

June 4, 2009

URGENT MATTER – DISCLOSURE OF VIOLATIONS OF LAW
STRICTLY CONFIDENTIAL

The Hon. Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General:

We represent Supervisory Special Agent Bassem Youssef, who is currently employed as a Unit Chief in the Federal Bureau of Investigation's ("FBI") Counterterrorism Division. He currently holds the position of Chief, Communications Analysis Unit ("CAU"). This letter is filed in accordance with Executive Order 12731, as codified in 55 *Federal Register* 42547, 5 U.S.C. § 2303; 42 U.S.C. 2000e-3(a); the Privacy Act, 5 U.S.C. § 552a and Public Law 109-115 (sections 818 and 820).

In 2006-07, the Department of Justice commenced an "investigation" of the FBI's use of National Security Letters ("NSLs"). The Justice Department's Office of Inspector General ("OIG") had released two prior reports on this subject matter, dated March 9, 2007, and March 2008. A third report, based on a joint review conducted by the FBI and OIG, is currently under review by the FBI. As you may be aware, the Justice Department's Office of Professional Responsibility ("OPR") issued a finding that Mr. Youssef was retaliated against for raising protected disclosures. We are very concerned that FBI managers may use the current joint FBI-OIG review as an avenue to further retaliate against Mr. Youssef. In this regard, Members of Congress wrote to the FBI expressing concerns over Mr. Youssef's treatment. It is our understanding that these letters were never fully answered. Furthermore, Mr. Youssef, through counsel, wrote detailed letters to former Attorney General Michael Mukasey (September 16, 2008 and September 23, 2008) expressing concerns over the joint FBI-OIG process. None of these letters were ever answered.

Based on the FBI's prior retaliatory conduct, and the failure of the Department of Justice to respond to prior inquiries, Mr. Youssef, through counsel, hereby files this formal request for correction of the draft and final Justice Department reports related to National Security Letters. This request is filed under the provisions of 5 U.S.C. § 552a and the

other laws referenced in the first paragraph.¹ To ensure that the report on these matters is complete and accurate, we request that the following information be included in the final report:

I. The report must accurately reflect that it was a result of a *joint* FBI-OIG review.

We are very concerned that the DOJ will issue this new NSL report as an OIG report. This is not accurate. In 2007, we were informed that the investigation was a joint FBI-OIG investigation. Mr. Youssef protested this arrangement and insisted that the investigation be independent. It was not. Because the DOJ denied Mr. Youssef's request that the FBI be excluded from participating in the investigation, it would be misleading to issue the report only in the name of the OIG. The report should clearly indicate that it was a joint project.

We hereby renew our request that the NSL matter be independently reviewed and that a full root cause analysis be conducted. Because Mr. Youssef had filed Title VII and whistleblower complaints against the FBI, and had provided testimony that the FBI had animus against him, the DOJ should have, from the start, taken strong measures to ensure that the entire investigation was independent. In 2007 we recommended that the DOJ follow the precedent used when reviewing misconduct in the FBI crime lab (i.e. the utilization of *outside* independent experts). The recommendation was also rejected.

II. The FBI and DOJ used illegal non-disclosure agreements and improperly censored witness testimony.

At the outset of the investigation the OIG requested that Mr. Youssef's counsel execute a "standard" FBI non-disclosure form. The form was purportedly required by the FBI (which was jointly conducting the investigation). The non-disclosure form was illegal on its face, and, among other defects, improperly restricted disclosures of misconduct to Congress and violated Public Law 109-115 (sections 818 and 820). When Mr. Youssef and his counsel objected to the use of illegal non-disclosure forms, Mr. Youssef was threatened with termination if he did not testify. To his credit, Mr. Youssef refused to consent to these illegal procedures. After some negotiations, the OIG agreed to modify the non-disclosure form applicable to the Youssef interview. However, other witness-attorneys who participated in the joint investigation were required to execute illegal gag orders. The requirement that employee-witnesses sign such gag orders indicates that the purpose of the investigation was something other than full disclosure of misconduct.

¹ Mr. Youssef has made a formal request to review the draft FBI-OIG report. We understand that such a review will be permitted once the draft report is declassified. At that time Mr. Youssef reserves the right to amend the contents of this letter and to seek additional corrections.

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The final report should discuss the illegal use of non-disclosure forms by the FBI and identify what corrective action should be taken to ensure that the FBI not use these forms in the future.

III. The report must reflect that the root causes of the NSL violations were the FBI's authorization of the exigent letters and its direction that CAU obtain records from telephone companies prior to obtaining proper NSLs from the operational units. The FBI approved and issued two electronic communications bureau-wide, which established the policy and procedures later found objectionable by the Inspector General.

Attachment 1 consists of an Electronic Communication ("EC") sent out Bureau-wide dated January 6, 2003.² It was approved by the highest-ranking FBI officials, and was sent to every Assistant Director, every SAC and every manager with any responsibility whatsoever over NSLs. Although not directly referenced on the face of the EC, this document would have been vetted with the Director of the FBI and would have been formally reviewed and approved by the FBI Office of General Counsel ("OGC"). The EC sets forth mandatory FBI policy that governed the use of NSLs.

The January 6th EC established the policy that the FBI would be using information collection tactics that would result in "generating an enormous amount of data in short order." Much of this data "may not actually be related to the terrorism activity under investigation." In other words, the FBI knew that it would collect information that would not, in fact, be tied to any actual terrorist threat or investigation.

To implement the mandates of the January 6th EC, another EC was drafted by the former Chief of the FBI's Communication's Analysis Unit ("CAU"). See, Attachment 2. This EC was "uploaded" into the FBI system and was accessible to all supervisors and agents who had any role in the NSL process. The second EC dated, November 18, 2003, established the procedures for the FBI's use of "exigent letters" to obtain telephone records without waiting for the filing of mandatory legal authority (i.e. a subpoena or a NSL).

The November 18th EC mandated CAU to obtain telephone records *before* it obtained an NSL or a subpoena. CAU would then obtain the "appropriate legal authority" only after the search was done. The November 18th EC stated that CAU "typically" would "request transactional records in response to specific field office requests for support." The EC continued and explained that the "Exigent Circumstances Letter" was the process used to obtain the data: "Under the authority of the Exigent Circumstances Letter signed by the

² Mr. Youssef's counsel was cleared to review redacted versions of the ECs and emails referenced in this letter. The contents of these documents were accurately transcribed and are set forth in the exhibits. The actual emails are all exhibits to the joint FBI-OIG investigation.

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appropriate CAU Supervisory Special Agent [withheld by FBI] will provide transactional records . . .” Thus, the illegal “exigent circumstance” searches identified in prior OIG reports were not caused by improper actions by supervisors within CAU – or by the actions of supervisors or managers who came into their positions after November 2003. Instead, the problem was caused by the complete failure of the FBI – at its highest levels – to understand the law and to police its own policies.

The final FBI-OIG report on the improper use of NSLs must fully acknowledge the role of these two ECs in establishing and mandating the program to use illegal exigent circumstance letters to conduct searches, and must hold accountable the managers who reviewed and approved these ECs.

IV. In 2006 Mr. Youssef attempted to have the November 18th EC withdrawn and corrected. FBI and OIG improperly stalled these corrective actions for over one year.

Before Mr. Youssef was even aware that the Inspector General commenced its initial investigation into the misuse of the exigent letters, Mr. Youssef had identified the problems associated with the two ECs identified above and recommended that the FBI issue a corrected EC addressing the improper use of exigent circumstances letters. The FBI Office of General Counsel ignored this recommendation.

After discovering the problems caused by the use of exigent circumstances letters, Mr. Youssef requested that his staff review the FBI policy and procedures set forth in the January and November 2003 ECs (i.e. Attachments 1 and 2) and revise the NSL/exigent letter policies which governed his actions within CAU.

After this review, Mr. Youssef re-drafted the November 18th EC to ensure that exigent letter searches were only conducted where authorized under law. In other words, the revised EC would mandate that searches were only conducted if there was an actual NSL or if there was a legally justifiable emergency that meets the strict legal definition permitting searches under truly exigent circumstances.

Mr. Youssef’s work on this process was completed in May 2006, and he communicated the proposed changes to FBI policy in an email to OGC, dated May 19, 2006. The proposed revised EC, if approved, would have ensured CAU’s compliance with the law. It explicitly defined exigent circumstances in a manner consistent with the law, and required that exigent circumstance searches only occur if the facts proved that the search was justified under the law: “In crisis situations where there is a specific threat to the United States . . . and loss of life and property are imminent, CAU will issue an exigent circumstances letter . . . under 18 USC 2702 [the law which sets forth the definition of exigent]. . . .”

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This revised policy was sent to OGC before the Office of Inspector General commenced its on-site review of the NSL process. In other words, Mr. Youssef requested formal correction of improper FBI policies before he was aware of any external review of the NSL process. However, OGC did not act on this recommendation, and the improper policy set forth in the 2003 ECs remained in the system (and binding on CAU) for another year.

The final FBI-OIG report must reflect that Mr. Youssef took prompt corrective actions to fix the improperly drafted policies that governed CAU, and it must also reflect that FBI OGC failed to implement these policy changes and failed to provide correct legal advice on the use of exigent letters. The final report must properly credit Mr. Youssef for making these recommended changes.

V. The final report must properly credit Mr. Youssef's corrective actions.

In January 2007, Mr. Youssef's actions in attempting to fix the exigent letter/NSL problems within the FBI were recognized by the Assistant Director for the FBI's Counterterrorism Division.³ Attachment 4. Mr. Youssef was commended for his actions in attempting to fix the NSL/exigent letter problems that had been created before Mr. Youssef had been named as the Chief of the Communications Analysis Unit. As reflected in the May 19, 2006 memorandum drafted by Mr. Youssef, and other actions set forth below, Mr. Youssef had taken extraordinary steps to correct the problems caused by the improper FBI procedures. The 2007 commendation by the Assistant Director was accurate and fully justified based on Mr. Youssef's efforts in 2005-06.

Moreover, Mr. Youssef's official performance evaluation for 2006 – which took into consideration his successful efforts to identify and correct the significant problems that existed within his unit when he was named Chief --- also recognized the contributions made by Mr. Youssef. This evaluation was accurate and its findings must also be reflected in the final FBI-OIG report.⁴

³ The Assistant Director for the Counterterrorism Division personally thanked Mr. Youssef for his actions in fixing the exigent letter/NSL problems in an email dated January 31, 2007: "Bassem – thank you for your efforts to ensure CTD [the Counterterrorism Division] is totally compliant. I very much appreciate all you are doing." Attachment 4 (email from Joe Billy to Bassem Youssef).

⁴ In his formal Performance Appraisal Report covering the 2006 time period, the Section Chief and the Deputy Assistant Director with responsibilities over CAU rated Mr. Youssef "excellent" or "outstanding" in every performance category and acknowledged his "outstanding" "professionalism during extreme operational circumstances." Attachment 5 (Annual Performance Appraisal Report executed by DAD Frahm on January 7, 2007).

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The final FBI-OIG report must include a recognition that Mr. Youssef's actions to make the FBI "compliant" with the law were commendable and that the Assistant Director's praise of Mr. Youssef's conduct was correct.

The FBI-OIG final report must also reflect that for many of the problems that the OIG identified in its first NSL report, Mr. Youssef had previously identified them and *corrected* or attempted correct them *before* the OIG issued its report. Any failure of the FBI-OIG to properly credit Mr. Youssef would result in misleading Congress and the public as to how the FBI internally identified and attempted to resolve and correct the NSL issues. It would also improperly downplay or cover-up the contribution that a whistleblower-employee can make to ensure that problems within an institution are identified and resolved.

VI. The FBI OGC obtained direct evidence that the Executive Assistant Director of the FBI authorized an illegal search in 2004 and failed to report the violation or correct the violation.

In an email chain commencing in December 2004, the FBI OGC learned that the Executive Assistant Director had requested that CAU conduct a search of telephone records, and that the search had been completed without any NSL and without any justification documenting the existence of an "exigent" circumstance. Attachment 6. The OGC also learned that no full or preliminary investigation existed and that an NSL could not be legally drafted. Finally the OGC learned that the search had in fact been completed without any proper legal authority.

The importance of this email chain cannot be overstated. It demonstrates that high level FBI managers (including the Executive Assistant Director for Counterterrorism and Counterintelligence) were directly involved in making requests for the illegal search of telephone records, that the FBI's Office of General Counsel was fully aware of this practice, that no corrective action was mandated and that the violations were never properly reported. Attachment 7 is a copy of Mr. Youssef's attorney's September 23, 2008 letter to the Attorney General discussing this email chain along with a copy of the email chain itself.

The final FBI-OIG report must fully document the incidents reflected in this email chain and hold the responsible officials accountable for committing these violations, for failure to report these violations and for failure to take any proper corrective action.

The FBI-OIG final report should also discuss whether the FBI and OIG engaged in a proper root cause review as to why the OGC did not immediately correct the policies and procedures that resulted in the illegal 2004 search. This root cause review should have included a focus on FBI "culture," especially when it concerns misconduct committed by

high-ranking officials and the failure of entities such as the OGC to police these managers.

VII. FBI OGC knew the full extent of the problems in the NSL programs no later than January 2005 and failed to order a stop to the violations.

Attachment No. 8 is an email dated March 11, 2005 from FBI Assistant General Counsel Patrice Kopistansky and addressed to upper level attorneys within the FBI's Office of General Counsel ("OGC"), including the Deputy General Counsel Julie Thomas and the head of the National Security Law Branch, Mr. Marion ("Spike") Bowman. The email was internal to OGC. The email documents internal discussions within OGC concerning the FBI's improper use of "exigent circumstance letters."

The March 11th email summarizes the problem and confirms that OGC knew of the violations no later than January 2005⁵: "*CAU gets emergency requests to get telephone numbers, gets the information, and then has to do an NSL to justify getting the information. As it is now, it sends us a lead to either the field or ITOS I or II to do the NSLs, but this [i.e. obtaining the NSL] rarely happens.*" The email recognizes that the real issue behind obtaining the NSL involved determining what preliminary investigation the NSL could be tied to, as under the law an NSL may issue only to support an approved preliminary or full investigation. 18 U.S.C. § 2709(b). In other words, without a preliminary or full investigation, you could not issue an NSL.

The Office of General Counsel also understood that the Communications Analysis Unit could not open up cases on its own ("CAU can't open cases because they are not operational. We would probably need to get ITOS I and II to open such cases"). In other words, CAU could never open up a preliminary investigation necessary to justify an NSL and would not even have any access to the underlying information concerning the alleged terrorist threat.

Consequently, the FBI Office of General Counsel fully understood that the FBI was obtaining information without having served the proper NSL request. OGC also understood that to justify these prior requests, or to continue to obtain information from the phone companies, they needed to determine "what file we issue the NSLs pursuant to." OGC knew that there had to be, at a minimum, a pending preliminary investigation out of which the NSL could be issued. OGC knew that it was the responsibility of the FBI's International Terrorism Operations Sections ("ITOS") (and other operational units) to open-up preliminary (or full) investigations prior to requesting that CAU obtain telephone records.

⁵ As indicated on page 3 above, OGC would have known about the January 6, 2003, EC through the normal course of business.

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Thus, the final FBI-OIG report should state that one of the root causes of the NSL violations was the failure of ITOS to open preliminary or full investigations prior to requesting that CAU obtain information from the phone company. The report should fully explain that FBI Office of General Counsel was fully aware of these problems within the ITOS and other operational counterterrorism sections, yet failed to take any prompt corrective action. The final report should also fully and properly credit Mr. Youssef, the Unit Chief of CAU in 2005, for the efforts he took (on his own initiative) to attempt to have ITOS comply with its obligations and his attempt to solicit the assistance of the Office of General Counsel in this process. The report should highlight that Mr. Youssef undertook this critical corrective action prior to the Inspector General review.

VIII. FBI OGC attempted to cover-up the NSL violations by proposing the creation of illegal “broad preliminary investigations” and improperly using control files to issue NSLs.

According to the March 11, 2005 email (attachment No. 8), the OGC attorneys “proposed” a “solution” to the NSL problem that would result in continued issuance of illegal NSLs and which would cover-up the violations committed by the FBI. The FBI Office of General Counsel proposed that the FBI open “very broad PIs [preliminary investigations] that could be ongoing and would encompass future threats.” The FBI would then use these broad generic so-called “preliminary investigations” as a pretext to justify NSLs and the continued use of the exigent letters. Instead of having the operational units legally and properly tie searches to real preliminary or full investigations, OGC proposed creating phony generic files and proposed having the Office of General Counsel (as opposed to the operational units) approve NSLs.

According to the email, these umbrella PIs would cover all of the so-called “emergency” requests for which the FBI was currently using the “exigent letter” to obtain information. The broad scope of these proposed preliminary investigations, and the ability to classify almost any search request, is evident from a review of the preliminary investigation proposed in the OGC email:

CAU and I came up with a list of six {sic} PIs that we could open that would encompass most, if not all of the emergency requests that came in. They were:

Threats against Transportation Facilities (e.g. airplanes, trains)

Threats against Infrastructure (e.g. bridges, roads, water treatment plants)

Threat against Public Facilities (e.g. mass?, sports stadiums)

Threats against individuals (e.g. plans to assassinate public figures)

Threats against Special events (e.g. World Bank event, Superbowl, G-8 Summit)

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In other emails, these “very broad” and “future threat” based PIs would be referred to in a variety of ways, including “Umbrella PIs,” “generic PIs” or PI’s initiated from a “control file.” Other emails make clear that the proposal to create these generic PIs was initiated by OGC, not CAU. As set forth below, FBI OGC actually approved the use of these control file investigations, but the illegal program was never implemented due to actions taken by Mr. Youssef.

The final FBI-OIG report must fully document the facts set forth in the March 11th email, and hold the FBI Office of General Counsel fully accountable for its failure to take proper corrective action upon having full and complete knowledge that the FBI was conducting illegal searches without proper NSL authority.

The final FBI-OIG report must also carefully review the proposed corrective action set forth in the March 11th email. This proposed corrective action was, on its face, illegal. It would have been highly improper and a violation of law for the FBI to justify issuing NSLs from control files. The use of “umbrella” preliminary investigations to justify NSLs would have constituted an even more egregious violation of law, and would have constituted an illegal cover-up of the NSL/exigent letter problem. Corrective actions must be put into effect to ensure that, in the future, the FBI General Counsel cannot propose actions that violate the privacy and constitutional rights of American citizens.

The final FBI-OIG report must reflect a careful evaluation of OGC’s attempt to hide the illegal use of exigent letters, and the FBI’s attempt to create a mechanism, i.e. “umbrella files”, that would permit it to continue to commit violations of privacy rights under the pretext of terrorism investigations. The FBI OGC attempt to cover-up the illegal actions of the FBI resulted in a continuation of the improper use of exigent letters for over one year.

IX. FBI OGC confirms in emails that they failed to provide assistance to CAU and failed to simply demand that the FBI’s operational units comply with the law on NSLs. Instead, FBI OGC relies upon its intent to institute generic control file preliminary investigations as justification for failing to immediately fix the problem. This email, along with others, demonstrates willfulness on behalf of FBI OGC.

On March 7, 2005, the FBI Office of General Counsel sent an email to Mr. Youssef and the Assistant Section Chief (Youssef’s immediate supervisor), Mr. Glen Rogers. It contained a postscript directed to one of the supervisors in CAU. See Attachment 9, email dated March 7, 2005. This postscript is highly significant as it demonstrates OGC’s knowledge, as early as March 2005, of all of the following:

1. OGC was in the process of formulating the “possible PIs to which we can tie emergency requests to.” This is a reference to the generic/umbrella PI concept.

2. OGC understood that the CAU “backlog” on NSLs continued to exist, and was “*getting worse*.” In other words, OGC knew that the unit was still sending out exigent letters to obtain data without an NSL. OGC knew that the law was not being followed, and knew that the problem was growing.
3. OGC then informs CAU that they “*can’t help*” fix the problem until they get “*generic PIs opened to which we can tie these NSLs*.” In other words, whatever request for assistance this supervisor made, it was rejected on the basis that CAU needed to work with OGC and come up with the generic PI solution.

The final FBI-OIG report should make a finding that, as reflected in the March 7, 2005 email, OGC knew of the exigent letter/illegal search problem, knew that this problem was “getting worse,” and refused to help fix the problem. Instead of providing CAU and the operational units (including ITOS) with proper legal advice, OGC delayed taking corrective action. OGC based this failure to act on its desire to implement the illegal control file/umbrella file search program set forth in other emails, including the March 11, 2005 email cited above.

X. The final FBI-OIG report should document that the highest levels of FBI OGC knew that the FBI was improperly obtaining information on the basis of the “exigent circumstances” letter and approved illegal corrective actions in April 2005.

The final FBI-OIG report should fully discuss the email chain dated April 5, 2005 [8:58AM; 9:04AM; 9:09AM; 11:57AM; 12:01AM; 12:09AM; 12:12PM]. *See, Attachment 10*. This is an internal email chain between attorneys in OGC, including the Deputy General Counsel and the head of the National Security Branch.

The first email on the chain (8:59 AM) is from Assistant General Counsel Kopistansky and is directed to her chain of command. The Assistant General Counsel who initiated this email chain is the attorney who took the lead on interacting with the Communications Analysis Unit on issues related to the exigent letters.

In the 8:59 AM email, she recognizes that the “operational units” needed to open up investigations before they searched for information, so that the FBI could be “*getting this information legally*.” The email recognizes the precise problem with the exigent letters (i.e. searches being conducted without preliminary investigations, and therefore without the legal predicate to obtain an NSL) and also understood that CAU was asking that OGC use its influence to “force the operational units to open these PIs.”

We request that the final FBI-OIG report carefully takes this email into consideration and recommends strong corrective action be taken concerning the FBI Office of General

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Counsel. This email supports a finding that FBI attorneys, at the highest level, knew the collection process was illegal, yet failed to take prompt or effective action to defend the laws of the United States.

The second email in the chain (9:04 AM) indicates that a solution to this problem may be reached if there was a meeting with the Deputy Assistant Director for the FBI, Mr. John Lewis (the Deputy Assistant Director with authority over the Communications Analysis Unit). However, as set forth below, this meeting was never organized by the General Counsel's office.

The third email in the chain (9:09AM) reinforces the fact that the operational units needed to "know that they need to open up these PIs." It also confirms the fact that the operational units were "not good about" establishing the required preliminary investigations, and that Mr. Youssef had reached out to OGC to obtain help in forcing the operational units to comply with the law. According to the email: "*So Bassem [Youssef] wanted to know if there was something we could do to force their [the operational units, i.e. ITOS] hand as far as opening up the necessary PIs.*"

This email is also critical to understanding the key role played by Mr. Youssef in trying to fix the problems created by the FBI's use of exigent letters. Mr. Youssef wanted to obtain help from OGC to force the operational units to open the investigations necessary for issuing NSLs. The Office of General Counsel should have immediately insisted that the operational units follow the law. They should have reported the failure to comply with the law to the proper authorities. At a minimum, the Office of General Counsel should have provided Mr. Youssef with the support he needed to ensure that the FBI was compliant with the law. Instead, as set forth below, the Office of General Counsel continued to formulate a plan which would have resulted in a major cover-up of these violations and a potential massive violation of the privacy and constitutional rights of American citizens. The final FBI-OIG report should specifically acknowledge Mr. Youssef's role in attempting to fix this problem, and the failure of the Office of General Counsel to provide proper guidance or assistance.

The fourth email in this chain (11:57AM) is extremely significant and revealing. Deputy General Counsel Julie Thomas ignores the request for assistance made by Mr. Youssef and sidesteps the idea that a meeting be conducted with the Deputy Assistant Director for Counterterrorism. In other words, the Deputy General Counsel failed to take any reasonable action to correct the problems identified by Mr. Youssef and the problems disclosed to her chain of command by the Assistant General Counsel.

Instead, Ms. Thomas states that she has been "signing a tremendous amount of these under our new procedure." In other words, Thomas has been signing out NSLs under umbrella/generic/control files in another program, which she confused with the ITOS-CAU/NSL program. The use of control files to justify NSLs is highly improper and

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illegal. The Deputy General Counsel of the FBI *admitted* in this email that the FBI was engaging in this improper conduct in another NSL-related program.

The final report of the FBI-OIG must carefully review this email and recommend appropriate corrective action concerning the illegal use of control files in this other program. This email is an excellent example of how misconduct can spread within an organization, especially when that organization does not have the management culture necessary to identify and correct problems.

The fifth email in the chain (12:01 PM) indicates that Thomas was referring to another NSL-related program. In this regard, Kopistansky states that she did not understand the “new procedure” referenced in the prior email, and Kopistansky did not think that the generic PI policy had been implemented in the NSL program that they were discussing. This email confirms Mr. Youssef’s understanding of the matter (i.e. that the FBI was also issuing illegal NSLs out of another program).

The sixth email in the chain (12:09 PM) further demonstrates that another unit in the FBI was using generic/umbrella/control files to justify NSLs, as Thomas states that she was “thinking of another unit.” She also recalled working with others in OGC to use this generic process to “help out” with a “delay in NSL processing.” Thomas then states that the entire issue raised by CAU/Youssef and Kopistansky needed to be placed on the “back burner.” Because Thomas believed that the solution to the issues raised by Youssef was at hand (i.e. the new procedure which was being used for other NSLs), there simply was no rush to fix this problem; she was able to relegate the matter to the “back burner.”

The last email (12:12 PM), confirms that the problem will be dealt with “later.” In this email Assistant General Counsel Kopistansky confirms that two attorneys in the OGC assigned to help CAU actually “can’t do anything” until the generic PI policy is created.

Significantly, in an earlier email, the Assistant General Counsel specifically acknowledged that the generic/control file policy she was proposing, which would provide a paper-justification for NSLs, was based *on another program already in effect within the FBI. Attachment 11*, email dated January 26, 2005. In other words, although the generic/control file process for justifying PIs and NSLs was never finally approved within CAU as the solution for the exigent circumstances letter problem, it was illegally approved and implemented for another NSL-related search program administered by the FBI. The use of generic/control PIs to justify NSLs is a clear violation of law.

XI. The final FBI-OIG report should document that the highest levels of FBI OGC stonewalled and failed to take prompt corrective action to stop the illegal use of exigent circumstances letters.

Attachment 12 is an April 12, 2005 email, sent by Assistant General Counsel Patrice Kopistansky to Deputy General Counsel Julie Thomas as a follow-up to the April 5th email chain. This email provides additional guidance and confirmation as to the meaning of the April 5th chain. The email confirms the following:

1. OGC was fully aware of the “problem with CAU and their backlog of NSLs.” This is the problem caused by the use of “exigent letters” and the failure of the operational units to provide the promised NSLs.

2. Mr. Youssef (i.e. CAU) wanted help from OGC in fixing this problem (“CAU would like us to put something out to pressure ITOS I”). ITOS stands for the International Terrorism Operations Section of the FBI.

3. OGC was stuck on the generic PI solution, i.e. creating Preliminary Investigations out of control files or umbrella files which could simply be used to justify the NSLs. Because OGC was committed to creating a system based on generic PIs to resolve the problem, they continued to postpone and ignore the repeated requests from Mr. Youssef to help fix the problem. OGC could have fixed the problem immediately by simply instructing the operational units to comply with the law, and by instructing CAU to stop issuing the exigent letters. But OGC did not do so. They remained committed to permitting the operational units to obtain information without real PIs being initiated. Instead, they were working on creating a system that would create phony PIs, which could simply paper-over the legal requirement that the searches be tied to a real terrorist PI, and thus permit the issuance of NSLs.

4. The email continues to recognize that the current process of conducting searches without NSLs and without any confirmed PIs was not legal. This confirmation is contained in the email’s conclusion that “generic PIs” should be adopted so the FBI could “more efficiently” and “not to mention legally” “continue to obtain emergency telephone information.”

5. Two follow-up emails are attached to this document. The first, sent at 5:02 PM, indicates that the Deputy General Counsel *approved* the generic PI solution proposed by Kopistansky. The second, sent at 5:03 PM, indicates that Kopistansky would start to draft the Electronic Communication or “EC” to implement the generic/umbrella/control file PI proposal.

6. Thus, by April, 2005, after having full knowledge that the current searches were not being conducted “legally” and that Mr. Youssef as head of CAU was trying to get help from OGC to have the operational units comply with the law, OGC internally

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approved the plan to establish generic PIs to permit the FBI to continue large numbers of illegal searches. OGC's commitment to the illegal generic PI procedure delayed constructive corrective action on these matters.

The Deputy General Counsel of OGC formally approved the umbrella PI proposal on April 12, 2005. Thereafter, the General Counsel's office tried to obtain assistance from CAU and the operational units to finalize the "umbrella" preliminary investigation control files.

In an email to Mr. Youssef dated May 27, 2005, Assistant General Counsel Kopistansky understood that it would be the responsibility of ITOS I and II to create the generic PIs: "Bassem, we have discussed this issue with ITOS I and II since they are the ones who would be creating the umbrella files that you would be using as the basis for your emergency NSLs." Attachment 13. The text of the May 27th email is troubling, as it demonstrates how the umbrella PI concept was open to abuse. An example given by OGC of facts which could justify using the umbrella PI to justify a search included the following: "For instance, if we see someone taking a picture of a bridge, and the person fits the stereotype of a domestic terrorist (e.g. young, male, Caucasian, maybe a crewcut – you get the point)" that person could be the subject of a generic PI NSL "*even though at that point there is no suggestion that the target is affiliated with a foreign power.*"

XII. The final FBI-OIG report should credit Mr. Youssef with playing a key role in preventing the Office of General Counsel from finalizing its plan to create illegal control files to justify the improper use of NSLs.

The FBI Office of General Counsel continued to push the generic/control file PI solution to the "exigent letter" issue through mid-September 2005. At that time OGC helped set up a meeting between CAU (Mr. Youssef), the ITOS I and ITOS II assistant section chiefs and the Office of General Counsel. Attachment 14, Email dated September 22, 2005. OGC believed that this meeting, requested by Mr. Youssef, was designed to facilitate the approval of the generic/umbrella PIs. Kopistansky clearly identified the problem at hand: "But the issue had been that we did not have PIs to attach them [NSL]." The FBI's assistant general counsel's solution was "*so we thought we'd create some.*" Attachment 15, Email dated September 23, 2005. In other words, OGC concedes that the purpose of the generic PIs was simply to "create" an investigation with which to justify the NSL.

However, Mr. Youssef testified (and the emails support) that he asked for this meeting to obtain a commitment from ITOS I and II to stop asking the CAU supervisors for emergency searches in non-emergency situations. The ITOS requests had placed pressure on CAU supervisors to use the exigent letter process, and Youssef wanted help from ITOS managers to put an end to this practice. In other words, Mr. Youssef wanted the operational units to open proper preliminary or full investigations and obtain

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information on the basis of a valid NSL (as set forth above, NSLs could not be issued absent such an investigation).

Youssef's intent for asking for the meeting and what he said at the meeting is confirmed in Attachment 16, an email from Kopinstansky to Youssef about that meeting: ". . . at the meeting on September 26, 2005, it seemed that your main concern was getting ITOS I to issue NSLs under existing files . . ."

Throughout the emails, OGC repeatedly confirms that Mr. Youssef wanted help in getting the operational units to comply with the law and provide the required NSLs. This is reflected in an October 21, 2005 email from Kopinstansky to Youssef, in which she acknowledged Mr. Youssef's position: ". . . you [Youssef] thought you needed the weight of OGC to come down on ITOS I to assure that they'd issue these NSLs . . ." Attachment 16.

In the October 21st email, Kopinstansky sets forth a rationalization for General Counsel's initial plan to create umbrella control files as a means to justify NSLs. She states that she was "under the impression that" CAU "did a lot of emergency situations" and thus there was a need for ITOS to "create some umbrella files under which we could issue NSLs." Kopinstansky's impression was absolutely correct concerning the actions of CAU *prior* to Youssef becoming Chief. Consistent with policy and practice, CAU had routinely used exigent letters to conduct searches for a number of years before Mr. Youssef was named Chief of the Unit.

However, after Mr. Youssef became the Unit Chief, and after he became aware of the improper use of exigent letters as a substitute for NSLs, Mr. Youssef initiated forceful and highly successful corrective actions. These corrective actions were initiated before the Inspector General review, and were initiated without any help from his supervisory chain of command. The corrective actions were initiated despite the fact that the Office of General Counsel refused to correct the two Electronic Communications that authorized the use of exigent letters and significantly delayed any actions to obtain compliance with the NSL requirements from the operational units.

The fact that Mr. Youssef was able to obtain substantial compliance with the legal requirements of NSLs, under these circumstances, should be noted in the final FBI-OIG report. The remarkably successful role played by Mr. Youssef in obtaining compliance with the law is fully reflected in the statistics concerning the issuance of exigent letters out of CAU after Mr. Youssef became Unit Chief and after he became fully aware of the issue.

Significantly, in the October 21st email, Assistant General Counsel Kopinstansky credits Youssef with the decision by General Counsel to abandon the generic/umbrella PI solution to the exigent letter problem. She supported Mr. Youssef's position that the current problem could be solved if pressure was put on ITOS to stop asking for

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emergency searches in non-emergency matters, and to ensure that they provided NSLs to CAU based only on the existence of a full investigation or preliminary investigation. Kopistansky described the meeting and her change of position as follows:

“I [Kopistansky] was under the impression that . . . you [CAU] needed ITOS I and II to create some umbrella files under which we could issue NSLs. Therefore, we had decided that we’d suggest the creation of umbrella files However, at the meeting on September 26, it seemed that your [Youssef’s] main concern was getting ITOS I to issue NSLs under existing files”

Kopistansky informed Youssef that Spike Bowman, the head of the National Security Law Branch, had contacted “higher ups” about Youssef’s concerns, and that she expected and hoped that CAU was now “receiving the information” needed to “meet the standard for NSLs, namely relevance to an authorized investigation.”

Although Kopistansky appeared to change her position on the use of the generic PIs to resolve the problems caused by the exigent letters within CAU, her email did not reflect a shift in position related to the use of such instruments to fix the backlog that she knew existed in CAU or a shift in OGC’s general position on the use of umbrella/generic PIs in other programs which also used NSLs to gather data. The issue of the backlog was not addressed in this email.

As set forth in the October 21st email, Mr. Youssef’s intent was to have the ITOS units simply comply with the law, and provide NSLs only in true emergency situations. According to a March 19, 2007 email from Youssef to the FBI General Counsel (and others in OGC), Youssef informed OGC that he took action in 2005 to ensure CAU compliance with the NSL rules. Attachment 17. He informed OGC of his communications with the FBI Inspection Division about the problems which had existed concerning the exigent circumstance letters and the corrective actions he had undertaken to fix the problem in 2005: “The inspection team was advised of the spring 2005 audit [i.e. Youssef’s attempt to identify all the searches that were conducted without NSLs] wherein CAU obtained a list of outstanding NSLs from [redacted by FBI]. The inspection asked what CAU was doing at the present time to remedy this situation and CAU advised that under normal circumstances (non-exigent) an NSL must be provided by the requesting entity prior to obtaining any telephone records”

In other words, by the spring of 2005 Youssef had instructed his staff to comply with the law and use the exigent circumstances letter only in true emergencies, and had further commenced an internal audit to locate all instances in which a search was conducted without an NSL. This provided CAU with a list that it would use to have the operational units provide the necessary NSLs. This review produced a list of all telephone numbers for which CAU had not received an NSL. CAU provided this list to the operational units to encourage them to provide the outstanding NSLs.

A review of the number of exigent letters sent from his unit confirms this fact, and confirms that by the end of 2005 exigent letters had all but stopped, and those that were issued were tied to a real emergency. *See Attachment 18, Exigent Letter Use Chart.*

The chart is based on the number of exigent circumstance letters issued out of CAU between December 2004 and January 2007. When Mr. Youssef was named Chief of CAU, the use of exigent letters was well established within the unit. As reflected in the attached emails, it was well known that these letters were used to conduct searches in situations for which an NSL was required. It was also well known that, although promised in the letters, the mandatory legal process (i.e. the NSL or a subpoena) was never provided to the telephone companies. Additionally, although NSLs were not legally needed in true “exigent circumstances,” it was also well established that such truly exigent circumstances were “few and far between.”

The final FBI-OIG report should find that when Mr. Youssef took over the Unit, CAU supervisors (consistent with policy and past practice) were issuing approximately 45 such letters per/month. Based on his efforts, the number of exigent letters used by the FBI was radically decreased before OGC took any formal action to abate the violations. The number of exigent letters was systemically reduced, and by February 2006 (months before the OIG commenced its review of the matter), no exigent letters were issued by CAU.

XIII. Throughout the relevant time period the FBI OGC continuously gave CAU erroneous legal advice.

As reflected in the above-cited emails, the FBI OGC engaged in misconduct when it refused to instruct and require the FBI operational units to comply with the law concerning NSLs, when it took no action to fix the improper 2003 policy Electronic Communications, when it signed NSLs based on generic/control files in the secret NSL program and when it attempted to create an illegal generic/control/umbrella file in order to create phony “preliminary investigations” which would permit the FBI to conduct searches in violation of the law.

In addition to these problems, two additional emails demonstrate that FBI OGC was willing to place the operational needs of the FBI above the law, and create legal justifications for improper searches.

In April 2005, Mr. Youssef had reached out to OGC in an attempt to obtain assistance in having the operational units comply with the law and provide NSLs. At that time OGC did not make any attempt to assist in this effort. Thereafter, Mr. Youssef made sure that FBI OGC knew that information was being obtained through use of the exigent letters “as emergencies when they aren’t necessarily emergencies.” *Attachment 19, April 26, 2005 email from Kopistansky to Youssef.* To remedy this problem, CAU needed the legal

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definition of “emergency” so that its staff could refuse to use an exigent letter to obtain information in emergency circumstances in which an NSL was otherwise required.

The advice obtained from OGC was improper. The OGC attorney stated as follows: “So please make sure that the people in your unit are instructed to ask for an NSL, *and only if it is clear to you that the requestor cannot await an NSL . . . should they be done as emergencies based on your exigent letter.*”

Mr. Youssef immediately forwarded this OGC guidance to his entire staff. Attachment 20. The problem with the guidance was that it was improper. The standard set forth by OGC concerning use of the “exigent letter” was whether or not “the requestor cannot await an NSL.” According to Mr. Youssef’s testimony, the operational units consistently used the “I cannot await an NSL” justification for insisting that CAU obtain the information from the phone companies through use of the exigent letter.

OGC failed to provide CAU with the actual legal definition of the exigent or emergency circumstance that would have legally permitted the FBI to request and obtain the phone data without an NSL. That legal definition is clearly set forth in the controlling laws, 18 U.S.C. § 2702: “*an emergency involving danger of death or serious physical injury to any person*” which “*requires disclosure without delay of information relating to the emergency.*”

In fact, OGC never provided CAU with the actual legal definition during the entire time period relevant to this complaint. CAU researched the issue on its own, and incorporated the correct legal standard into the new policy EC proposed by Mr. Youssef in May, 2006. Attachment 3.

Instead of providing CAU with accurate legal advice, OGC actually insisted that CAU continue to use the exigent circumstances letter *after* Mr. Youssef had taken steps to essentially stop its usage. Between February and May 2006, Mr. Youssef’s efforts almost completely terminated the CAU’s use of the exigent circumstances letter:

<u>Month</u>	<u># of Exigent Circumstance Letters</u>
February/06	0
March/06	3
April/06	2
May/06	2

Attachment 18.

But on May 26, 2006, FBI OGC slightly revised the contents of the exigent circumstance letter (i.e. removed the reference to awaiting the issuance of a subpoena, and replaced it with reference to a National Security Letter) and actually instructed CAU to “start using”

the new exigent circumstances letter “PRONTO” (emphasis in the original). Attachment 21, email from Kopistansky to Robleto, May 26, 2006.

Again, OGC did not provide CAU with the controlling legal definition for exigent circumstances, but instead provided guidance that the letter could still be used. Not surprisingly, the number of such letters started to increase once again. Attachment 18.

XIV. The FBI utilized the “umbrella” concept to “clean up” the backlog in NSLs caused by the improper use of the exigent letters.

OGC’s use of the “umbrella” concept filtered its way into the ITOS and CAU as a method for cleaning up the backlog of NSLs. In 2006, as a result of Mr. Youssef’s audit of exigent letter requests, the CAU was able to identify past searches for which NSLs were never issued. Under Mr. Youssef’s direction, a “spread sheet” of “outstanding NSL requests” was created in October 2005. Attachment 22, email dated October 27, 2005 (11:13AM). Mr. Youssef directed his staff to contact the operational unit supervisors who had “sent the lead to us” in order to “clear our outstanding NSL requests.” *Id.*

The CAU attempted to get these NSLs from the operational units, but had limited success. The inability of CAU to obtain the NSLs from the operational units is not surprising, as NSLs could only be approved if a preliminary or other ongoing investigation existed. If no preliminary investigation was ever opened, absent the FBI instituting the “umbrella/control file” solution proposed by OGC, it would be impossible to justify the NSL.

Consequently, the supervisors within ITOS and CAU discussed this problem and came up with the “umbrella” “solution.” According to an email from a CAU supervisor (Mr. Randy Allen) to OGC (Kopistansky), dated November 14, 2006, the solution involved justifying a “blanket” NSL for past searches “acting under the umbrella that terrorists are in the U.S. and are imminently planning operations.” Attachment 23, email dated November 14, 2006, from Allen to Kopistansky. In other words, the ITOS and CAU supervisors utilized the “umbrella” concept originally proposed by OGC in order to create a justification for an NSL that would cover the prior undocumented searches. This solution was discussed with the Section Chief for ITOS, Mr. Hiembach, and with the CAU Unit Chief (Youssef). However, it was the Assistant Director for the Counterterrorism Division (Billy) and the Deputy Assistant Director for Counterterrorism (Cummings), among others, who actually “signed off” on these blanket NSLs.

FBI OGC was concerned that Mr. Youssef testified about these blanket NSLs during his initial interview with the Inspector General. This concern triggered an email from Kopistansky to the FBI General Counsel Valerie Caproni informing her that Joseph Billy, the Assistant Director for the Counterterrorism Division, had signed a blanket NSL. Attachment 24, email dated November 7, 2006, Kopistansky to Caproni (“I presume

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Bassem told OIG about it so I thought you ought to know about it”). After receiving this information from Kopistansky, the General Counsel contacted Billy. In an email also dated November 7, 2006, Billy claimed that he had “no recollection” of having signed the blanket NSL. *Id.* OGC also attempted to distance itself from this blanket NSL, despite the fact that OGC had strongly advocated and approved using “umbrella” investigations to justify resolving NSL problems.

In a May 14, 2009 letter to the Chairman of the House and Senate Judiciary and Intelligence Committees, the Department of Justice described these eleven umbrella clean-up NSLs as “so-called ‘blanket NSLs.’” The Justice Department indicated that they were a “good faith but ill-conceived attempt to provide the communications service providers with legal authority for records they had previously provided to the FBI based on oral requests and exigent letters.” This finding is only partially correct, as it ignores two key factors.

First, the “so-called blanket NSLs” were clearly based on the umbrella NSL concept created by the FBI (and improperly used in another FBI program). Thus, there was precedent within the FBI for creating NSLs, even though no proper preliminary investigation was justified. Second, that the top leadership of the FBI’s counterterrorism program executed eleven blanket NSLs demonstrates the veracity of one of Mr. Youssef’s key concerns. Specifically, since 2002 Mr. Youssef raised serious concerns about the failure of the FBI to require its managers to have expertise in counterterrorism. Mr. Youssef raised the concern that top managers responsible for protecting the United States from another terrorist attack had no background or experience in counterterrorism. The Director of the FBI publicly defended this position, and stated that his picks for top managers needed no expertise whatsoever in counterterrorism. One of the managers whose appointment the Director publicly defended (Mr. Gary Bald), admitted that he had no expertise in counterterrorism. Bald was the manager who requested the illegal search documented in the email chain set forth in [Attachment 6](#). Bald testified that expertise in counterterrorism was not as important as being “the strongest leader.” Reference Gary Bald deposition of 3-14-2005, p. 22, line 19.

The final FBI-OIG report must review the guidance provided by FBI OGC and why OGC never provided accurate advice about the use of “umbrella” or “control” files to justify the issuance of NSLs. The report should carefully review the training and expertise required by top FBI managers with the authority to sign NSLs. The highest levels of FBI Counterterrorism management executed the umbrella clean-up NSLs, including the current Executive Assistant Director for Counterterrorism and Counterintelligence (Art Cummings), the current Assistant Director for Counterterrorism (Michael Heimbach) and the former Assistant Director for Counterterrorism (Joe Billy). Did these high-ranking officials have the proper training in counterterrorism procedures necessary to competently do their jobs? The final report should also review the current FBI policy, which states that managers in counterterrorism do not need subject matter expertise in the areas that they manage. This policy must be repudiated in the strongest possible terms.

CONCLUSION

Since 2002 Mr. Youssef (an internationally recognized expert in operational counterterrorism and the FBI's highest ranking fluent Arabic speaker, *see Attachments 25 and 26*, the 1994 Director of Central Intelligence Award and Mr. Youssef's Legal Attaché Performance Review dated May 3, 2000) has forcefully expressed his concern that the FBI has not properly trained and prepared its managers in counterterrorism matters. Most of Mr. Youssef's public statements on this matter have expressed deep concerns over the failure of the FBI to require expertise in operational counterterrorism. These concerns clearly overlap with the failure of the FBI to mandate that managers also have full training and expertise in legal compliance matters. While one might expect the FBI's Office of General Counsel to provide needed guidance on legal boundaries, the events recounted here show that OGC has failed in this fundamental responsibility, and FBI managers must have their own training and experience to know how to conduct administrative counterterrorism procedures while still protecting the privacy rights of all Americans.⁶

The final report should carefully review Mr. Youssef's numerous concerns on these matters. Clearly, the report should find that one of the root causes of the NSL problem was the failure of the FBI to properly train its managers in counterterrorism procedures and the fact that the FBI, in response to concerns raised by Mr. Youssef, issued a public policy position that background and experience in counterterrorism was not a requirement for any promotions in the top FBI management ranks. The NSL experience painfully demonstrates how the lack of expertise can and will, in practice, have devastating consequences.

One can only hope that the FBI will reverse this policy, and that the failure of the FBI to require counterterrorism expertise among its managers will not result, directly or indirectly, in another devastating terrorist attack on U.S. soil. Likewise the FBI must review its policies concerning the recruitment and treatment of Arab Americans within the FBI. Like Mr. Youssef, who was born in Egypt, other Arab American citizens have knowledge and skills that, if properly utilized, would further strengthen America's ability to detect and prevent another serious terrorist attack. However, by publicly stating that critical skills needed in combating Middle Eastern based terrorism, such as fluency in Arabic or knowledge of Middle Eastern culture and history, are not required as part of the FBI's promotional process, seriously undermines the ability of the FBI to recruit and

⁶ Respecting Americans' privacy rights will also enhance the proper functioning of law enforcement. When law enforcement agencies overcollect information, they become less efficient at honing in on useful information for counterterrorism operations. By properly controlling the amount of information they collect, the dots to be connected become easier to see.

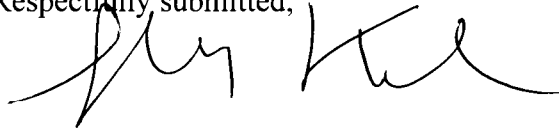
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promote potentially highly skilled agents with the expertise needed to protect America from another attack.

Thank you in advance for your attention to these matters. In accordance with the Privacy Act, I hereby request that a copy of this letter be attached to any "draft" of the FBI-OIG report related to Mr. Youssef and the NSL/exigent letter matter. I also request that the information in this letter be fully incorporated into the final report issued by the FBI-OIG.

As always, my client and my office remain at your disposal in order to provide additional information about the concerns raised in this letter and the proper corrective actions which should be taken to protect both the Constitutional rights and the security of all Americans.

Respectfully submitted,



Stephen M. Kohn
President, National Whistleblowers Center and
Attorney for Mr. Youssef



Richard R. Renner
Legal Director, National Whistleblowers Center and
Attorney for Mr. Youssef

cc:

Honorable Charles E. Grassley
United States Senator
Senate Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Honorable Patrick J. Leahy
Chairman
Senate Committee on the Judiciary
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Honorable Dianne Feinstein
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Select Committee on Intelligence
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Honorable Sheldon Whitehouse
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Honorable Silvestre Reyes
Chairman
Permanent Select Committee on Intelligence
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Attachment 1

Date: 1/6/2003

To: All Divisions
From: Counterterrorism CAS/CAU/ Room 4944
Contact: [REDACTED]

Attn: Assistant Directors
ADIC
SAC
Legat
Terrorism Supervisors

Approved by: Mefford Larry A
Harrington Thomas
Fedarcyk Michael R

Drafted by: [REDACTED]

Case Id: (U) 66F-HQ-A1397797 (Pending)
Title: Communications Analysis Unit; Counterterrorism Program Matters
Synopsis: (U) Review of the mission of the Communications Analysis Unit and a description of the services this unit provides.

(S) **Derived From: G-3**
Declassify On: X1

Details: (U) For the information of field offices, Legats, and FBIHQ divisions, the following provided to clarify the mission of the Communications Analysis Unit (CAU) of the Counterterrorism Division's Communications Analysis Section (CAS), as well as to describe this unit's distinct role in the FBI's participation in the global war on terror.

(U) The CAU facilitates the prevention and prosecution of international and domestic terrorism activities through the relevant collation, incisive analysis, and timely dissemination of high quality intelligence identified through telephone calling activity.

(S) This mission is accomplished through liaison the CAU has established with specific elements of the United States Intelligence Community (USIC) who are in the a unique position to provide potentially actionable intelligence to the FBI. This intelligence is reviewed by the CAU's team of supervisory Special Agents, Intelligence Operations Specialists, and Technical Information Specialists experienced in the investigation of international and domestic terrorism cases. These personnel are equipped with analytic tools capable of further dissecting the intelligence so that logical leads may be deduced from the information and forwarded to appropriate entities.

Redacted Paragraph

(S) An important facet of the work underway in the CAU in the achievements of a defined capability within the FBI to provide for predictive exploitation of certain types of international terrorist calling activity. This capability will preeminently allow the FBI to identify and intercept previously unknown hostile elements on US soil. The Counterterrorism Division has determined this capability is imperative to the continuing efforts by the FBI to protect our nation against future terrorist attacks.

(S) The operational support conducted by the CAU is accomplished through the use of a number of analytical tools, some of which are highly classified. Other tools are publicly or commercially available. The CAU strives to provide operational support at the lowest classification level possible - sometimes using multiple techniques to identify the same information at a lower classification level. It should be noted that some of the information available to the CAU is classified NOFORN which does not allow for dissemination for foreign intelligence agencies.

(S) The CAU also has the ability to conduct calling analysis on specific individual numbers of high interest to case agents. Analysis of these numbers utilizing specialized tools beyond the FBI Telephone Application can sometimes provide the case agent with previously unknown associates or terrorism activity regarding their subjects. (Redacted Section)

(S) Comprehensive calling analysis of hot numbers (those instruments and techniques being utilized by known terrorists) has the potential of generating an enormous amount of data in short order, much of which may not actually be related to the terrorism activity under investigation. For this reason, the most beneficial analysis seems to emerge with a summary of events predating the request, as well as a description of the intended investigative inquiry, can accompany the request for calling analysis.

Redacted Version

(U) Through liaison developed by the unit, in exigent circumstances the CAU is able to obtain specialized toll records information for international and domestic numbers which are linked to subjects of pending terrorism investigations. Appropriate legal authority (Grand Jury subpoena or NSL) must follow these requests.

(U) All field offices have access to and should utilize the Telephone Application on the FBINET in their investigations. The Telephone Application is the FBI's central repository for telephone subscriber data and should be checked prior to setting leads for telephone related records.

(U) Lead for requesting calling analysis may be set to Counterterrorism with the identifier AT CAU, DC in Electronic Communications. Requests for calling analysis in a criminal terrorism investigation should emanate from a classified sub file of that investigation since all of the USIC databases utilized by the CAU contains classified information. The reply EC prepared by the CAU will normally be classified at the SECRET level and will contain necessary caveats regarding the information contained therein. Special arrangements need to be made to pass information classified beyond the SECRET level.

Attachment 2

Precedence: ROUTINE

Date: 11/18/2003

To: Counterterrorism

Attn: Communications Analysis Unit
All CAU personnel

From: Counterterrorism

Communications Analysis Unit, Room 4944

Contact: UC Glenn T. Rogers, (202) 323-4254

Approved By: Rogers Glenn T

Drafted By: Robinson Donald E Jr:der

Case ID #: (U) 66F-HQ-A1397797 (Pending)

Title: (U) COMMUNICATIONS ANALYSIS UNIT (CAU)
COUNTERTERRORISM PROGRAM MATTERS

Synopsis: (S) This communication articulates and establishes administrative policy and procedures regarding the service of National Security Letters (NSLs) by CAU personnel.

(S) **Derived From :** G-3
Declassify On: X1

Enclosure(s): (S) Sample Electronic Communication (EC) documenting the NSL service and forwarding original evidence to field offices.

Details: (S/OC/NF) This communication articulates and establishes administrative procedures regarding the service of field generated National Security Letters (NSLs) by CAU personnel. These procedures will be effective upon the date of this communication. In addition CAU personnel should expeditiously forward all original evidence, as defined in this communication, to the appropriate field office. Currently, CAU personnel are involved in the service of NSLs under two distinct scenarios, [redacted] leads and field generated requests.

(S/OC/NF) **Field Generated Requests**

(S/OC/NF) In support of CAU's mission to provide timely and relevant analytical support to the field, a unique liaison relationship has been established with [redacted]. Under the auspices of a

[redacted] Typically, CAU analytical personnel will request [redacted] transactional records in response to specific field office requests for support. Under the authority of an Exigent Circumstances Letter signed by the appropriate CAU Supervisory Special Agent (SSA), [redacted] will provide transactional records in the form of data saved on a Compact Disc.

(S/OC/NF) All digital media provided by [redacted] must be considered original evidence. CAU SSA Team Leaders will be responsible for all coordination with field offices to ensure generation of an NSL requesting these records. Upon approval by the field office, this NSL will be forwarded to the appropriate CAU SSA Team Leader for personal service on the [redacted] representative. The CAU SSA Team Leader will then be responsible for ensuring the generation of an EC (see enclosure) which documents NSL service and transmits the original evidence to that field office. The CAU SSA Team Leader will also be responsible for ensuring that all [redacted] data is uploaded to Automated Case Support/Telephone Application (ACS/TA) under the field office substantive file number prior to transmittal to the field office. The EC to the field should explicitly state that this data has been upload to ACS/TA.

(S/OC/NF) These procedures are not limited to service of NSLs on [redacted]. As the CAU Telecommunications Industry Liaison program expands to include other carriers such as [redacted] and [redacted], the procedures detailed herein will apply to NSL service on these companies as well.

(S/OC/NF) **[redacted]**

(S/OC/NF) CAU will prepare initial NSLs requesting subscriber data only for all [redacted] leads under a pre-existing policy. This communication does not modify this policy. Under these circumstances, subscriber data will be forwarded to CAU by the field office serving the NSL. [redacted]

LEAD(s) :

Set Lead 1: (Info)

COUNTERTERRORISM

AT AT CAU, DC

(U) All CAU personnel are responsible for adherence to the policy and procedures articulated herein.

EE

Attachment 3

To: All Field Offices From: Counterterrorism
RE: (U) 66F-HQ-A1397797, 05/19/2006

Precedence: ROUTINE

Date: 05/19/2006

TO: All Field Offices

Counterterrorism

General Counsel

Attn: All SACs
All ASACs
All CDCs

Attn: ITOS I SC
All ITOS I UCS
ITOS II SC

Attn: Valerie Caproni
Julie F. Thomas

From: Counterterrorism CAS/CAU/ Room 4315
Contact: Bassem Youssef

Approved by: Hulon, Caproni, Lewis, Smith, Wall, Youssef

Case Id: (U) 66F-HQ-A1397797 (Pending)

Title: COMMUNICATIONS ANALYSIS UNIT (CAU)
COUNTERTERRORISM PROGRAM MATTERS

Synopsis: (S) This communication articulates and establishes administrative policy and procedures regarding the service of non [withheld] National Security Letters (NSL's) by CAU personnel.

Derived From: G-3
Declassify On: X1

Enclosure: (S) Sample standard NSL and attachment.

Details: (U) This communication establishes policy and procedures regarding the service of headquarters and field generated non [withheld] NSL's by CAU personnel. This communications will also clarify the requirements for exigent situations where CAU personnel will issue Exigent Circumstances Letters to telecommunication carriers prior to serving an NLS. These procedures will be effective upon the data of this communication.

(U) In support of CAU's mission to provide timely and relevant analytical support to FBI field offices and headquarters operational units (Redacted)

(U) [In order to ensure this valuable relationship with the telecommunication

industry remains viable], CAU has established the NSL policy documented in this Electronic Communications (EC).

(U) The enclosed attachments are designed to assist FBI field offices and headquarters personnel with accessing CAU telecommunications assets.

Exigent Circumstances

(U) (NF/OC) In crisis situations where there is a specific threat to the United States or its allies, both domestically or overseas, and loss of life and property are imminent, CAU will issue an exigent circumstances letter to [. . .] requesting transactional non content records that are subject to production under 18 USC 2709 pertaining to the target number (s) connected to the threat. CAU will then conduct the appropriate toll analysis and provide the results to the requesting office. The issuance of an NSL is expected forthwith from the field office or headquarters operational personnel. Upon receipt of the NSL, the original records will be sent to the requestor to serve as original evidence.

(u) (NF/OC) Additionally, CAU will issue an Exigent Circumstances letter for kidnapping or fugitive cases where there is grave danger to the victim or the public at large. CAU will then provide the necessary analysis to the requesting office. Again, the issuance of an NSL or subpoena is expected forthwith from the field office or headquarters operational personnel. Upon receipt of the NSL, the original records will be sent to the requestor to serve as original evidence.

Routine Counterterrorism and Counterintelligence Investigations

(u) (NF/OC) All routine NSL's for Counterterrorism or Counterintelligence cases must be sent through the normal office procedures to the appropriate telecommunication carrier corporate office, including (redacted) CAU does not have the inherent resources to effectively manage voluminous NSL requests of a routine nature.

(u) (NF/OC) However, there will be instances where CAU will work closely with an office on a specific case and recognize the need for instantaneous toll data. During these rare occurrences, CAU will recommend that the field office or headquarters entity write an NSL to one or all of the carriers for toll days.

Major Case Report

(u) (NF/OC) During a fast moving major case CAU offers valuable tactical intelligence to case agents and headquarters operational personnel by obtaining efficient and accurate calling data through the partner carriers. An NSL must be issued, by either field office or headquarters personnel, prior to receiving toll records in all non exigent circumstances during major investigations. When the NSL is received by CAU, all efforts will be made to expedite the request to minimize the delay in obtaining the records or analyzing the results.

(u) (NF/OC) All call records provided by CAU must be considered original evidence. CAU personnel will generate an EC which documents NSL service and transmits the

original evidence to the field responsible for uploading the toll records into the Automated Case Support/Telephone Application database.

(u) (NF/OC) The mission of CAU is to facilitate the prevention and prosecution of international and domestic terrorism activities through the relevant collation, incisive analysis, and timely dissemination of high quality intelligence identified through liaison the CAU has established with specific elements of the United States Intelligence Community (USIC) and telecommunication industry representatives who are in a unique position to provide potentially actionable intelligence to the FBI.

Lead (s)

Set Lead 1: (Info)

All receiving offices

(U) Please read and clear.

Attachment 4

YOUSSEF, BASSEM (CTD) (FBI)

From: YOUSSEF, BASSEM (CTD) (FBI)
Sent: Thursday, February 01, 2007 6:59 AM
To: BILLY, JOSEPH (CTD) (FBI)
Cc: FRAHM, CHARLES E (CTD) (FBI)
Subject: RE: Subpoenas for telephone number requests connected to DT investigations

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Thank you for the very kind and encouraging words. We will always try our best to serve and make a difference. God bless you in all you do.

Regards,

Bassem Youssef
Chief
Communications Analysis Unit
Communications Exploitation Section
CTD
(202)324-7187

-----Original Message-----

From: BILLY, JOSEPH (CTD) (FBI)
Sent: Wednesday, January 31, 2007 6:14 PM
To: YOUSSEF, BASSEM (CTD) (FBI)
Cc: FRAHM, CHARLES E (CTD) (FBI)
Subject: FW: Subpoenas for telephone number requests connected to DT investigations

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Bassem- thankyou for all your efforts to ensure CTD is totally compliant. I very much appreciate all you are doing.

Joe

Attachment 5

FD-728.1 (Rev. 06-01-2006)

Federal Bureau of Investigation
Performance Appraisal System — Special Agent and Support Personnel
Performance Appraisal Report — Cover Page

See Instructional Page of [] — Cover Page

1. Payroll Name of Employee Bassem Youssef		2. Social Security Number [REDACTED]
3. Position Title, Grade and Number Unit Chief GS-15		4. Office of Assignment and Cost Code Communications Analysis Unit / 1327
5. Type of Appraisal: A <input checked="" type="checkbox"/> Annual N <input type="checkbox"/> Interim Date: <u>12/29/2006</u> Date: _____		6. Summary Rating: <input type="checkbox"/> Unacceptable <input type="checkbox"/> Minimally Successful <input type="checkbox"/> Successful <input checked="" type="checkbox"/> Excellent <input type="checkbox"/> Outstanding

7. <u>[REDACTED]</u> Signature of Rating Official	<u>[REDACTED]</u> Name (Typed or Printed)	<u>12/28/06</u> Date
8. <u>[REDACTED]</u> Signature of Reviewing Official	<u>[REDACTED]</u> Name (Typed or Printed)	<u>1/7/07</u> Date

I am aware that a rating of Unacceptable will preclude me from consideration for promotion, transfer, and/or a within-grade increase and may be the basis for my reassignment, reduction in grade, or removal. My signature only indicates that I have reviewed this appraisal, not that I am necessarily in agreement with the information herein or that I am relinquishing my right to request reconsideration of it.

9. [Signature]
Signature of Employee

12/29/06
Date

10. Field/FBIHQ Division Use — Entered into BPMS	PRAU USE ONLY:
By: _____ (Initials)	Logged: _____
On: _____ (Date)	Reviewed: _____
Date of Plan: _____	Entered: _____
Plan Renewal Date: _____	Verified: _____

EMPLOYEE'S PERSONNEL FILE NUMBER: 067-0891648

**Federal Bureau of Investigation
Performance Appraisal System — Special Agent and Support Personnel
Performance Appraisal Report — Evaluation Page**

Payroll Name of Employee Bassem Youssef	2. Social Security Number
--	-------------------------------

Critical Element	Rating Level					Numeric Value
	Unacceptable	Minimally Successful (2)	Successful (3)	Excellent (4)	Outstanding (5)	
Investigating, Decision Making, and Analyzing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	5
Organizing, Planning, and Coordinating	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	4
Relating with Others and Providing Professional Service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	4
Acquiring, Applying, and Sharing Job Knowledge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	4
Maintaining High Professional Standards	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	5
Communicating Orally and in Writing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	5
Achieving Results	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	N/A
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Sum of Numeric Values: 27
 ÷
Number of Critical Elements: 6
 = 4.5

728.4 (06-01-2006)

Federal Bureau of Investigation
Performance Appraisal System — Special Agent and Support Personnel
Performance Appraisal Report — Overall Summary Rating Narrative Page

Payroll Name of Employee Bassem Youssef	2. Social Security Number XXXXXXXXXX
--	--

Overall Summary Rating Narrative:

Unit Chief (UC) Bassem Youssef has performed in an overall excellent manner. His decision making, oral communication and ability to maintain a high level of professionalism during extreme operational circumstances have been outstanding. UC Youssef is the senior UC in the Section and handles the Section's Front Office duties in the absence of the Section Chief and Assistant Section Chief. When called upon, he has handled these duties with a high level of responsiveness and professionalism.

Attachment 6

-----Original Message-----

From: KOPISTANSKY, PATRICE I. (OGC) (FBI)
Sent: Tuesday, February 08, 2005 9:41 AM
To: ROGERS, GLENN T. (CTD) (FBI)
Cc: BLUMENFELD, LAURA ROSS (OGC) (FBI); THOMPSON, SHAWN M. (OGC) (FBI); [REDACTED]. (CTD) (FBI)
Subject: FW: New Nsl
Importance: High

SECRET

RECORD [REDACTED]HQ-C[REDACTED]

Glenn, I have an NSL request from [REDACTED] that came to me in mid-December, and it was in connection with this NSL request that I found out that the information had already been received, and that led to all our meetings. And I never did issue this NSL. And it was problematic because I still had some questions as to the content of the EC and Mike never had a chance to answer my questions. (see below).

Further, since we have this issue as to what investigation we are tying these to, in this case, there is a file number [REDACTED]HQ-C[REDACTED]. I am not sure what file that is. And in the reference lines, it lists file number [REDACTED], and I don't know what that is. Moreover, under the administrative section, it says "reference is made to CAU Project #[REDACTED]." I'd like to know what that is, as well. Does it have something to do with [REDACTED] requests? Lastly, in an earlier version of this EC, Mike had simply referenced the [REDACTED] cable from which all this information comes, [REDACTED]. The later version of the EC, which is attached above, has more information, which I assume Mike took from the [REDACTED] cable. But I still have unanswered questions. That might be resolved if we saw the [REDACTED] cable.

So can you help here, or forward this to someone in your unit who can help.

pik

FYI - Rob - we still have not received the categories of terrorist threats that we can use to determine whether we should be opening broad PIs or doing control files, or whatever. So can you let us know when you might be able to

get that of us. Until then, I assume we can't do any NSLs where we don't have a PI or full otherwise. thanks!

-----Original Message-----

From: ██████████ (CTD) (FBI)
Sent: Wednesday, December 15, 2004 2:39 PM
To: KOPISTANSKY, PATRICE I. (OGC) (FBI)
Subject: RE: New Nsl
Importance: High

SECRET
RECORD [REDACTED]-HQ-C[REDACTED]

Partice,

Attached is the final version of this request.

Once again thanks

██████████
██████████
Communications Analysis Unit
FBIHQ - Room 4315
202-323-4202 (work)
[REDACTED] (SkyTel pager)
202-324-5178 (Non secure fax)
[REDACTED] (Secure fax)
[REDACTED]

-----Original Message-----

From: KOPISTANSKY, PATRICE I. (OGC) (FBI)
Sent: Wednesday, December 15, 2004 11:35 AM
To: ██████████, ██████████ (CTD) (FBI)
Subject: RE: New Nsl

SECRET
RECORD [REDACTED]-HQ-C[REDACTED]

I expect this will work, if there are some clarifications in the EC. Do we know that **[REDACTED]** is an extremist - is that information confirmed by the FBI or is it simply **[REDACTED]** info. Do we have an investigation on **[REDACTED]**? We need to say that the information is relevant to an authorized investigation, so what is that investigation? Is it the one in the reference line? Or is it the CAU Project number?

[REDACTED]

Also, we need a time frame on this request.

thanks. pik (Also, you spelled my name wrong in the EC)

-----Original Message-----

From: [REDACTED] (CTD) (FBI)
Sent: Wednesday, December 15, 2004 9:14 AM
To: KOPISTANSKY, PATRICE I. (OGC) (FBI)
Subject: RE: New Nsl

SECRET

RECORD [REDACTED]-HQ-C[REDACTED]

Patrice,

This is a revised edition. I was able to provide you with some more details. Let me know if this is good and I will upload it.

Mike

-----Original Message-----

From: KOPISTANSKY, PATRICE I. (OGC) (FBI)
Sent: Tuesday, December 14, 2004 3:53 PM
To: [REDACTED] (CTD) (FBI)
Subject: RE: New Nsl

SECRET

RECORD [REDACTED]-HQ-C[REDACTED]

Mike, I'm sorry but this is really not enough (and I've doublechecked with the unit chief here, as well, and she concurs). Can't you dummy down the cable? "FBI investigation has revealed" . . . or something like that. The EC has to be a record of the fact that the information we want is relevant to an authorized investigation. I don't have that here in the EC. I am sure that you know it is true and Gary Bald knows it's true but it needs to be reflected on a piece of paper. So please try to reword the cable so as to give me something to show that this information is relevant to an ongoing investigation. Can you incorporate the cable by reference, or is the classification too high? If you could incorporate by reference, then you wouldn't have to write

the details on the EC, and then if you could provide me with a copy of the cable, it would work. But if that's not doable, you need to summarize the cable in some fashion.

thanks. pik

-----Original Message-----

From: ██████████ ██████████ (CTD) (FBI)
Sent: Tuesday, December 14, 2004 3:12 PM
To: KOPISTANSKY, PATRICE I. (OGC) (FBI)
Subject: RE: New Nsl

SECRET
RECORD [REDACTED]-HQ-C[REDACTED]

Patrice,

Sorry for the short EC. The problem is I handle most of the emergencies that I receive come from upper mgmt. I don't always receive documentation or know all the facts related to the number which is a problem for me when I try to get the NSL. The cable will provide some insight. The EC I sent you was a draft and the NSL should be directed to **REDACTED]**. Because of the classification of the cable I am unable to put the information in the ec. Let me know what you think.

Thanks

██████████

-----Original Message-----

From: KOPISTANSKY, PATRICE I. (OGC) (FBI)
Sent: Tuesday, December 14, 2004 2:58 PM
To: ██████████ ██████████ (CTD) (FBI)
Subject: RE: New Nsl

SECRET
RECORD [REDACTED]-HQ-C[REDACTED]

I am not sure why you chose to do this EC in such a short-hand matter, as opposed to the one you sent me yesterday.. The EC has to specify why the numbers are relevant to an authorized investigation. Maybe I would

know if I read the cable but since I don't have the cable, I need you to tell me in the EC why you want the information. Also, I don't have the name of the carrier or the dates that you want the information from. All of this should be in the EC, as it was in your earlier EC.

thanks. pik

-----Original Message-----

From: [REDACTED], [REDACTED] (CTD) (FBI)
Sent: Tuesday, December 14, 2004 2:49 PM
To: KOPISTANSKY, PATRICE I. (OGC) (FBI)
Subject: New Nsl
Importance: High

SECRET

RECORD [REDACTED]-HQ-C[REDACTED]

Patrice,

The attached document was produced as a result of a phone call with EAD Gary Bald. Bald passed information regarding numbers related to a terrorist organization with ties to the US. Can you please draw up an NSL for the numbers.

Let me know if there are any problems.

I was also wondering how the other request was going.

Thanks

Happy Holidays

[REDACTED]
Communications Analysis Unit
FBIHQ - Room 4315
202-323-4202 (work)
[REDACTED] (SkyTel pager)
202-324-5178 (Non secure fax)
[REDACTED] (Secure fax)
[REDACTED]

DERIVED FROM: G-1 FBI Classification Guide G-1, dated 1/99,
Foreign Government Information
DECLASSIFICATION EXEMPTION 1
SECRET

Attachment 7



KOHN, KOHN & COLAPINTO, LLP

URGENT MATTER – DISCLOSURE OF VIOLATIONS OF LAW

September 23, 2008

Hon. Michael B. Mukasey
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

Re: FBI Violation of NSL Law (Supplement to September 16th Complaint)

Dear Judge Mukasey:

I am writing in further regard to my letter dated September 16, 2008. This letter is also transmitted in accordance with Executive Order 12731, as codified in 55 *Federal Register* 42547, 5 U.S.C. § 2303, 42 U.S.C. 2000e-3(a) and Public Law 109-115 (sections 818 and 820). Mr. Bassem Youssef (through counsel) hereby files a formal complaint for your direct and immediate consideration. Mr. Youssef is a Supervisory Special Agent and Unit Chief employed by the Federal Bureau of Investigation (“FBI”).

The documents and information relied upon in this complaint are not currently classified. My office was “cleared” to obtain access to this information pursuant to various laws. Some of the information contained in this letter was the subject of a non-disclosure agreement. This agreement explicitly permits my office to raise concerns about illegal conduct with various offices, including the Attorney General of the United States and the Congress of the United States.

Attached is an email chain dated December 14-15, 2004 between a former Communications Analysis Unit (“CAU”) supervisor (Michael Fowler), an Assistant General Counsel from the FBI’s Office of General Counsel (“OGC”), Patrice Kopistansky and one final email dated February 8, 2005 from Kopistansky to the former Unit Chief of the CAU (who at the time was the Assistant Section Chief, with supervisory responsibility over the new CAU Unit Chief), Mr. Glenn Rogers.

This email chain demonstrates that:

1. The Executive Assistant Director for the FBI’s Counterterrorism and Counterintelligence Divisions willfully ordered a search of telephone company records in violation of law;

2. The search was conducted in violation of law;
3. The violations were so extreme that over two months after the search the FBI still could not justify the issuance of a National Security Letter to cover-up the illegal search;
4. The CAU supervisor indicated in an email that similar searches had been conducted;
5. The Assistant General Counsel failed to make a referral to the IOB (“Intelligence Oversight Board), despite having direct knowledge that an illegal search had occurred;
6. The Assistant General Counsel proposed to solve this problem by creating generic “control files” or “preliminary investigations” (“PI”) with which to justify the issuance of an NSL in the absence of specific facts justifying a search. Such a process is highly illegal;
7. That FBI OGC and the top management above CAU were fully aware of these problems prior to Mr. Youssef’s involvement, yet failed to (a) order counterterrorism managers/CAU to comply with the law; (b) fully inform Mr. Youssef as to the scope of the problem, and; (c) initiate any proper corrective action.

The facts as set forth in the emails are as follows:

Email Dated December 14, 2004 (2:49 PM) from Fowler to Kopistansky: This email confirms that the search was performed at the request of EAD Gary Bald, based on a phone call. Bald passed on phone numbers he wanted searched, but the email does not indicate that he passed on any information regarding the existence of an investigation for which the search could be authorized. In this email Fowler requested that OGC draft the required NSL.

Email Dated December 14, 2004 (2:58 PM) from Kopistansky to Fowler: This email confirms that the Bald request was not based on information related to an ongoing FBI investigation. Kopistansky rightly noted that she could not issue the NSL because the paper-work justifying the NSL (i.e. the “EC”) did not indicate that the search was conducted as part of an “authorized investigation.” Without such an investigation a legal search could not have been conducted.

Furthermore, the information provided by Fowler should have alerted Kopistansky to the fact that there was no ongoing FBI investigation. The EC referenced a “cable.” This refers to a cable generated by another intelligence agency. Thus, on its face the search was not conducted pursuant to an FBI investigation. Had Bald forwarded the cable to the counterterrorism operational units, and had these units been able to show a nexus between that cable and any legitimate ongoing or potential preliminary investigation, an

NSL could have been legally issued. But Bald did not do this, and there is nothing in the record which demonstrates that the search was legally justifiable.

Email Dated December 14, 2004 (3:12 PM) from Fowler to Kopistansky: The problems with the Bald search are further confirmed in this email. Not only does Mr. Fowler confirm that he has asked or requested telephone company searches without having all the needed information, he states that this is a problem which “upper” management has caused in other cases. In other words, Bald (the EAD) and presumably other members of the FBI’s upper management, have personally ordered illegal searches in the past. Mr. Fowler’s words are unmistakable: *“Sorry for the short EC. The problem is I handle most of the emergencies that I receive come from upper mgmt. I don’t always receive documentation or know all the facts related to the number which is a problem for me when I try to get the NSL.”* As reflected in the email, obtaining the NSL is an afterthought. The standard operating procedure in the Unit at that time was to conduct the search of records related to hundreds of telephone numbers without any legal instrument.

Email Dated December 14, 2004 (3:53 PM) from Kopistansky to Fowler: In this email Kopistansky again confirms that she cannot issue an NSL unless there is an ongoing investigation (or at least a preliminary investigation). The draft EC by Fowler still does not contain information confirming the existence of an investigation. Kopistansky attempts to provide legal cover for this failure by stating “I am sure that you know it is true [i.e. that there was an ongoing investigation] and Gary Bald knows it’s true but it needs to be reflected on a piece of paper.”

The problem is that there was no investigation. Again, the Bald request was based on a “cable,” not on an investigation. The cable came from an entity outside the FBI, and thus could not reflect the existence of an investigation.

Email Dated December 15, 2004 (9:14 AM) from Fowler to Kopistansky: Fowler redrafts the EC, and again asks OGC to issue the NSL.

Email Dated December 15, 2004 (11:35 AM) from Kopistansky to Fowler: Kopistansky again asks for reference to an “authorized investigation.” Her question is simply: *“We need to say that the information is relevant to an authorized investigation, what is that investigation?”*

Email Dated February 8, 2005 (9:41 AM) from Kopistansky to Rogers: In this email Kopistansky confirms that the NSL was never issued. Furthermore she confirms that that search was conducted without an NSL. Thus, no later than the date of this email Kopistansky knew that an illegal search had been conducted at the request of an executive manager, that this was not an isolated incident and that after two months of attempting to justify an NSL, the FBI still could not find any legal justification for Bald’s order that phone records be searched.

After informing Rogers, the Assistant Section Chief of the Communications Exploitation Section (i.e. the manager with authority over the Unit Chief of CAU), of the problem with the Bald search, the email confirms that OGC wanted Rogers to come up with information which would justify the FBI's use of bogus investigatory/control files to justify future Bald-type requests. She informed Rogers that OGC could not issue NSLs for the searches ordered by upper management (or regularly requested by the operational units and implemented by CAU) until Rogers worked with OGC and developed "broad PIs" or "control files" to justify the searches.

This email chain sets the background for the various emails discussed in my letter dated September 16, 2008, in which OGC's attempt to justify warrantless searches through the improper and illegal use of broad generic preliminary investigations and/or control files was further discussed (and confirmed).

The attached email chain documents serious violations of civil liberties, constitutional protections and law. It also documents a serious threat to national security and equal protection under the law.

In regard to national security, Mr. Bald obtained information from a cable received from another intelligence agency. Given his position, he should have had the expertise to understand that information. Apparently he did not. If he had understood the information, should have had the expertise to initiate a legal investigation (or preliminary investigation). Furthermore, given his years of work within the FBI, he should have known the basic legal and administrative requirements to obtain records from third parties, such as a telephone company. Most troubling, during a deposition in 2005, Mr. Bald conceded that he had no expertise, experience or background in counterterrorism operations, let alone Middle Eastern counterterrorism. Furthermore, the Director of the FBI, who personally appointed Bald to his position, testified under oath that Bald was qualified to lead the charge against *al-Qaeda* because he had supervised the "sniper" shooting case in Washington, D.C. (a domestic criminal investigation). Director Mueller testified that Bald did not need any experience or expertise in counterterrorism matters, which would have included the use of NSLs under the Patriot Act and how to interpret cables obtained from other intelligence agencies.

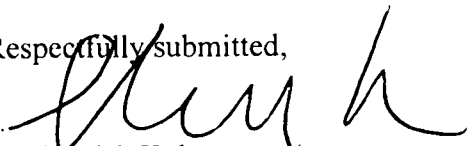
Without such expertise Bald was unable to fully decipher the information he had received and, thus, did not have the ability to understand how to fit this information into an ongoing FBI investigation, or to use it to justify a proper preliminary investigation. Instead, rather than following the law, he simply ordered a search. Had the top managers in the Counterterrorism Division had the necessary background and experience, they would have been in a position to guard against such unjustified and illegal searches, or would at very least have been in a position to tie any such search to a valid investigation (or preliminary investigation). Instead these managers were (and still are) shooting blind.

In regard to equal protection under the law, the FBI's promotional policies within its counterterrorism program actually encourage and enable the very violations documented in this email chain. The FBI does not require that any of its counterterrorism

managers have background, experience or knowledge of operational counterterrorism, Arabic, or Middle Eastern culture/history. By failing to require expertise in these areas, the FBI has created a management structure which not only undermines civil liberties (not to mention its anti-terrorism), but also systemically discriminates against qualified Arab Americans. For example, Arab Americans like Mr. Youssef possess many of the skills desperately needed within the FBI's counterterrorism management structure. Mr. Youssef has *years* of Middle Eastern counterterrorism operational experience. He served the FBI for four years in Saudi Arabia, and has conducted successful operations and/or other activities in Egypt, Pakistan, UAE, Yemen, Kuwait, Lebanon, France, Belgium, Italy, Morocco and Israel. He is fluent in Arabic. Had someone like Mr. Youssef received the cable, instead of Mr. Bald, that person would have a keen understanding of the threat at hand to determine what immediate investigative steps would be necessary to determine whether or not an NSL was needed.

Thank you in advance for your attention to these matters and your concern that fundamental rights enshrined in our Constitution are protected. I trust that you will ensure that the allegations set forth in this complaint are fully investigated by a truly independent organization.

Respectfully submitted,



Stephen M. Kohn
Attorney for Mr. Youssef

CC:

Hon. Charles E. Grassley
United States Senator
Senate Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Hon. John Conyers, Jr.
Chairman
House Committee on the Judiciary

Hon. Robert S. Scott
Chairman
House Subcommittee on Crime, Terrorism and Homeland Security
Committee on the Judiciary

Attachment 8

EX 12

From: PATRICE KOPISTANSKY

Sent: March 11, 2005 3:42 PM

To: MARION BOWMAN; JULIE THOMAS

CC: [REDACTED]

Subject: CAU Backlog of NSLs

About two months ago we discussed the fact that CAU gets emergency requests to get telephone information on phone numbers, gets the information, and then has to do an NSL to justify getting the information. As it is now, it sends a lead to either the field or ITOS I or II to do the NSLs, but this rarely happens. So we agreed to provide Will and Laura and Shawn, who would respond immediately to the ECs from CAU and get NSLs out ASAP.

The issue arose as to what file we issue the NSLs pursuant to. As you may remember, we agreed that we would look at a proposed solution whereby we open very broad PIs that could be ongoing and would encompass future threats. CAU and I came up with a list of six PIs that we could open that would encompass most, if not all, of the emergency requests that came in.

They were:

Threats against Transportation Facilities (e.g. airplanes, trains)

Threats against Infrastructure (e.g. bridges, roads, water treatment plants)

Threats against Public Facilities (e.g. mass ?, sports stadiums)

Threats against individuals (e.g. plans to assassinate public figures)

Threats against Special events (e.g. World Bank event, Superbowl, G-8 Summit)

Obviously, there is overlap, but I don't think that matters.

Assuming it is okay to open PIs that would be phrased in some way that the PI would encompass [deleted] ... [track language or NSIG] or words to that effect, how would you suggest we go about this? Apparently, CAU can't open cases because they are not operational. We would probably need to get ITOS I and II to open such cases. But we need some leverage to get them to do it, maybe in the form of OGC guidance that instructs that this is the way we've determined we can handle the emergency requests that CAU has been getting.

Any thoughts?

Attachment 9

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

-----Original Message-----

From: [REDACTED] (OGC) (FBI)
Sent: Monday, March 07, 2005 11:18 AM
To: YOUSSEF, BASSEM (CTD) (FBI); [REDACTED] (CTD) (FBI)
Cc: S [REDACTED]. (CTD) (FBI); [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI)
Subject: CAU telephone NSLs

At the CDC conference, I informed the CDCs that they should encourage people to route NSLs for telephone numbers through your unit. But when I went on your website, the link to "What CAU can do for You," the powerpoint suggests that you don't want all NSLs to go to you but just ones tied to significant events or that are involved in several calls of investigative targets, etc. Is that true, or do you want all phone NSLs to go to you?

Also, the powerpoint seems to indicate that you get third generation calls, in addition to second generation calls. If you do, I am not so sure that we can justify that with an NSL on the original call and argue that a third generation call is relevant to that authorized investigation. I have talked to several attorneys here and I think we agree that we can make an argument that second generation calls are relevant, but beyond that, it seems that you should have some info about the second generation call that makes you think the third generation call is of some importance.

Please give me your thoughts.

thanks. pik

p.s. Rob, OGC stilll hasn't heard from you about the of possible PIs to which we can tie the emergency requests to. So I assume your backlog is still backlogged and getting worse. We can't help until we get some information about getting generic PIs opened to which we can tie these NSLs. thanks

Attachment 10

From: PATRICE KOPISTANSKY
Sent: April 5, 2005 8:59 AM
To: MARION BOWMAN; JULIE THOMAS; LIZANNE KELLEY
Cc: LAURA BLUMENFELD; ROSS; SHAWN THOMPSON; WILMON HEALY LEE, JR.
Subject: CAU backlog of NSLs

I sent this email a while ago to deal with the situation of CAU issuing NSLs in emergency situations. I don't believe I've heard any feedback. And the issue is, assuming that it is a good idea, how do we implement it and force the operational units to open these PIs – have OGC guidance possibly, to tell the ops units that they have to do this in order to be getting this information legally?

From: Marion Bowman

Sent: April 5, 2005 9:04 AM

To: PATRICE KOPISTANSKY; JULIE THOMAS; LIZANNE KELLEY; LAURA
BLUMENFELD; SHAWN THOMPSON; WILMON HEALY LEE, JR.

Subject: CAU backlog of NSLs

The best thing to do is set up a meeting with John Lewis - CAU falls under him. I believe I talked with him about this when it first arose.

From: PATRICE KOPISTANSKY
Sent: April 5, 2005 9:09 AM
To: MARION BOWMAN
Cc: LAURA BLUMENFELD; SHAWN THOMPSON; WILMON HEALEY LEE, JR., JULIE THOMAS, LIZANNE KELLEY
Subject: CAU backlog of NSLs

I have had a meeting with the head of CAU, Bassem Youssef, and he is comfortable with this arrangement. I'll contact him to make sure Lewis is on board, but the issue is legally, whether this is okay, and whether we can use our influence to help get it done, i.e. let the ops people know that they need to open up these PIs. To date, when asked to do NSLs, the ops folks, have not been good about it. So Bassem wanted to know if there was something we could do to force their hand as far as opening up the necessary PIs.

From: JULIE THOMAS
Sent: Tuesday April 5, 2005 11:57 AM
To: MARION BOWMAN
Cc: PATRICE KOPISTANSKY
Subject: CAU backlog of NSLs

Patrice and Spike,

Schedule such a meeting after inspection if you still see a problem; however, I have been signing a tremendous amount of these under our new procedure.

From: PATRICE KOPISTANSKY
Sent: Tuesday, April 5, 2005 12:01 PM
To: JULIE THOMAS
Cc: MARION BOWMAN
Subject: Re: CAU backlog of NSLs

I don't quite understand what new procedure you mean. I didn't think we'd implemented one, inasmuch as CAU, to my knowledge, still doesn't have working PIs under which to put these emergency requests for info so that Laura and Shawn can approve them here.

From: JULIE THOMAS
Sent: Tuesday April 5, 2005 12:09 PM
To: PATRICE KOPISTANSKY
Subject: Re: CAU backlog of NSLs

Patrice, maybe I'm thinking of another unit, but I clearly remember teaching Laura B and a paralegal at HQ to help out with this delay in NSL processing. But bottom line, I have to place this on the back burner for this week.

Julie

From: PATRICE KOPISTANSKY
Sent: Tuesday April 5, 2005 12:12 PM
To: JULIE THOMAS
Subject: Re: CAU Backlog of NSLs

No problem. We can deal with this later. But - FYI - you are thinking of the same project. Except Laura and Will can't do anything until CAU and OGC come up with a system for having PIs on the books to which we can tie emergency requests for information via NSLs. Until we do so, Laura and Will will not be getting NSLs to draft/approve.

Attachment 11

fyi

-----Original Message-----

From: KOPISTANSKY, PATRICE I. (OGC) (FBI)

Sent: Wednesday, January 26, 2005 4:54 PM

To: ROGERS, GLENN T. (CTD) (FBI)

Cc: BOWMAN, MARION E. (OGC) (FBI); THOMAS, JULIE F. (OGC) (FBI); THOMPSON, SHAWN M. (CTD) (FBI); BLUMENFELD, LAURA ROSS (OGC) (FBI); [REDACTED] (OGC) (FBI)

Subject: Creating necessary files/investigations to which NSL can be tied

Glenn, we've toyed around with a number of ideas as to how to make this work, i.e., how to establish files or investigations by which we can obtain an NSL.

The easiest solution from a legal point of view is to open a PI everytime you get a request. It is more than likely that you would have enough information to meet the standard for a PI, which is very low ("information or an allegation indicating the existence of a circumstance. . ." and circumstance is defined, in relevant part, to include "a crime involved in or related to a threat to the national security [that] has or may have occurred, is or may be occurring, or will or may occur."

However, assuming that such an approach would be cumbersome, option two is to set up either control files or a more generic PI for each type of threat that you receive. In other words, if we could group threats by target (infrastructure, airports, nuclear facilities, etc.) and/or by weapons (bombs, missiles, etc.), then we could establish a control file much like [redacted] and tie the NSL to the particular control file that the threat fits into. Or we could open up a set of PIs that are more encompassing than just one particular threat. A PI could be opened for an investigation of, for instance, "all threats to airports that may be occurring or will or may occur." (tracking the language for opening a PI).

In order to decide how best to set up a system in advance (to avoid having to open a PI each time), we need some sort of listing from you as to the broad categories of threats that you receive. If you can come up with such a listing, either by target or type of weapon, or whatever criteria you deem best covers the threats that you get, then we will work with that listing and determine how to put it into effect so as to be able to tie an NSL to it.

If you have any thoughts on this approach, please let me know. If you are okay with it, then please send me a listing of the categories of files/investigations that you would suggest cover the threats you receive.

thanks. pik

Attachment 12

From: PATRICE KOPISTANSKY
Sent: Tuesday April 12, 2005 4:43 PM
To: JULIE THOMAS
Cc: [REDACTED]
Subject: FWD CAU backlog of NSLs

Lizanne suggested I re-send this to you, so yell at her, please, if you think I'm badgering you. Just so you know, we still have this problem with CAU and their backlog of NSLs, which cannot be relieved until generic PIs are opened. CAU would like us to put something out to pressure ITOS I to open these up. If you give me the go ahead, I will draft a very short EC explaining the solution and saying that it is legally necessary that we open these suggested generic PIs so that we can more efficiently (not to mention legally) continue to obtain emergency telephone information. (CAU has found in the past that its request of ITOS I to issue NSLs has gone unaddressed, so that is why they think that if there is any legal underpinning that can be found, it would force ITOS I to open those cases). I also have been told by other attorneys here that some field offices are having the same problem with respect to getting information in emergency situations, and to the extent we come out with guidance that legitimizes broad generic PIs to cover emergency situations, but also sets some bounds so this would not be abused, this apparently could be of use throughout the FBI.

From: JULIE THOMAS
Sent: Tuesday April 12, 2005 5:02 PM
To: : PATRICE KOPISTANSKY
Subject: RE: CAU backlog of NSLs

I will sign the EC.
Julie

From: PATRICE KOPISTANSKY
Sent: Tuesday April 12, 2005 5:03 PM
To: JULIE THOMAS
Subject: Re: CAU backlog of NSLs

Okay, then I'll draft it.

(Attached to this email string are all the emails from ex. 12. Except email from PIK to BOWMAN Tue. 4/5/05 @9:09 AM.)

Attachment 13

From: KOPISTANSKY, PATRICE I. (OGC) (FBI)
Sent: Friday, May 27, 2005 11:48 AM
To: YOUSSEF, BASSEM (CTD) (FBI)
Cc: [REDACTED] (CTD) (FBI)
Subject: Creation of umbrella files to cover emergency NSLs

Bassem, we have discussed this issue with ITOS I and II since they are the ones who would be creating the umbrella files that you would be using as the basis for your emergency NSLs. A question has arisen in terms of how you are able to fit threats into categories, particularly distinguishing between foreign and domestic threats, based on the limited information you have. For instance, if we see someone taking a picture of a bridge, and the person fits the stereotype of a domestic terrorist (e.g. young, male, Caucasian, maybe a crewcut - you get the point) and you have some piece of information that requires telephone info, would you fit that NSL into the ITOS I./II created umbrella investigation of threats to infrastructure on behalf of a foreign power even though at that point there is no suggestion that the target is affiliated with a foreign power and in fact the outward stereotypical signs are that the threat to national security is domestic. Or are there ever situations, now, where the information you have is so limited that you can't begin to guess whether the threat is foreign or a domestic. I assume, since all your information gathering is through NSLs, and not criminal mechanism, that even in those cases, you are using NSLs and tying them to some national security investigation?

thanks. pik

Attachment 14

---Original Message---

From: KOPISTANSKY, PATRICE I. (OGC) (FBI)

Sent: Thursday, September 22, 2005 2:12 PM

To: YOUSSEF, BASSEM (CTD) (FBI); [REDACTED] (CTD) (FBI); [REDACTED] (CTD) (FBI)

Cc: [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI)

Subject: NSL Project

We would like to set up a meeting on Monday, September 26 at 12:15 p.m. at LX-1 to discuss the issue of assisting CAU in its efforts to obtain NSLs to validate the gathering of information obtained in emergency situations. OGC has suggested the opening of umbrella- type preliminary investigations which would cover most, if not all, of the emergency situations brought to CAU for the purpose of obtaining telephone information. To do so, we need the assistance of ITOS I and ITOS II.

Bassim, I would need the representation of CAU obviously so if you could not make it, maybe you could have someone else from CAU attend.

If this time doesn't work, can you please suggest alternative dates?

Thanks. Patrice Kopistansky OGC/NSLB

Attachment 15

Ex 22

From: PATRICE KOPISTANSKY
Sent: September 23, 2005 8:43 AM
To: LAURA BLUMENFELD; SHAWN THOMPSON

We are having a meeting out here at LX 1 on the long - delayed project for CAU about creating umbrella PIs so that emergency requests for information that CAU receives and obtains by emergency letters can be followed up with NSLs with a quick turnaround time. But the issue had been that we did not have PIs to attach them to, so we thought we'd create some...

You are welcome to attend the meeting, although you don't have to...

Attachment 16

From: KOPISTANSKY, PATRICE I. (OGC) (FBI)
Sent: Friday, October 21, 2005 10:38 AM
To: YOUSSEF, BASSEM (CTD) (FBI)
Cc: ████████████████████ (OGC) (FBI)
Subject: NSLs

Bassem - I am actually sitting down to write the EC that you need to set forth the proper procedures that are needed in responding to the NSL requests that you get and in actually getting the NSLs issued. I had sent you prior drafts of the EC as I envisioned it but that was at a time when I think the request to us was phrased quite differently than how it turned out at the meeting we had on September 26. At the time I originally drafted the memo, I was under the impression that you did a lot of emergency situations so that you needed ITOS I and II to create some umbrella files under which we could issue NSLs. Therefore, we had decided that we'd suggest the creation of umbrella files for WMD, infrastructure, public structures, etc.

However, at the meeting on September 26, it seemed that your main concern was getting ITOS I to issue NSLs under existing files. You said that the emergency requests were few and far between, and that you were intending to request more information at the time that CAU was asked to provide information. If you got sufficient information, you did not believe that it would be difficult to find an investigation to which to relate the request. Thus, there no longer seemed to be a need to create umbrella files, as we had previously discussed.

In the interim, I believe that Spike Bowman has spoken to higher ups about this matter. I am hoping it has gotten better and that you are receiving the information you need to be able to meet the standard for NSLs, namely relevance to an authorized investigation.

At this point, in order to make sure this EC from OGC serves your purpose, I'd like to hear from you as to exactly what you'd like us to be instructing. This EC is probably more operational than legal, as we agreed earlier, because you thought you needed the weight of OGC to come down on ITOS I to assure that they'd issue these NSLs (or open PIS, as was the previous idea). So operationally, please tell me how you perceive this EC to assist you and what instructions you would like OGC to give to ITOS I and

ITOS II (and maybe the field, as well) with respect to the assistance they can give you in this regard.

I don't know if we still need this EC to address emergency situations in which we do NOT have an investigation to which to tie the request to and thus need some sort of umbrella file. If you think we do, let me know.

Attachment 17

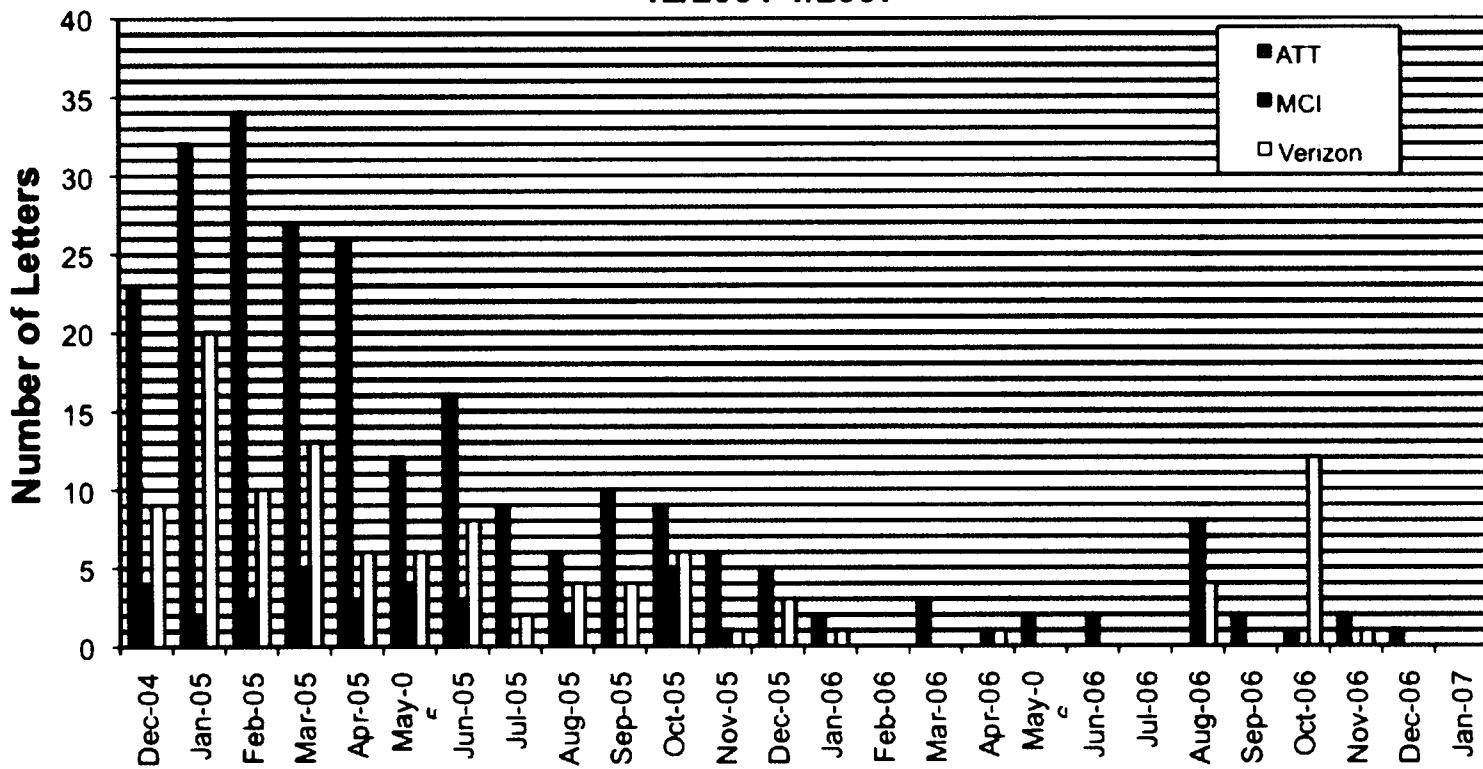
Email

From: Youssef
Date: March 19, 2007 12:12 PM
To: Caproni, Wall, Kopitansky, Ortiz
Cc: Julie, Frahm, Hess
Subject: Request for information: Exigent Letters
* * *

The inspection team was advised of the spring 2005 audit wherein CAU obtained a list of the outstanding NSL's from (redacted). The inspection asked what CAU is doing at the present time to remedy this situation and CAU advised that exigent letters are not (now) being utilized by CAU and that everyone in CAU has been advised that under normal circumstances (non exigent) and NSL must be provided by the requesting entity prior to obtaining any telephone records from the (redacted) CAU has not advised the inspection team that CAU has been retaining copies of the exigent letters.

Attachment 18

**Exhibit 10: Exigent Letter Use
12/2004-1/2007**



Attachment 19

-----Original Message-----

From: KOPISTANSKY, PATRICE I. (OGC) (FBI)

Sent: Tuesday, April 26, 2005 9:57 AM

To: YOUSSEF, BASSEM (CTD) (FBI)

Subject: Emergency NSLs

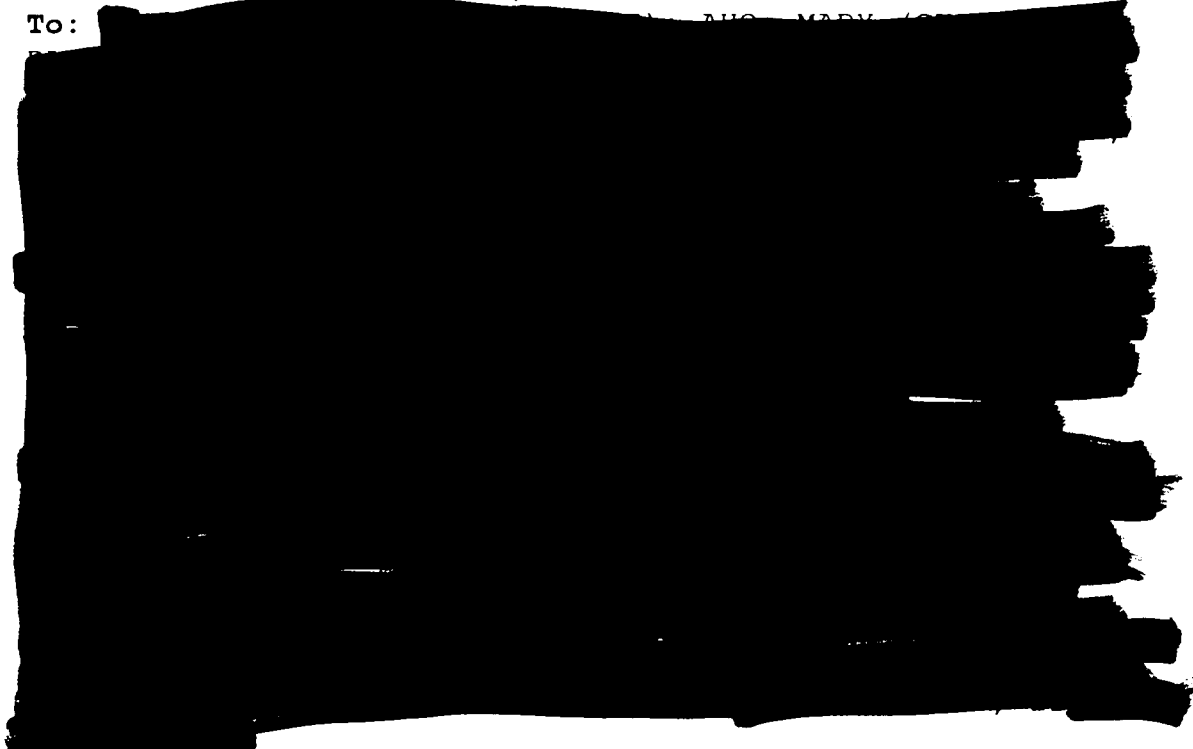
I need to clarify something with your unit. I gather from talking to various units that they are coming to CAU to get the phone company reps to give them information. I also understand that some of these are being done as emergencies when they aren't necessarily emergencies, that, on occasion, CAU is presuming that someone who comes to them has an emergency. I think we need to revisit this. As you know, we are willing to allow these exigent requests when there really are exigent circumstances. But please do not assume that all people who come to you are in an emergency situation. So please make sure the people in your unit are instructed to ask for an NSL, and only if it is clear to you that the requestor cannot await an NSL (and remember, we can do NSLs quickly - you or the requester can get a request to NSL, to Will or Laura, and we will get it done quickly. You can email me, as well. I will do whatever it takes to get NSLs done in a day or two) -- should they be done as emergencies based on your exigent letter.

I know the phone company reps are trying to be helpful, so they apparently are taking minimal process in order to assist us. We have to make sure we are not taking advantage of this system, and that we are following the letter of the law without jeopardizing national security.

Thanks. patrice k.

Attachment 20

From: YOUSSEF, BASSEM (CTD) (FBI)
Sent: Wednesday, April 27, 2005 8:23 AM
To: [REDACTED]



Subject: FW: Emergency NSLs

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Hello all,

Please review the OGC E-mail I'm forwarding to you. We all need to differentiate between what is an exigent request and what is not. If you have any questions please come see me and we'll discuss further. Thanks for doing great work.

Bassem

Bassem Youssef
CAU
4-7187
HQ Rm 4315

Attachment 21

From: KOPISTANSKY, PATRICE I. (OGC) (FBI)
Sent: Friday, May 26, 2006 8:46 AM
To: ROBLETO, JOSE A. (CTD) (FBI)
Cc: YOUSSEF, BASSEM (CTD)(FBI); MIRANDA, VERONICA I. (OGC)
(FBI); MOYER, SALLY ANNE (OGC) (FBI); SANDERS, RICHARD J.
(CTD) (FBI)
Subject: RE: EC

Here are the revised exigent circumstances letters for [withheld] and [withheld]. Please start using PRONTO. pik

Attachment 22

From: BASSEM YOUSSEF
Sent: October 27, 2005 11:13AM
To: Martin Robleto
Subject: Thanks Gary

Hello team leader,

Please review the attached spreadsheet and lets clear our outstanding NSL requests. I'd like each of you to send 'remind me' emails to those who set the lead to us to query our telecom assets.

Once that's done, please send me a status email listing all the outstanding NSLs for your team and whether you sent them an EC or an Email.
This is a priority matter.
Thanks.

Attachment 23

Email

From: Allen, Randall

Sent: 11/14/06 8:50 AM

To: Kopistansky, Patrice I

Cc: Youssef

Subject : RE; OIG audit re usage of NSLs – re CAU situation

* * *

Patrice,

We had completed a large group of telephone numbers related to (withheld) instead of having NSLs created for all the numbers individually. We combined them into one NSL for each carrier, (withheld) and (withheld) and presented them to Mr. Billy. It was an effort to consolidate what otherwise would have been a disparate, critically time consuming and redundant effort. I created the NSL letters and attached the relevant numbers thereto. The NSL was forwarded to the respective carriers who had provided us timely data that was needed during the “heat of the battle” as the case was breaking. This cut down the operational input, data return and analytical return of information to ITOS and the filed by weeks or longer if we had tried to do each of the numbers with an individual NSL. We subsequently did likewise during (withheld) which involved hundreds of telephone numbers again related to a large case. Once each Operation begins to slow, usually after the first two weeks to a month we revert to the individual NSL(s). To gain an important perspective of the genesis for this solution one has to appreciate that ITOS and our intelligence partners are acting under the umbrella that terrorist are in the U.S. and are imminently planning operations. The NSL(s) discussed were proposed to SC Hiembach, UC Youseff and signed off by Mr. Billy and Mr. Cummings.

SSA Randy Allen
CAU LX-1 1S-425

Attachment 24

Email

From: Kopistansky, Patrice, I

Sent: 11/7/06 9:03 AM

To: Caproni, Valerie E. (OGC) (FBI)

Subject: FW: OIG audit re: usage of NSLs – re CAU situation

* * *

Per the email below from Youssef, with regard to the backlog, they had Joe Billy sign a blanket NSL. I don't know if anyone in NSLB reviewed this. I know that I did not, nor did I know about it until this email below. I had just had assurances that the backlog no longer existed.

I presume Bassem told OIG about it so I thought you ought to know about it. Pik

Email

From: Caproni, Valerie E

Sent: 11/7/06 10:56 AM

To: Billy, Joseph (CTD) (FBI)

Subject: FW: OIG audit re usage of NSLs – re CAU situation

* * *

Joe,

Do you have any recollection of signing a “blanket” NSL? What does that mean? Did anyone in OGC OK that as a way to resolve this issue?

VC

....

Email

From: Billy, Joseph

Sent: 11/7/06 7:35 PM

To: Caproni, Valerie E

Subject: Re: OIG audit re usage of NSLs – re CAU situation

* * *

Valerie – I have no recollection of signing anything blanket. NSLs are individual as far as I always knew.

Joe

Attachment 25

ORIGINAL ~~SECRET~~

RECOMMENDATION FOR INTELLIGENCE COMMUNITY AWARD

(Submit 15 copies with description of performance or service warranting award, bio profile, and unclassified citation)

1. NAME OF PERSON RECOMMENDED (Last/First/Middle) YOUSSEF, BASSEM		2. SOCIAL SECURITY NO.	3. GRADE/RANK GS-13
4. YOB 1958	5. PARENT ORGANIZATION FBI	6. TITLE/PLACE OF ASSIGNMENT DURING AWARD PERIOD SPECIAL AGENT LOS ANGELES	
7. RECOMMENDED AWARD <i>see page 2 - NIMOR</i> NATIONAL INTELLIGENCE DISTINGUISHED SERVICE MEDAL SEE BLOCK #19		8. INCLUSIVE DATES FOR WHICH RECOMMENDED JANUARY 1993 - APRIL 1994	
9. IF RETIRING, DATE OF RETIREMENT N/A	10. HOME ADDRESS P.O. BOX 241871 LOS ANGELES, 90024		11. TELEPHONE OFFICE: 310-477-656 HOME: 818-545-903

12. HAS NOMINEE RECEIVED OR BEEN RECOMMENDED FOR ANOTHER AWARD FOR THIS SERVICE OR ACT?
 Yes: If so, indicate award **OST**
 No:

13. TITLE AND SIGNATURE OF INDIVIDUAL MAKING RECOMMENDATION COREY W. HART, SUPERVISORY SPECIAL AGENT, LAFO <i>SSA Corey W. Hart</i> EDWARD J. CURRAN, ASAC, Edward Curran	14. DATE 4/12/94 5/14/94
--	--

15. TITLE AND SIGNATURE OF HEAD OF INTELLIGENCE ORGANIZATION MAKING RECOMMENDATION ROBERT M. BRYANT, ASSISTANT DIRECTOR, NATIONAL SECURITY DIVISION <i>Robert M. Bryant</i>	16. DATE 10/14/94
--	-----------------------------

17. TITLE AND SIGNATURE OF HEAD OF NOMINEE'S PARENT ORGANIZATION (in other than recommendation) <i>James T. ...</i>	18. DATE 10/14/94
--	-----------------------------

19. REPORT OF INTELLIGENCE COMMUNITY AWARDS REVIEW PANEL
 The Intelligence Community Awards Review Panel, having considered the foregoing recommendation of _____ **08 NOV 1994**

recommends approval
 does not recommend approval
 recommends award of **National Intelligence Certificate of Distinction**

THE RECOMMENDATION IN SECTION 19 IS APPROVED:

William D. ...
 DIRECTOR OF CENTRAL INTELLIGENCE

W.O. Anderson
11/30/94
 DATE

BEST COPY

FORM 4239 OBSOLETE PREVIOUS EDITIONS

DATE: **8/9/04**
 CLASSIFIED BY: **60671 ucl/NLS/Bautin**
 REASON: 1.4 (C) **8/9/2029**
 DECLASSIFY ON: **03-220**

SEE ADDENDUM (INTD) PAGE(S) 2

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE.

~~SECRET~~

~~SECRET~~

Airtel from SAC, Los Angeles to Director, FBI, dated 5/4/94
Re: INTELLIGENCE COMMUNITY AWARDS PROGRAM (ICARP)
FOREIGN COUNTERINTELLIGENCE (FCI) PROGRAM

ADDENDUM: NATIONAL SECURITY DIVISION (NSD) RAP/rap. 10/13/94

By airtel dated 5/4/94, SAC Los Angeles nominated Special Agent (SA) Bassem Youssef for the National Intelligence Distinguished Service Medal.

Upon review of Los Angeles' ICARP nomination, the NSD recommends that the National Intelligence Medal of Achievement (NIMOA) be awarded to SA Bassem Youssef. The NIMOA award more appropriately recognizes SA Youssef's meritorious conduct in the performance of outstanding service to the Intelligence Community.

APPROVED:	Crim. Inv. _____	Laboratory _____	Off. of EEO _____
	Crim. Jur. Info. _____	Legal Counsel _____	Affairs _____
Director _____	Servs. _____	National Sec. _____	Off. of Public _____
	Finance _____	Personnel _____	& Cond. Affs. _____
Deputy Director _____	Info. Res. _____	Training _____	
	Inspection _____		

~~SECRET~~

~~SECRET~~

This communication is classified "Secret" in its entirety.

Due to his Middle Eastern background and his inherent knowledge of that region's traditions, customs, and languages Special Agent (SA) YOUSSEF has on a daily basis assisted other SAs with interviews of Arab individuals as well as reviews of Arabic language documents which greatly contribute to the efficacy of these International Terrorism (IT) investigations. Also SA YOUSSEF has assisted other field divisions with similar needs, and in one instance, assisted FBI Minneapolis with the interview of a potential drug source and was subsequently commended in writing by SAC, Minneapolis. During the past year, SA YOUSSEF has tirelessly worked to uncover and continue to identify the members of the Islamic Group (IG) in Southern California, as well as identified its associates in other field divisions and countries, and apprising appropriate FBI offices of their presence. In connection with these investigations SA YOUSSEF has submitted two FISA court applications to FBIHQ, which has resulted in sophisticated coverage of members of the local international terrorist cell and expanded the knowledge regarding its local structure and activities of some of its members. In order to achieve these results, SA YOUSSEF has worked diligently and dedicated long and irregular hours beyond what is normally required to achieve these accomplishments to date. Also, SA YOUSSEF is routinely contacted by supervisors and analysts at FBIHQ as well as field agents in other offices in order to gain his insight into these important and sometimes complex investigations.

(S) SA YOUSSEF has shown creativity and relentless initiative in pursuing his international terrorism cases and as an example has, as a result of numerous pretext telephone calls in the Arabic language, obtained valuable information which otherwise would not have been elicited. As a direct result of his relentless investigative efforts, FBI Los Angeles has more than [REDACTED] IG cases pending which is a significant step in identifying the local IG's network which has the potential for committing terrorist acts anywhere in the U.S. comparable to the 2/26/93 bombing of the World Trade Center, New York, New York. A

On several occasions, SA YOUSSEF has conducted briefings to senior representatives of the Los Angeles Police Department, Los Angeles Sheriff's Department, and U.S. Secret Service, all of whom have personnel assigned to the Los Angeles Task Force on Terrorism and are periodically briefed regarding significant investigations. Also, during February, 1994,

~~Classified by 8760~~
~~Declassify on OADR~~

~~SECRET~~

~~SECRET~~

SA YOUSSEF attended an international terrorism in-service comprised of approximately 150 Special Agents, and at this meeting presented a lecture regarding the IG which was the primary focus of the in-service. In both these instances SA YOUSSEF's briefings were very informative and of great benefit to the audience in understanding what is now seen as the latest international terrorist threat to U.S. interests here and abroad.

Furthermore, SA YOUSSEF has developed assets who have provided significant information which has very much assisted in the furtherance of international terrorism investigations which do not only impact FBI Los Angeles, but many field offices throughout the FBI. His efforts in developing and maintaining assets has resulted in much valuable personality assessment information on individual subjects, as well as information which further defines the structure and modus operandi of the IG with a documented presence in the U.S. Also, SA YOUSSEF has used creative efforts to develop valuable sources, and one such example is his attempts through much effort, odd work hours, and

[REDACTED]

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In the (S) interim, his contacts with asset have provided valuable intelligence information regarding the IG on a timely basis. In furtherance of this sensitive operation oftentimes SA YOUSSEF has been required to work late into the night and/or early morning in order to establish contact with asset who is located [REDACTED]

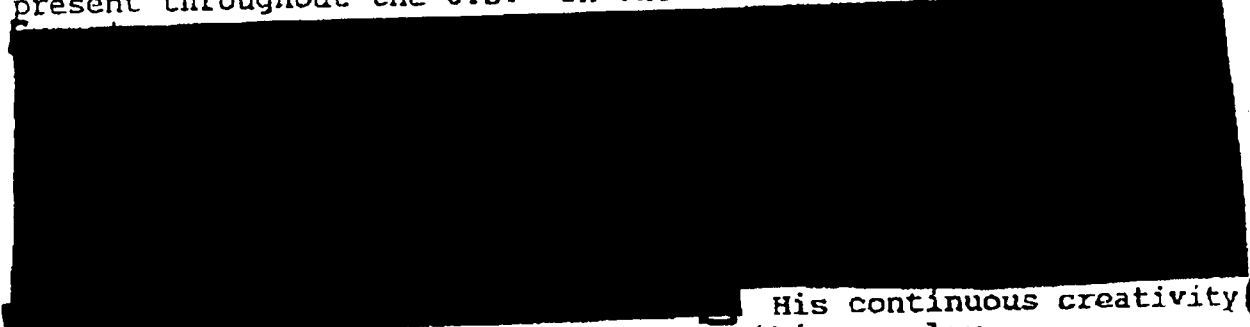
[REDACTED] His perseverance and (S) creativity during the conduct of this operation to date are very noteworthy and supported by FBIHQ in addition to the FBI Los Angeles management hierarchy.

Due to his continuous, conscientious, innovative and resourceful efforts, SA YOUSSEF is recommended for consideration for the National Intelligence Distinguished Service Medal.

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Utilizing to the maximum advantage his Middle Eastern background, and his inherent knowledge of that region's traditions, customs, and languages, SA BASSEM YOUSSEF has implemented these skills on a daily basis in furtherance of the FBI's primary mission of preventing terrorist acts which has benefitted not only FBI, Los Angeles, but also many other field divisions throughout the FBI who have periodically sought his valuable assistance. Since January, 1993, he has worked tirelessly to uncover and to continue to identify members of an international terrorist cell in Southern California, as well as to identify its associates throughout the United States and abroad, utilizing creative and relentless investigative initiative to accomplish this end. His constant efforts in developing and handling assets has resulted in much valuable personality assessment data on individual cell members, as well as information which defines the structure and modus operandi of this dangerous international terrorist group whose members are present throughout the U.S. On one such case he has attempted to



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His continuous creativity (S) and perseverance during the conduct of this complex, international operation have been very noteworthy and deserving of special recognition due to his constant resourceful efforts in support of the FBI's primary counterterrorism mission of preventing acts of terrorism.

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Attachment 26

Performance Appraisal Report - Cover Page

[See Instructional Page of FD-728 - Cover Page]

1. Payroll Name of Employee Bassem Youssef	2. Social Security Number [REDACTED]
3. Position Title, Grade and Number Supervisory Special Agent (Legat) 1811-15-78-15-714	4. Office of Assignment and Cost Code Legat Riyadh
5. General Nature of Assignment Legal Attache	

6. Summary Rating **Exceptional**

7. **Acting Unit Chief Walter F. Smith** 4/12/00
 Signature of Rating Official Name (Typed or Printed) Date

I have reviewed and approved this appraisal. () See my comments attached.

8. **Section Chief Thomas C. Knowles** 4/11/00
 Signature of Reviewing Official Name (Typed or Printed) Date

I am aware that a rating of less than Fully Successful (FS) on any critical element may preclude me from consideration for promotion and/or transfer. In addition, I am aware that my Summary Rating, if below the FS level, will preclude my consideration for a within-grade increase and that a Summary Rating of Unacceptable may be the basis for my reassignment, reduction in grade, or removal. My signature only indicates that I have reviewed this appraisal, not that I am necessarily in agreement with the information herein or that I am relinquishing my right to request reconsideration of it.

9. 5/3/2000
 Signature of Employee Date Presented for Signature

10. Basis/Reason for Issuance A <input checked="" type="checkbox"/> End of Annual Period T <input type="checkbox"/> Position Change Date _____ N <input type="checkbox"/> Current Appraisal Date _____ Q <input type="checkbox"/> Requested by FBIHQ Date _____ D <input type="checkbox"/> Conclusion of Detail Date _____ W <input type="checkbox"/> Unacceptable - Warning Date _____ F <input type="checkbox"/> Warning Resolution Date _____	11. Field/FBIHQ Division Use Entered Into BPMS - By _____ (Initials) On _____ (Date) Date of Plan _____	PRAU USE ONLY Logged _____ Reviewed _____ Entered _____ Verified _____ Printout _____
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ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED
 DATE 5/22/03 BY 60400/ML

Performance Management System - Special Agent and Support Personnel
Performance Appraisal Report - Narrative Page

[See Instructional Page of FD-728b - Narrative Page]

1. Payroll Name of Employee Bassem Youssef	2. Social Security Number [REDACTED]
3. Critical Element # <u>1</u> . (Include specific examples of positive/negative performance. Such examples should include references to particular assignments, dates, time frames, and quality of work.)	

Management of Liaison Program:

During the rating period, LEGAT Youssef has continued to build strong liaison with the Saudi Mabahith, which was initiated by LEGAT upon the official establishment of the Legat Office in 1997. This has resulted in the Mabahith extending a second invitation, in April 1999, for the WFO KHOBOMB team to conduct the highly controversial and nearly impossible access [REDACTED] to the KHOBOMB suspects detained in Saudi Arabia. Prior to Director Freeh's visit, LEGAT Youssef was tasked to approach the Mabahith in an effort to determine whether or not the Saudi Government would be willing to grant the FBI direct access (face to face interview) to two (2) of the KHOBOMB detainees. LEGAT was able to receive an unofficial okay from Prince Naif Bin Abdul Aziz, Saudi Arabia's Minister Of Interior (MOI). This was followed by Director Freeh's visit to Saudi Arabia on February 20, 2000. This visit was characterized by the Director as a "highly successful" visit. LEGAT Youssef was able to facilitate meetings with the King, Crown Prince, and the Minister of Interior, which were all highly successful meetings.

On March 1, 2000, LEGAT Youssef coordinated the unprecedented meeting between Director Freeh and Prince Mohammad Bin Naif, Assistant MOI. During that meeting, Prince Mohammad carried a message from his father (Prince Naif) advising that the Saudi Government has agreed to grant the FBI direct face to face interviews of not just two (2) of the detainees, but all six (6). Granting the FBI such a request is directly related to the exceptionally strong liaison affected by LEGAT Youssef.

LEGAT Youssef has continued to build and nurture strong liaison with other key foreign law enforcement officials in the Gulf region. Director of the Kuwait State Security (KSS), Director of the Kuwait Criminal Investigative Directorate (CID), Directors of the Omani Internal Security Service (ISS) and Royal Oman Police (ROP), Director General of the Dubai Police, Director of the Bahrain Security and Intelligence Service (BSIS), and Bahrain CID, to name a few.

Riyadh's Inspection report has mentioned that "In addition to establishing excellent relationship with the Saudi Mabahith, LEGAT Youssef developed an impressive liaison base of prominent law enforcement officials in the Legat territory."