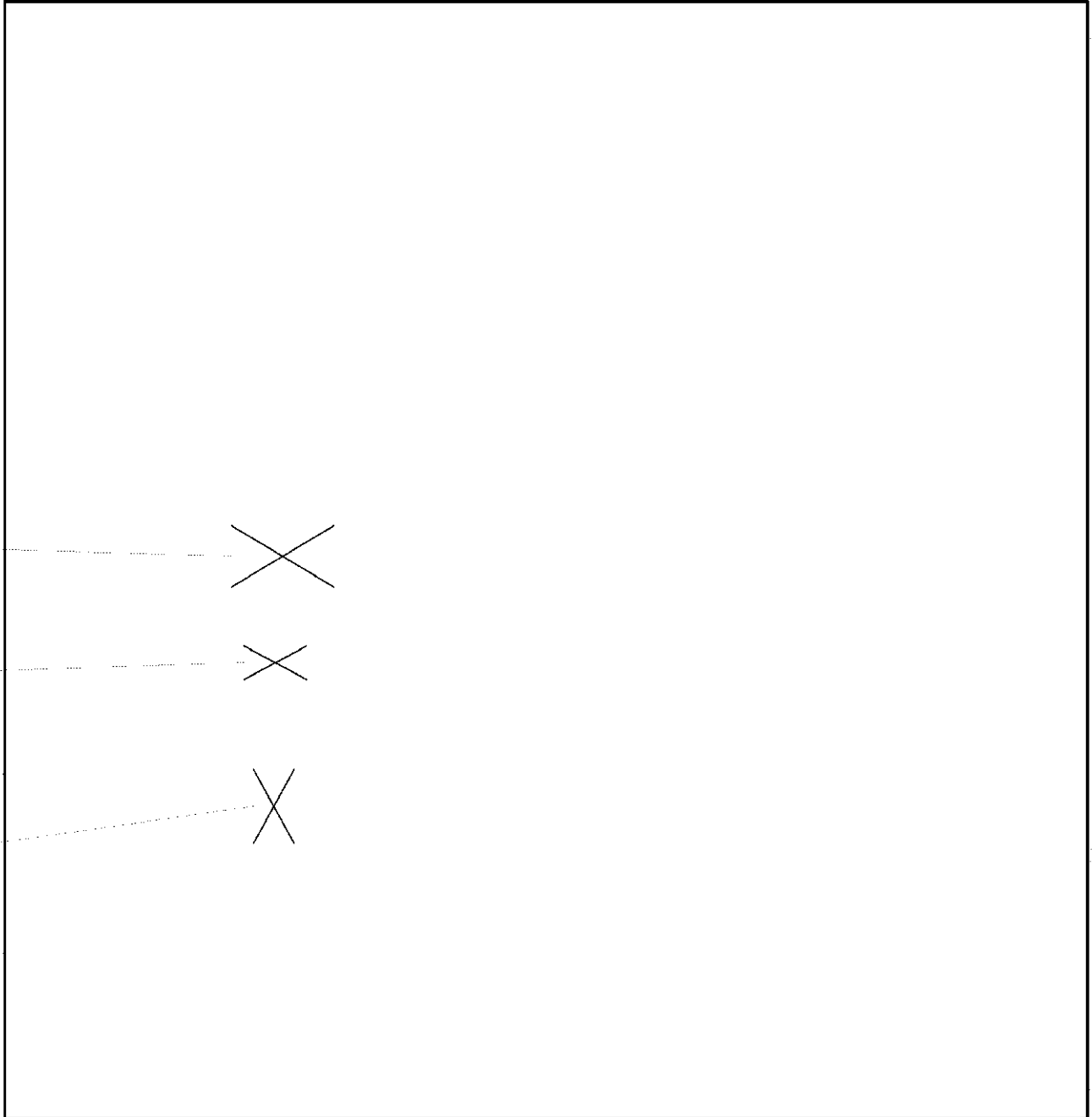
NSL VIO-10213

- OIG REQ-PAR (12-13-06) ITEM#2

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Memorandum from Julie F. Thomas to NSLB Attorneys
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Memorandum from Julie F. Thomas to NSLB Attorneys
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NSL VIO-10215

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Memorandum from Julie F. Thomas to NSLB Attorneys
Re: Guidance for Drafting IOB Opinions, 11/30/2006

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NSL VIO-10216

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Memorandum from Julie F. Thomas to NSLB Attorneys
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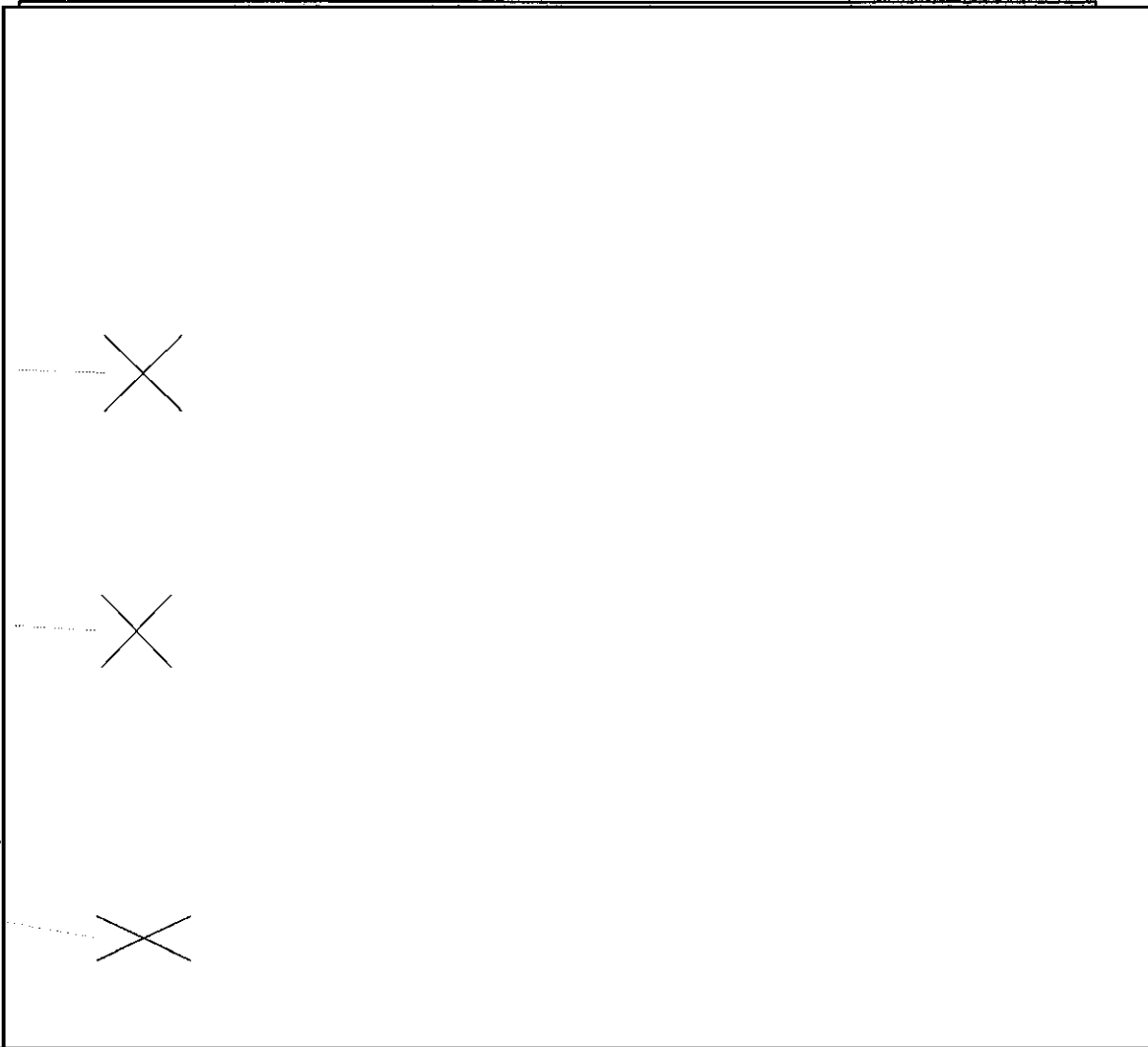
NSL VIO-10217

OIG REQ-PAR (12-13-06) ITEM#2

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Memorandum from Julie F. Thomas to NSLB Attorneys
Re: Guidance for Drafting IOB Opinions, 11/30/2006



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NSL VIO-10218

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Memorandum from Julie F. Thomas to NSLB Attorneys.
Re: Guidance for Drafting IOB Opinions, 11/30/2006

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NSL VIO-10219

OIG REQ-PAR (12-13-06) ITEM#2

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Memorandum from Julie F. Thomas to NSLB Attorneys
Re: Guidance for Drafting IOB Opinions, 11/30/2006

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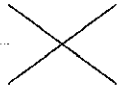
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NSL VIO-10220

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Memorandum from Julie F. Thomas to NSLB Attorneys
Re: Guidance for Drafting IOB Opinions, 11/30/2006

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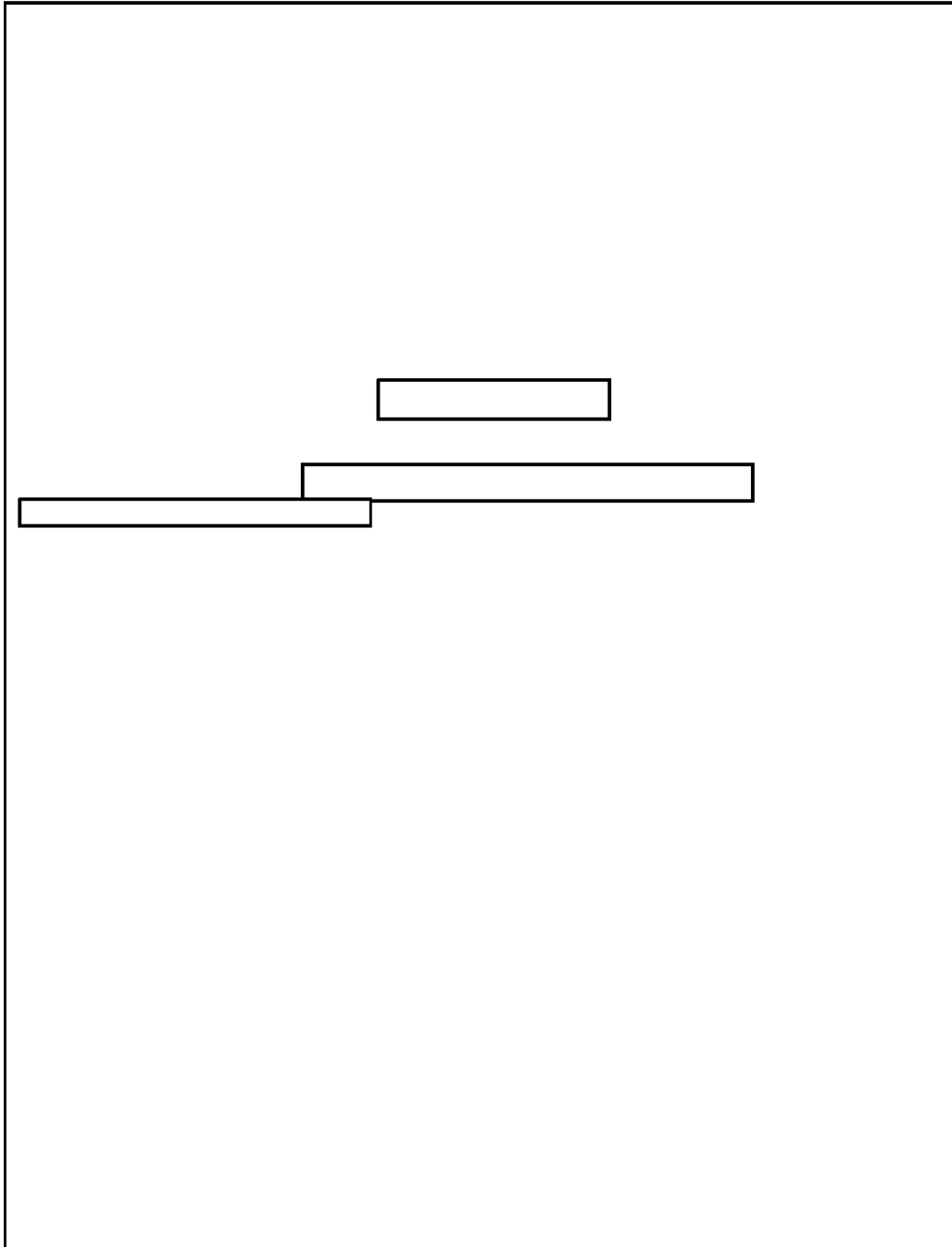
NSL VIO-10221

OIG REQ-PAR (12-13-06) ITEM#2

FBI0000020

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Memorandum from Julie F. Thomas to NSLB Attorneys
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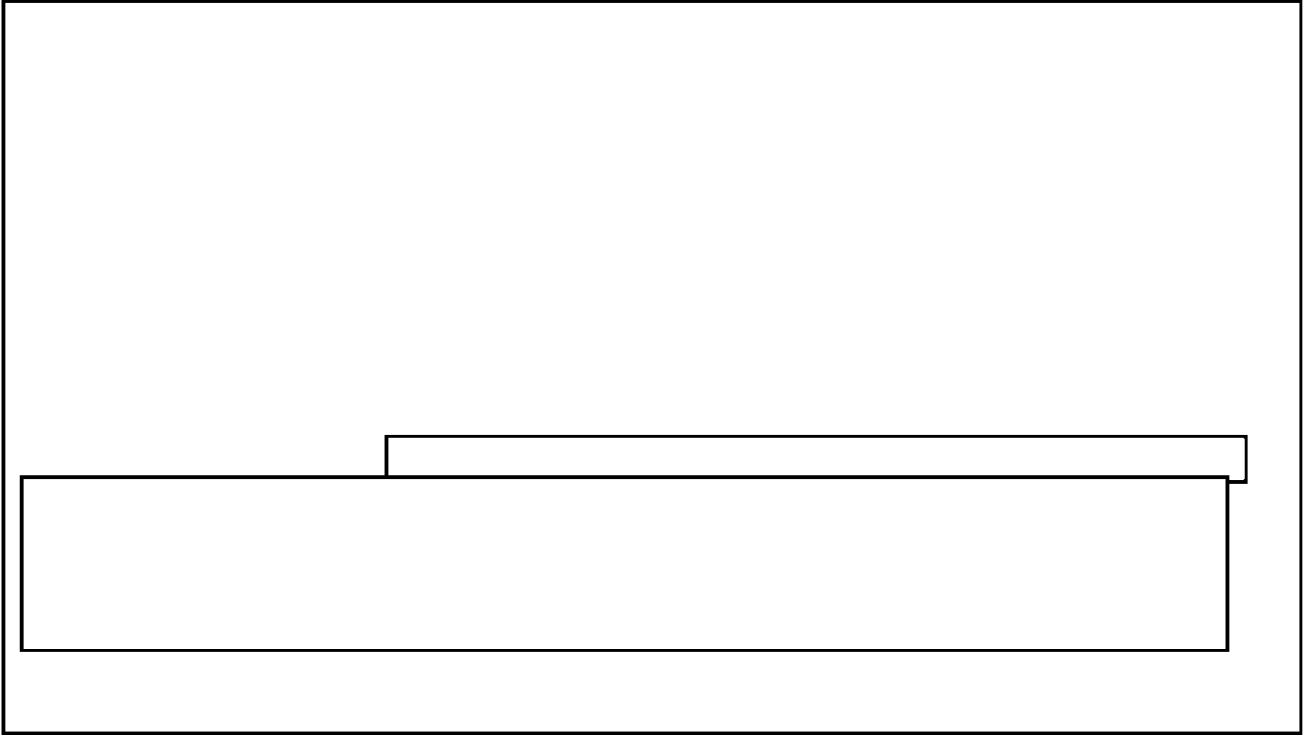
NSL VIO-10222

OIG REQ-PAR (12-13-06) ITEM#2

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Memorandum from Julie F. Thomas to NSLB Attorneys
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NSL VIO-10223

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 05/05/2006

To: [Redacted]

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

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Counterintelligence

Attn: CD-2B, SSA [Redacted]

Inspection

Attn: IIS, CRS [Redacted]

From: Office of the General Counsel
NSLB/CILU/Room 7947
Contact: AGC [Redacted]

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WHERE SHOWN OTHERWISE

Approved By: Thomas Julie F

[Redacted]

DATE: 06-28-2007
CLASSIFIED BY: 65179/DMH/KSR/RM
REASON: 1.4 (c)
DECLASSIFY ON: 06-28-2032

Drafted By:

(U)

Case ID #: (S) 278-HQ-C1229736-VIO Serial 1289 (Pending)

(U)

Title: (S) INTELLIGENCE OVERSIGHT BOARD
MATTER 2006- [Redacted] b2

(U)

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). OGC will prepare and deliver the necessary correspondence to the IOB.

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

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Reference: (S) [Redacted] (Pending)

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Details: (S) By electronic communication (EC) dated 03/29/2006, the [Redacted] Field Office [Redacted] requested that OGC review the facts of the captioned matter and determine whether it warrants reporting to the IOB. In our opinion, it does. Our analysis follows.

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(S) On 11/23/2004, a [Redacted] case agent submitted a National Security Letter (NSL) seeking telephone toll billing records of a certain target to [Redacted] Due to a

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NSL VIO-10238

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To: [REDACTED] From: Office of the General Counsel
Re: 278-HQ-C1229736-VIO, 05/05/2006

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typographical error, the telephone number on the NSL was erroneously transcribed.¹ On 02/04/2005, the telephone records were opened and it was determined that they were not the target's records. [REDACTED] immediately ceased review of the telephone records.²

(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 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.

(U) 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

¹ (U) In order to avoid any further dissemination of this incorrect telephone number, the number is not being listed in this document.

(U) ² ~~(S)~~ On 03/27/2006, [REDACTED] realized that this incident constituted an IOB violation and promptly reported the matter to OGC, the Inspection Division, and the Counterintelligence Division.

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NSL VIO-10239

OIG REQ-PAR (12-13-06) ITEM#2

FBI0000038

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To: [REDACTED] From: Office of the General Counsel
Re: 278-HQ-C1229736-VIO, 05/05/2006

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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~~(S)~~ In this situation, due to the incorrect number stated in the NSL, the FBI received telephone toll billing records pertaining to a telephone number that was neither under investigation nor related to an investigation. Therefore, the information was improperly collected, although unintentionally so, in violation of the NSIG and ECPA.

(U) Here, the target's rights were not violated because he was not the subject of the improperly collected information. It is unknown whether the erroneous information received pertained to a United States Person, inasmuch as there has been no review of the information. Nonetheless, based upon the fact that information which may be about a USP was improperly, although inadvertently, collected, and in accordance with the reporting requirements of Section 2.4 of Executive Order 12863, OGC will prepare a cover letter and a memorandum to report this matter to the IOB.

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To: [redacted] From: Office of the General Counsel
Re: 278-HQ-C1229736-VIO, 05/05/2006

LEAD(s) :

Set Lead 1: (Action)

INSPECTION

AT WASHINGTON, DC

(U) For action deemed appropriate.

Set Lead 2: (Information)

COUNTERINTELLIGENCE

AT WASHINGTON, DC

(U) For information.

Set Lead 3: (Information)

[redacted]

AT [redacted]

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(U) The [redacted] Field Office should contact [redacted] and ask whether the improperly or unintentionally acquired information should be returned or destroyed with appropriate documentation to the file.

cc: Ms. Thomas

[redacted]
IOB Library

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U.S. Department of Justice

Federal Bureau of Investigation

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Washington, D. C. 20535-0001

BY COURIER

DECLASSIFIED BY 65179/DMH/KSP/RW
ON 06-28-2007

Mr. Stephen Friedman
Chairman
Intelligence Oversight Board
Room 50209
New Executive Office Building
725 17th Street, Northwest
Washington, D.C.

Dear Mr. Friedman:

Enclosed for your information is a self-explanatory memorandum entitled "Intelligence Oversight Board Matter 2006-" (U)

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The memorandum 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. (U)

Enclosure

~~UNCLASSIFIED WHEN
DETACHED FROM
CLASSIFIED ENCLOSURE~~

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

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Mr. Stephen Friedman

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 R. 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

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INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
[REDACTED] FIELD OFFICE
IOB MATTER 2006 [REDACTED] (U)

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~~(S)~~ By electronic communication dated March 29, 2006, the Federal Bureau of Investigation (FBI) [REDACTED] Field Office reported that, on November 23, 2004, the FBI submitted a National Security Letter (NSL) seeking telephone toll billing records relating to a certain target to [REDACTED]. Due to a typographical error, the telephone number on the NSL was erroneously transcribed. On February 4, 2005, the telephone records were opened and it was determined that they were not the target's records. [REDACTED] immediately ceased review of the telephone records.

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~~(S)~~ Due to the incorrect number stated in the NSL, the FBI received telephone toll billing records pertaining to a telephone number that was neither under investigation nor related to an investigation. The error was discovered upon receipt of the information, and the records were neither reviewed nor used for any investigative purpose. Despite the inadvertent nature of the mistake, the fact remains that information was improperly collected on a telephone number unrelated to an investigation. The overcollection was a violation of Section V.12. of The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection. Thus, the matter is being reported to the IOB.

DECLASSIFIED BY 65179/DMH/RSE/RW
ON 08-10-2007

~~Derived from: G-3
Declassify on: 25X-1~~

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FEDERAL BUREAU OF INVESTIGATION
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