

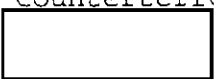
Precedence: ROUTINE

Date: 12/01/2004

To: Director's Office
Counterterrorism

Attn: OPR
AD
SAC
CDC

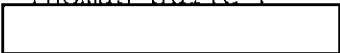
DATE: 08-01-2007
CLASSIFIED BY: 65179/DMH/KSR/RM
REASON: 1.4 (c)
DECLASSIFY ON: 08-01-2032



From: General Counsel
National Security Law Branch/Room 7975
Contact:

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Approved By: Thomas Julie F



Drafted By:



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

Title: (U) POTENTIAL INTELLIGENCE OVERSIGHT BOARD
(IOB) MATTER 2004-

b2 ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

(U) Synopsis: ~~(S)~~ It is the opinion of the Office of the General
Counsel (OGC) that this matter should not be reported to the
Intelligence Oversight Board (IOB). With respect to these
matters, a record of this decision should be maintained in the
investigative control file for review by the Counsel to the IOB.

(U) ~~(S)~~ Derived From: G-3
Declassify On: X25-1

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(S) Details: ~~(S)~~ As discussed in the referenced electronic
communication (EC), on 2/13/2003, the Division

"United States person" as that term is defined in Section 1801(i)
of the Foreign Intelligence Surveillance Act of 1978, 50 U.S.C.
Section 1801 et seq.

(S) Due to administrative backlog and the
subsequent three day holiday weekend, captioned matter was not
administratively closed in ACS until 02/18/2004.

(U) ~~(S)~~ On 11/07/2003, set a routine lead
to the Division to serve a National Security
Letter (NSL) in this case. served the NSL
to the telephone provider on 11/14/2003, but did
not provide the requested telephone
records to until 02/27/2004, after the expiration
(02/13/2004) and administrative closure (2/18/2004) of this
investigation.

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Case ID : 278-HQ-C1229736-VIO

Serial : 624

(U) ~~(S)~~ On 03/03/2004, [redacted] notified [redacted] that they had received the telephone toll records requested by [redacted] NSL, but a check of ACS revealed that [redacted] had closed the investigation. [redacted] subsequently forwarded the collected telephone records to [redacted]. Without reviewing the telephone records, [redacted] sealed the telephone records in an envelope and archived the sealed envelope within the closed investigation file.

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(U) ~~(S)~~ Section 2-56 of the National Foreign Intelligence Program Manual (NFIPM) requires OGC to determine whether the facts related above are required to be reported to the IOB. For the reasons discussed below, this matter need not be reported to the IOB.

(U) Section 2.4 of Executive Order (E.O.) 12863, dated September 13, 1993, mandates that Inspectors General and General Counsels of the Intelligence Community components (in the FBI, the Assistant Director, Inspection Division, and the General Counsel, OGC, respectively) report to the IOB concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive. This language was adopted verbatim from E.O. 12334, dated December 4, 1981, when the IOB was known as the President's Intelligence Oversight Board (PIOB). By longstanding agreement between the FBI and the IOB (and its predecessor, the PIOB), this language has been interpreted to mandate the reporting of any violation of a provision of the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations (FCIG), 11 or other guidelines or regulations approved by the Attorney General in accordance with E.O. 12333, dated December 4, 1981, if such provision was designed in full or in part to ensure the protection of the individual rights of U.S. persons. Violations of provisions that are essentially administrative in nature need not be reported to the IOB. The FBI is required, however, to maintain records of such administrative violations so that the Counsel to the IOB may review them upon request.

(U) ~~(S)~~ Paragraphs II.C.3., II.D.3., and V.12, of The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG) authorize the use of National Security Letters in a preliminary or full national security investigation. Pursuant to this authority, on 11/07/2003, [redacted] lawfully issued a NSL for [redacted] that requested telephone records in this case. On 11/14/2003, [redacted] properly served the NSL on [redacted]. [redacted] subsequent failure to cancel this lead at the time they closed the case was an administrative error that did not affect the lawfulness of the previously served NSL. [redacted] properly sealed and archived the telephone records received from the NSL because the case was no longer open at the time

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of their receipt.

(U) ~~(S)~~ The late receipt of the telephone records in this case constitutes an administrative error, not a substantive violation of law or regulation designed to protect the individual rights of U.S. persons. As discussed above, under longstanding agreement between the FBI and the IOB, administrative errors are not reportable to the IOB. [redacted] slow response in this case did not affect the lawfulness of the NSL. [redacted] has already sealed and archived the records in question. Additionally, none of these records were reviewed or used by [redacted] in its investigation. Under these circumstances, it is OGC's opinion that the late receipt of these telephone records by [redacted] on [redacted] behalf is not an error that must be reported to the IOB.

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(U) A copy of our opinion should be retained in the Counterterrorism Division control file for review by Counsel to the IOB, if requested.

LEAD (s)

Set Lead 1: (Action)

DIRECTOR'S OFFICE

AT OPR, FO, DC

(U) For action deemed appropriate.

Set Lead 2: (Action)

COUNTERTERRORISM

AT WASHINGTON, DC

(U) Read and clear.

Set Lead 3: (Action)

[redacted]

AT [redacted]

(U) Read and clear.

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Set Lead 4: (Action)

[redacted]

~~SECRET~~

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Page 4

AT

(U) Read and clear.

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1 - Ms. Thomas

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FOOTNOTES

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(U)

~~(S)~~ The FCIG was superseded on October 31, 2003, by the Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG).

~~SECRET~~

NSL VIO-23446

Precedence: ROUTINE

Date: 10/21/2004

To: Director's Office
Counterintelligence
[Redacted]

Attn: OPR
Attn: AD
Attn: SAC
CDC

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

From: General Counsel
NSLB/CILU/Room 7975
Contact: [Redacted] ext. [Redacted]

DATE: 08-01-2007
CLASSIFIED BY 65179/DMH/KSR/Rb2
REASON: 1.4 (c)
DECLASSIFY ON: 08-01-2032

Approved By: Thomas Julie
[Redacted]

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Drafted By: [Redacted]

(U) Case ID #: (S) 278-HO-C1229736-VIO (Pending)
(S) [Redacted] (Pending)

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(U) Title: (S) INTELLIGENCE OVERSIGHT BOARD MATTER
(S) IOB 2004 [Redacted]

(U) Synopsis: (S) The Office of the General Counsel (OGC) considers that this matter must be reported to the Intelligence Oversight Board (IOB) and to the Office of Professional Responsibility (OPR). OGC will prepare an appropriate cover letter and a memorandum to the IOB. Our analysis follows.

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

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(S) Details: (S) [Redacted]
[Redacted] court-authorized electronic surveillance under the terms of the Foreign Intelligence Surveillance Act (FISA). SA [Redacted] is a [Redacted] assigned to [Redacted] where she has responsibility for [Redacted] case. SA [Redacted] supervisor is SSA [Redacted]

(S) (S) On 6/22/2004, SSA [Redacted] determined during the course of a file review that SA [Redacted] had used information derived from the electronic surveillance to access [Redacted]. Specifically, SA [Redacted] obtained information about [Redacted]

(S) [Redacted] electronic surveillance. [Redacted]

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(S) Case ID : 278-HO-C1229736-VIO Serial : 600

(S) [Redacted]

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transactions. The information that SA [] obtained was never memorialized in any FBI document other than the file's case review sheet as of the 6/22/2004 file review. SSA [] informed SA [] who was not previously aware of the fact, that a National Security Letter (NSL) was the appropriate method for obtaining banking information in a foreign counterintelligence investigation. SSA [] promptly reported the matter to the Office of the General Counsel (OGC). An NSL was subsequently issued in this case to obtain the subject's bank information, which is clearly relevant to a foreign counterintelligence investigation.

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(U) The Right to Financial Privacy Act (RFPA), Title 12, United States Code, Section 3401 et seq. (12 USC 3401 et seq.) states in 3402 that "except as provided by section 3403(c) or (d), 3413, or 3414 of this title, no Government authority may have access to or obtain copies of, or the information contained in the financial records of any customer from a financial institution . . ."

(U) 12 USC 3414 provides in part:

(a) (1) Nothing in this chapter (except sections 3415, 3417, 3418, and 3421 of this title) shall apply to the production and disclosure of financial records pursuant to requests from--

(A) a Government authority authorized to conduct foreign counter- or foreign positive-intelligence activities for purposes of conducting such activities; or

(B) . . .

(2) In the instances specified in paragraph (1), the Government authority shall submit to the financial institution the certificate required in section 3403(b) of this title signed by a supervisory official of a rank designated by the head of the Government authority.

(U) Section 2-17 of the National Foreign Intelligence Program Manual (NFIPM) lists the FBI officials who can request financial records under the foregoing section of RFPA. According to section 2-17 of the NFIPM, such requests must be made by an Assistant Special Agent in Charge or a more senior official.

(U) 12 USC 3417 provides for civil liability of an agency or department of the United States that obtains financial records or information in violation of the RFPA. The same section deals with "disciplinary action for wilful or intentional violation" of these RFPA provisions by agents or employees of the government.

(U) ~~(S)~~ In this instance, the conduct of SA [] was wilful and intentional, even though she did not realize that she had acted in contravention of the RFPA and Bureau policy. It

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should also be noted that SA [redacted] was at the time a probationary agent. Inasmuch as her actions nevertheless amount to "intelligence activities that . . . may be unlawful or contrary to Executive order or Presidential directive" they are reportable to the Intelligence Oversight Board (IOB) under the terms of section 2.4 of Executive Order 12863. OGC will therefore prepare a cover letter and a memorandum to report this matter to the IOB and to advise that it has been referred to the Office of Professional Responsibility.

LEAD(s):

Set Lead 1: (Action)

DIRECTOR'S OFFICE

AT OPR FO, DC

(U) For action deemed appropriate.

Set Lead 2: (Action)

COUNTERINTELLIGENCE

AT WASHINGTON, DC

(U) Please read and clear.

Set Lead 3: (Action)

[redacted]

AT [redacted]

(U) For action deemed appropriate.

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Precedence: ROUTINE

Date: 09/15/2004

To: Director's Office
Counterintelligence

Attn: OPR
Attn: AD
Attn: SAC
Attn: SAC
CDC

DATE: 08-01-2007
CLASSIFIED BY 65179/DMH/KSK/RW
REASON: 1.4 (c)
DECLASSIFY ON: 08-01-2032

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From: Office of the General Counsel
NSLB/CILU/Rm 7975

ALL INFORMATION CONTAINED
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WHERE SHOWN OTHERWISE

Contact: [Redacted]

Approved By: Curran John F

[Redacted]

Drafted By: [Redacted]

Case ID #: (U) 278-HQ-C1229736-VIO (Pending)
(S) [Redacted] (Pending)

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Title: (U) INTELLIGENCE OVERSIGHT BOARD MATTER
IOB 2004 [Redacted]

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Synopsis: (U) The Office of the General Counsel considers that this matter warrants a report to the Intelligence Oversight Board and to the Office of Professional Responsibility. Our analysis follows.

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

Details: (S) [Redacted]

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[Redacted] in December 2002-January 2003. A polygraph of the subject was inconclusive in one section but showed deception in another. The [Redacted] field office [Redacted] in conformity with the Attorney General's Guidelines for National Security Investigations.

(U) ~~(S)~~ On 5/21/2004, the SAC authorized the issuance of National Security Letters (NSLs) seeking credit reports about the subject from the three major credit reporting companies. The letters, which cited Title 15, United States Code, Section 1681v (15 USC 1681v), requested "a copy of a consumer report and all other information contained in your files for the below listed consumer i.e., the subject." All three NSLs included a

Case ID : 278-HQ-C1229736-VIO Serial : 595
[Redacted]

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certification by the SAC, purportedly "in accordance with 15 USC 1681v(b)," that "the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities ietc."

(U) ~~(S)~~ The letters were duly delivered to two of the three companies, both of which provided the requested credit information. The third letter, which had been sent to the [redacted] office for delivery to [redacted] was returned unexecuted to [redacted] by a [redacted] intelligence analyst who noticed that it referred to 15 USC 1681v instead of 15 USC 1681u.

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(U) ~~(S)~~ After learning of the error, the [redacted] office determined that the two credit reports had already been disseminated to a member of the [redacted] Foreign Counterintelligence Task Force in connection with the investigation. The reports were retrieved, sealed, and forwarded to Headquarters together with a report of the incident. (See 278-TR-C1229736-VIO, serial 573.)

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(U) The section of law cited in the three NSLs, 15 USC 1681v, was added by the USA Patriot Act, P.L. 107-56. It provides in part that "a consumer reporting agency shall furnish a consumer report of a consumer and all other information in a consumer's file to a government agency authorized to conduct investigations of, or intelligence or counterintelligence activities and analysis related to, international terrorism when presented with a written certification by such government agency that such information is necessary for the agency's conduct of such investigation, activity or analysis." (Emphasis added.)

(U) By way of contrast, 15 USC 1681u is an older statute that applies to both counterintelligence and counterterrorism investigations. In connection with an authorized investigation of such cases, the FBI may use an NSL to obtain the names and addresses of all financial institutions at which a consumer maintains or has maintained an account. If additional information is needed, such as a consumer report, a designated Bureau official is required to seek an ex parte court order directing the consumer reporting agency to furnish the report to the FBI.

(U) To obtain the ex parte order, the FBI must show "that the consumer report is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment to the Constitution of the United States."

(U) ~~(S)~~ The Office of the General Counsel issued instructions regarding the differences between 15 USC 1681u and 15 USC 1681v, together with sample forms, in an EC dated 10/1/2003. (See 66F-HQ-A1255972, serial 32.)

(U) The [] office cited the wrong section of the Fair Credit Reporting Act in three NSLs that requested credit reports of a U.S. person in connection with a counterintelligence investigation. Moreover, the letters included a certification that was misleading although not untrue. (The certification stated, correctly, that the information was needed in connection with an authorized investigation to protect against international terrorism or clandestine intelligence activities. Section 1681v, however, refers only to international terrorism.) Two of the three letters resulted in the production of credit information that would not have been available solely through an NSL if the correct section had been cited.

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(U) In weighing the gravity of this matter, the Office of the General Counsel notes that [] citation of 15 USC 1681v does not appear to have been a deliberate effort to circumvent the requirements of section 1681u. Once apprised of the error, [] immediately took appropriate action to recover and seal the information that it obtained based of the error and to report the matter to Headquarters. The question of intent is relevant because 15 USC 1681u(j) suggests that Congress did not consider disciplinary action by an agency to be warranted unless "the circumstances surrounding the violation raise questions of whether or not an employee of the agency or department acted wilfully or intentionally with respect to the violation. . . ."

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(U) We are also mindful of the fact that the [] office could have obtained exactly the same result (i.e., the subject's credit report) if it had followed the two step process set forth in 15 USC 1681u, namely, an NSL followed by an ex parte application for a court order. The proof required for such an order is minimal and the facts in this case would have justified it.

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(U) Nevertheless, in preserving a distinct provision for obtaining credit information in counterintelligence cases, Congress apparently intended to apply a different standard to this type of case. By using Section 1681v rather than Section 1681u for a counterintelligence case, the [] office contravened the intent of Congress, albeit inadvertently. The matter should therefore be referred to the Intelligence Oversight Board and to the Office of Professional Responsibility. OGC will prepare a cover letter and a memorandum to report this matter to the IOB.

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(U) The action of Intelligence Analyst [] in detecting this error and calling it to the attention of the [] office is to be commended.

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LEAD(s):

Set Lead 1: (Action)

DIRECTOR'S OFFICE

AT OPR FO, DC

(U) For action deemed appropriate.

Set Lead 2: (Action)

COUNTERINTELLIGENCE

AT WASHINGTON, DC

(U) Please read and clear.

Set Lead 3: (Action)

[REDACTED]

AT

[REDACTED]

(U) For action deemed appropriate

Set Lead 4: (Discretionary)

[REDACTED]

AT

[REDACTED]

RA

(U) For action deemed appropriate.

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Precedence: ROUTINE

Date: 01/31/2005

To: Director's Office

Attn: OPR
Attn: SAC
ADC
SSRA

[Redacted]

[Redacted]

From: Office of the General Counsel
National Security Law Branch
Contact: [Redacted]

ALL INFORMATION CONTAINED
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WHERE SHOWN OTHERWISE

Approved By: Thomas Julie F

[Redacted]

Drafted By:

[Redacted]

DATE: 08-01-2007
CLASSIFIED BY 65179/DMH/KSR/RM
REASON: 1.4 (c)
DECLASSIFY ON: 08-01-2032

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(U) Case ID #: (S) 278-HQ-C1229736-VIO
(S) 278 [Redacted] 65943-280

(U) Title: (S) INTELLIGENCE OVERSIGHT BOARD (IOB)
MATTER 2004 [Redacted]

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(U) Synopsis: (S) It is the opinion of the Office of the General Counsel ("OGC") that this matter must be reported to the IOB. OGC will prepare a cover letter and a letter head memorandum to report this matter to the IOB. Our analysis follows.

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

(U) Reference: (S) 278-HQ-C1229736-VIO-632

Administrative: (U) This communication contains one or more footnotes. To read the footnotes, download and print the document into Corel Word Perfect.

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(U) Details: (S) By electronic communication (EC) dated December 6, 2004 (cited below) [Redacted], the [Redacted] Division ([Redacted]) reported a possible IOB error in conjunction with an on-going foreign counterintelligence investigation. In short, the recipient of a National Security Letter ("NSL") provided unresponsive, unsolicited material on a compact disc ("CD") to [Redacted] together with material responsive to the NSL.

[Redacted]

On or about September 27, 2004, [Redacted] issued a

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Case ID : 278-HQ-C1229736-VIO
278 [Redacted] 65943

Serial : 803
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NSL, pursuant to the Electronic Communications Privacy Act ("ECPA"), 18 U.S.C. 2709, to [redacted]

[redacted] The NSL included a request for "the name(s), address(es), length of service, and local and long distance toll billing records" associated with a call back 800 telephone number related to this [redacted]

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(U) ~~(S)~~ On November 27, 2004, the case agent received a CD from [redacted] in response to the NSL. The CD contained information both responsive and non-responsive to the NSL. The non-responsive information included content information in the form of images of faxes and voice messages transmitted to the 800 number. This non-responsive information was voluntarily provided by [redacted] but was beyond the scope of the information requested in the NSL.i3'

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(U) ~~(S)~~ The case agent immediately turned this CD over to the [redacted] Associate Division Counsel ("ADC") upon recognizing the unresponsive material as such. No copies of the CD were made, and the ADC continues to safeguard it.i4'

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(U) ~~(S)~~ As required by Executive Order (E.O.) 12863 and Section 2-56 of the National Foreign Intelligence Program Manual (NFIPM), OGC was tasked to determine whether the receipt of unsolicited material described herein is a matter which must be reported to the IOB. It must.

(U) Section 2.4 of E.O. 12863, dated September 13, 1993, mandates that Inspector Generals and General Counsel of the Intelligence Community components (in the FBI, the Assistant Director, INSD, and the General Counsel, OGC, respectively) report to the IOB concerning intelligence activities that they have reason to believe may be unlawful or contrary to an EO or Presidential Directive. This language was adopted verbatim from EO 12334, dated December 4, 1981, when the IOB was known as the President's Intelligence Oversight Board (PIOB). By longstanding agreement between the FBI and the IOB (and its predecessor, the PIOB), this language has been interpreted to mandate the reporting of any violation of a provision of the Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG), or other guidelines or regulations approved by the Attorney General in accordance with EO 12333, dated December 4, 1981, if such provisions were specifically intended to ensure the protection of the individual rights of U.S. persons. Violations of provisions that are essentially administrative in nature need not be reported to the IOB. The FBI is required, however, to maintain records of such administrative violations so that the Counsel to the IOB may review them upon request.

(U) ~~(S)~~ In this instance [redacted] issued a lawful NSL to [redacted] and received in response information both within and beyond the scope and description of that requested by the NSL. The error here was committed solely by [redacted] which was not acting as agents for

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[redacted] or the FBI as a whole. [redacted] committed no error, substantive, administrative, or otherwise, and did not itself impinge on the rights of any known U.S. person. Nevertheless, [redacted] came into the possession of material that [redacted] was unauthorized to provide to the FBI under ECPA. Though [redacted] committed no error itself, the mere receipt of unauthorized material pursuant to a lawfully issued NSL should be reported to the IOB, in accordance with the reporting requirements of Section 2.4 of E.O. 12863.

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****FOOTNOTES****

(U) i1: ~~(S)~~ See EC from the [redacted] Division to the General Counsel, dated December 6, 2004, Case ID # 278-HQ-C1229736-VIO Serial 632, titled "Intelligence Oversight Board (IOB) Matter," hereinafter cited as [redacted] EC."

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(U)

i2: ~~(S)~~ [redacted] EC.
i3: ~~(S)~~ Id.
i4: ~~(S)~~ Id.

LEAD(s):

Set Lead 1: (Info)

DIRECTOR'S OFFICE

AT OPR FO, DC

(U) Read and clear.

Set Lead 2: (Action)

[redacted]

AT [redacted]

(U) ~~(S)~~ The CD provided by [redacted] must be forwarded to the appropriate FBI Headquarters Section with oversight of this case, or if none, to the author of this EC, for forwarding to OIPR and the FISA Court.

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CC: Ms. Thomas

SSA [redacted]

[redacted]
NSLB IOB Library

~~SECRET~~

IOB - Total Numbers for FY 2004 and FY 2005

| | FY 2004 | FY 2005 |
|----------------------|---------|---------|
| Total Potential IOBs | | |
| • Reported | | |
| • Not Reported | | |
| • Pending | | |

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Categories - Reported IOBs:

| Category - Reported IOBs | 2004 | 2005 |
|---|------|------|
| 1- FBI errors in FISA ELSUR and FISA PS. | | |
| 2 - FBI Error in the use of National Security investigative tools (i.e., mail covers, and NSLs). e.g. | | |
| 3- Third-Party or Technical errors in the use of FISA ELSUR. | | |
| 4- Third-Party or Technical errors in the use of National Security investigative tools. | | |
| 5- Miscellaneous administrative errors resulting in unauthorized investigative activities. | | |

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Combine of non reportable that are admin errors
 of non reportable

~~SECRET~~

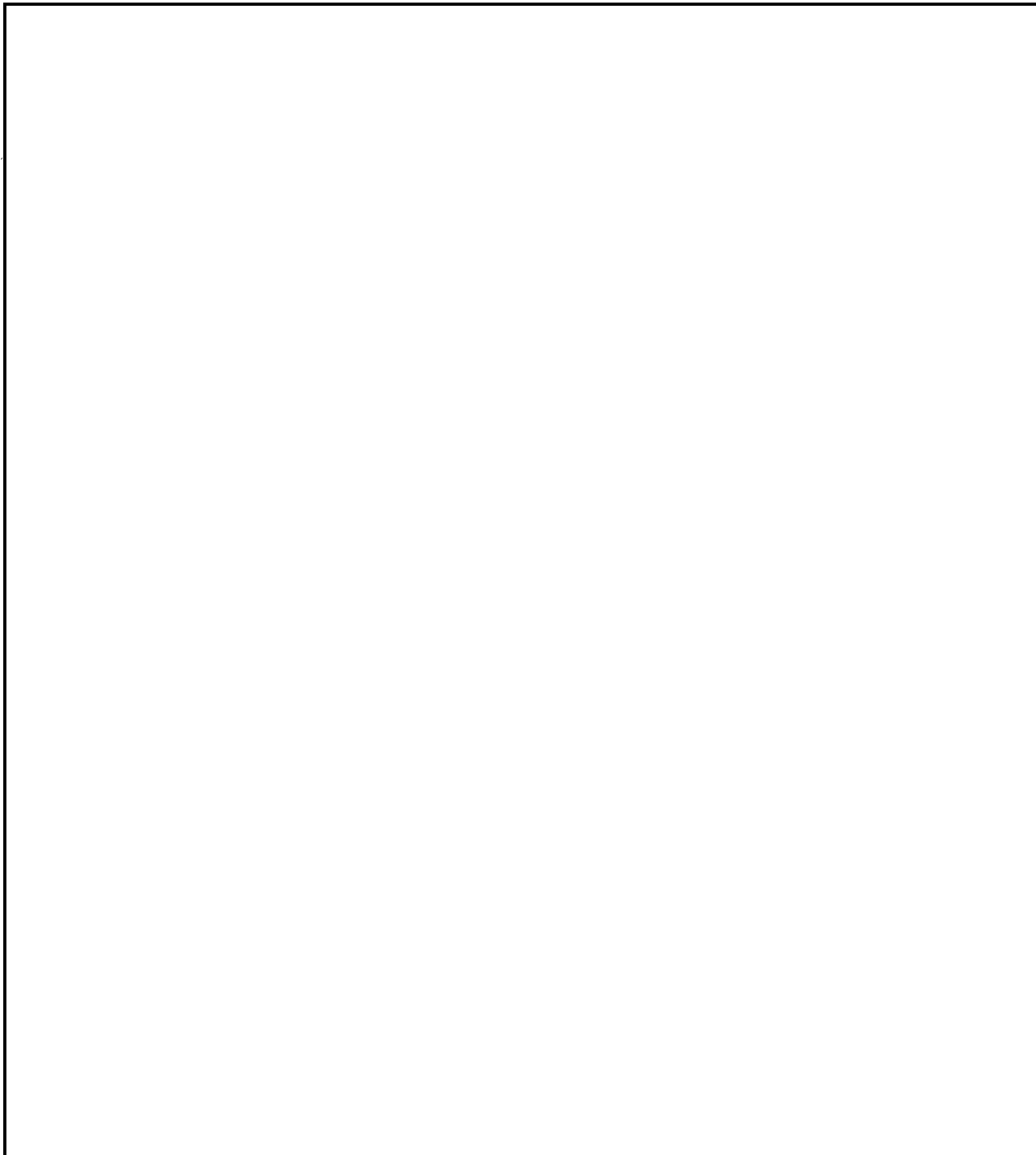
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WHERE SHOWN OTHERWISE

~~SECRET~~

DATE: 08-13-2007
CLASSIFIED BY: 65179/DML/KSR/RW
REASON: 1.4 (c,d)
DECLASSIFY ON: 08-13-2032

IOBs FY 2004



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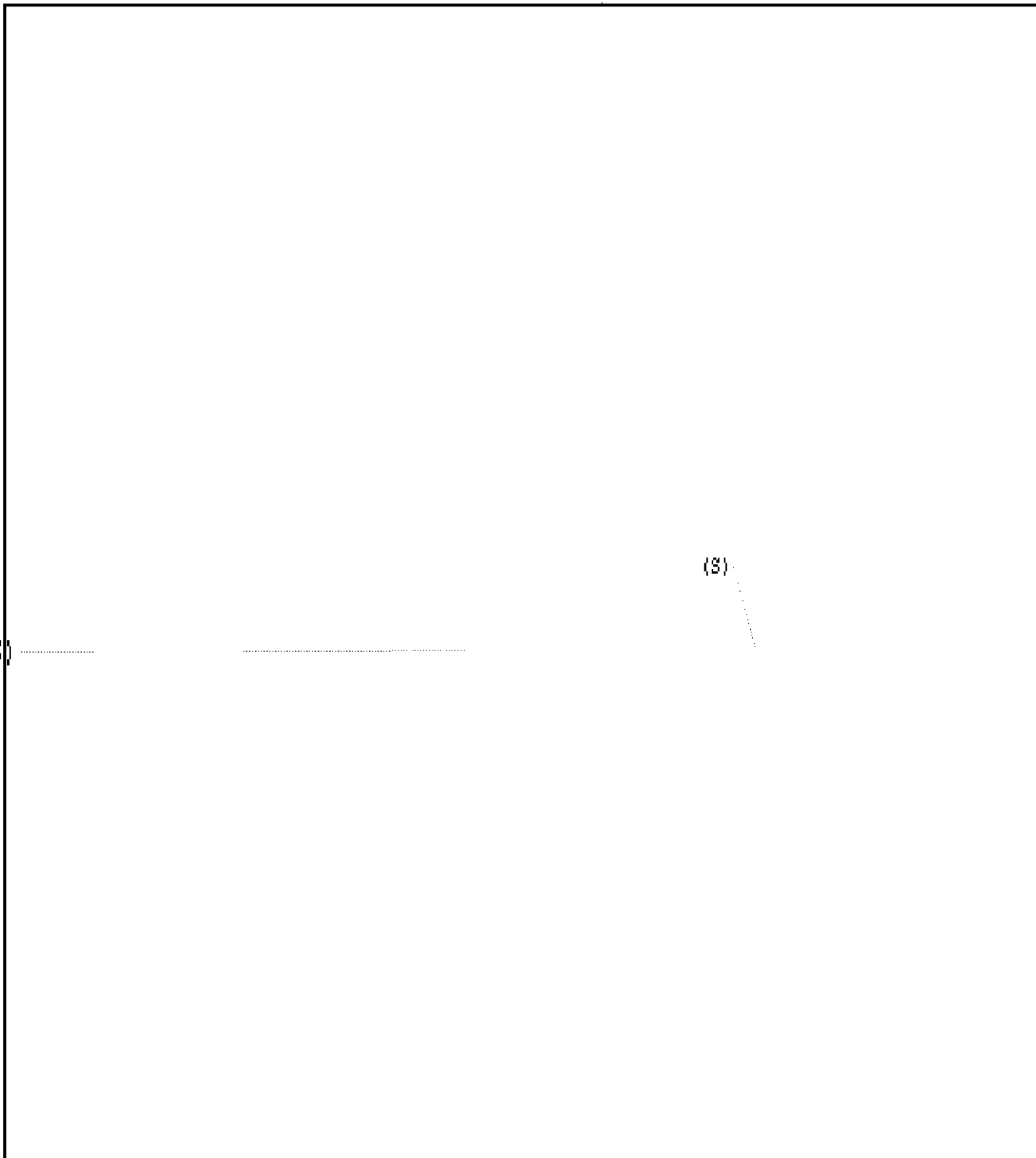


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IOBs FY 2004



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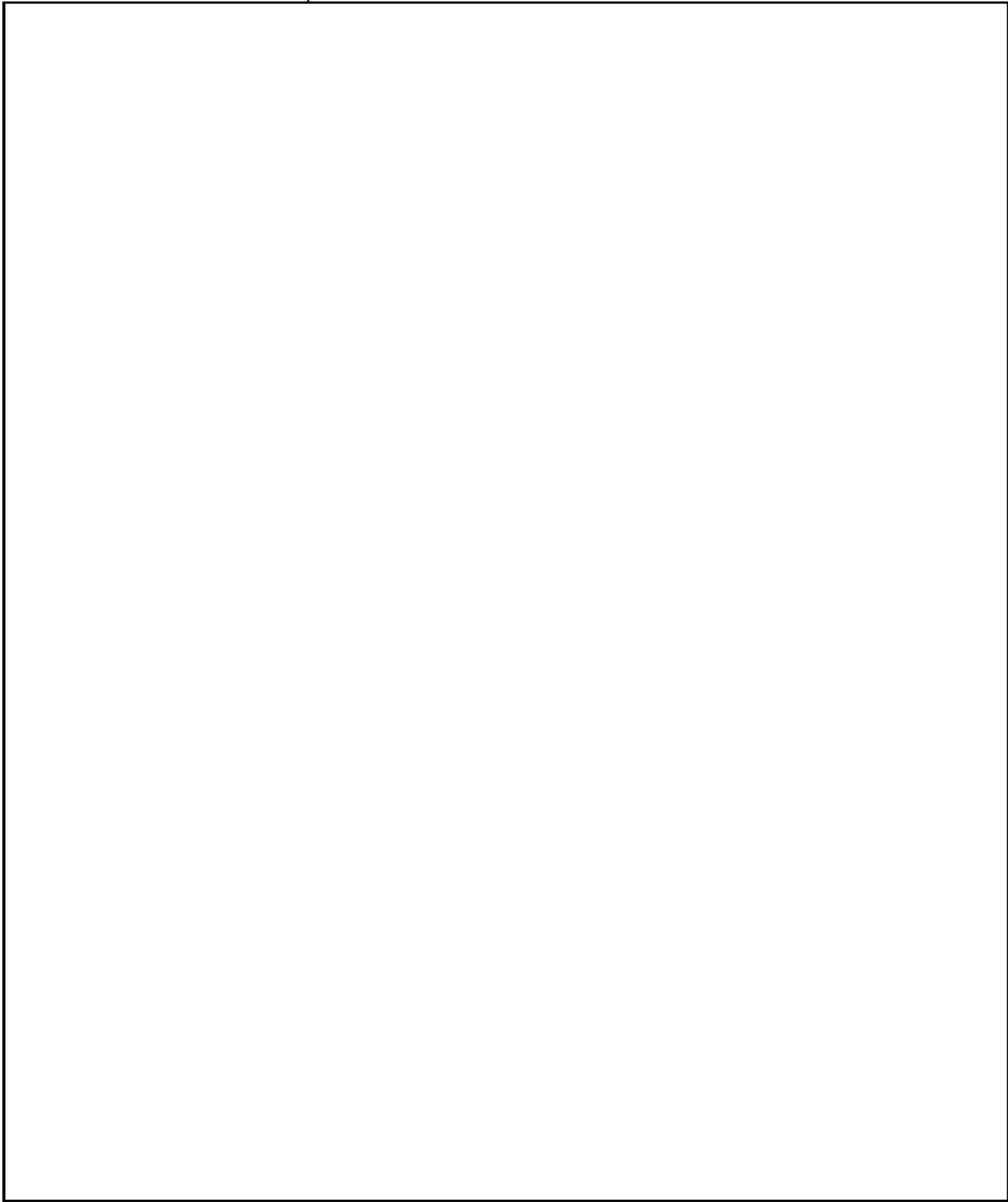
(S)

(S)

~~SECRET~~

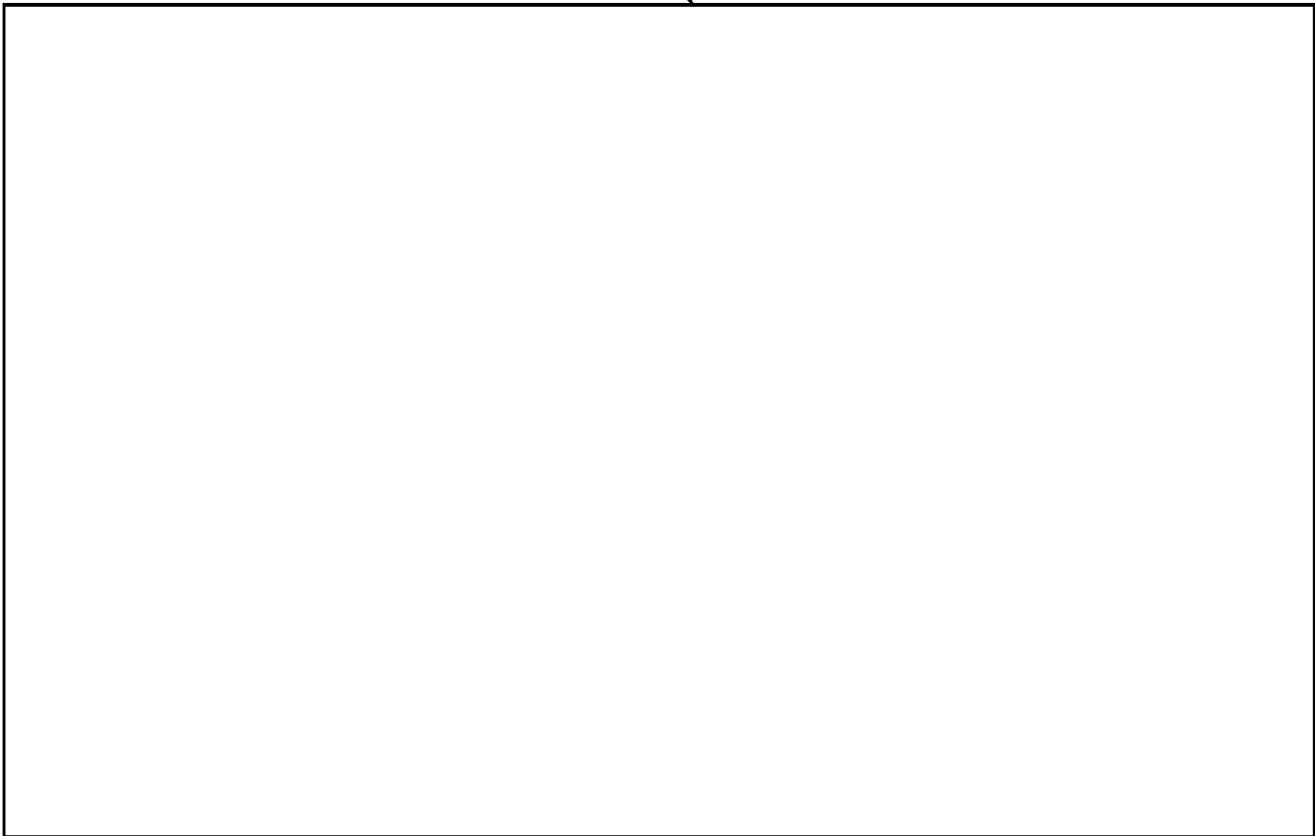
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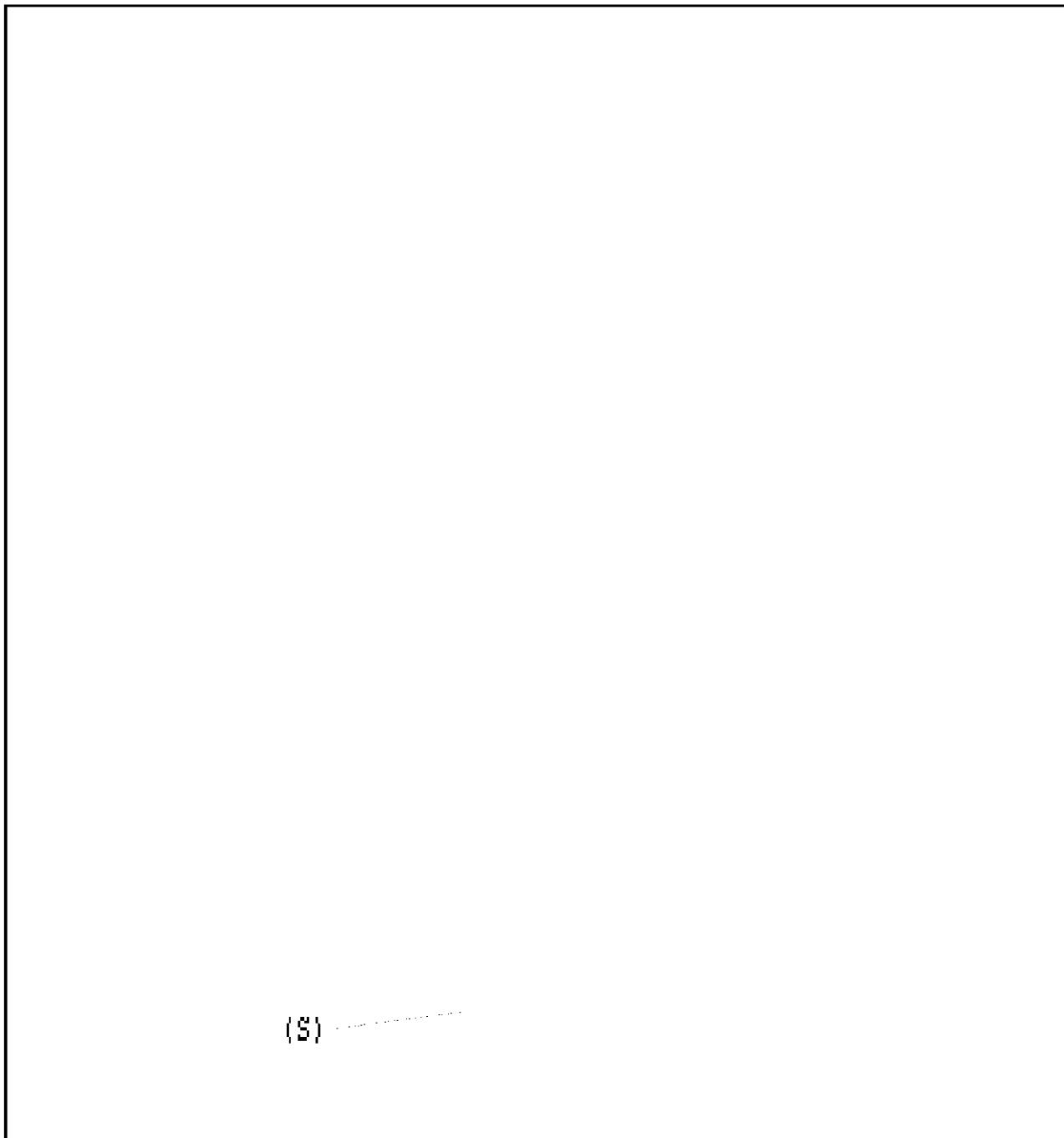
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~~SECRET~~

IOBs FY 2004

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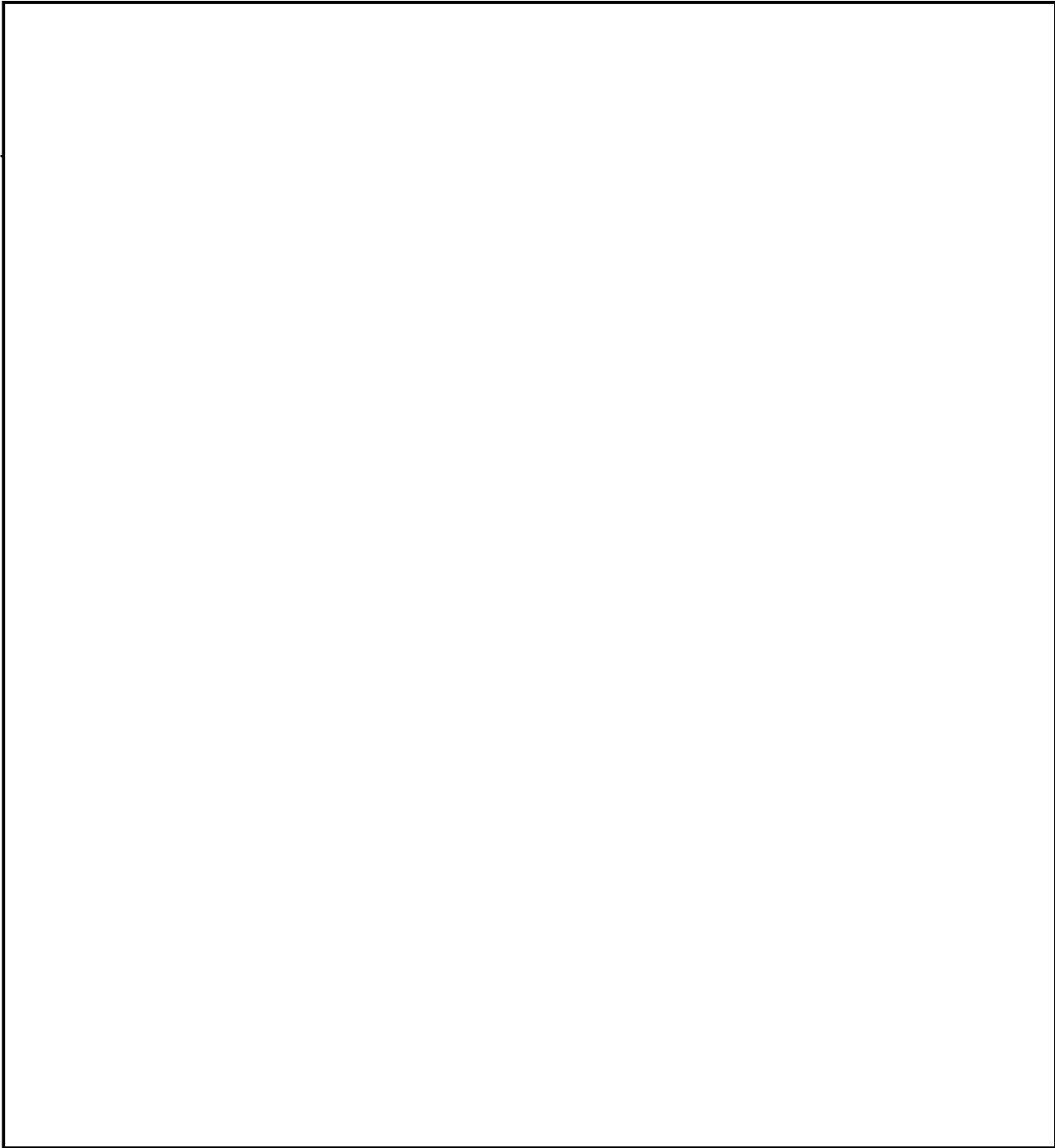


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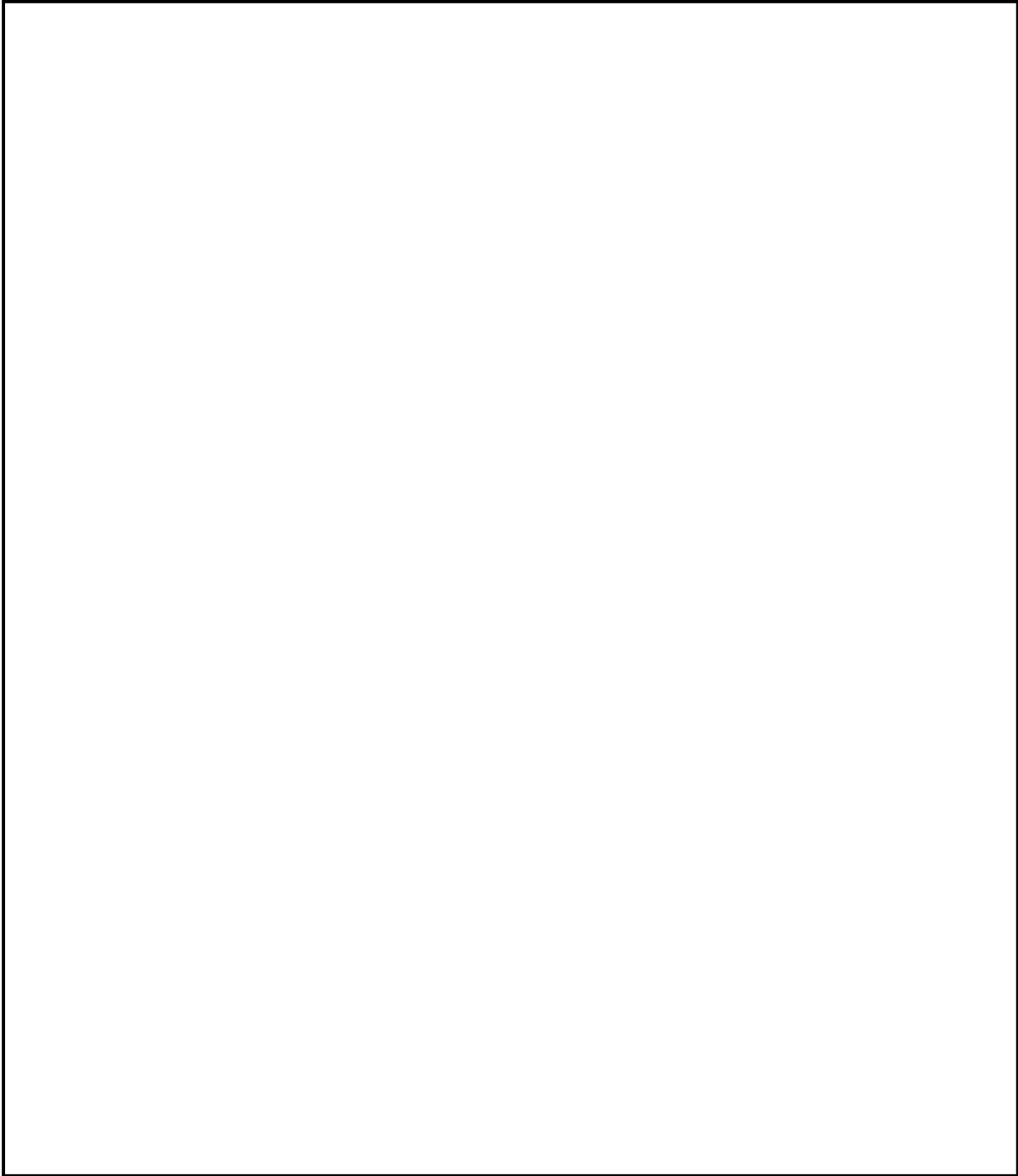
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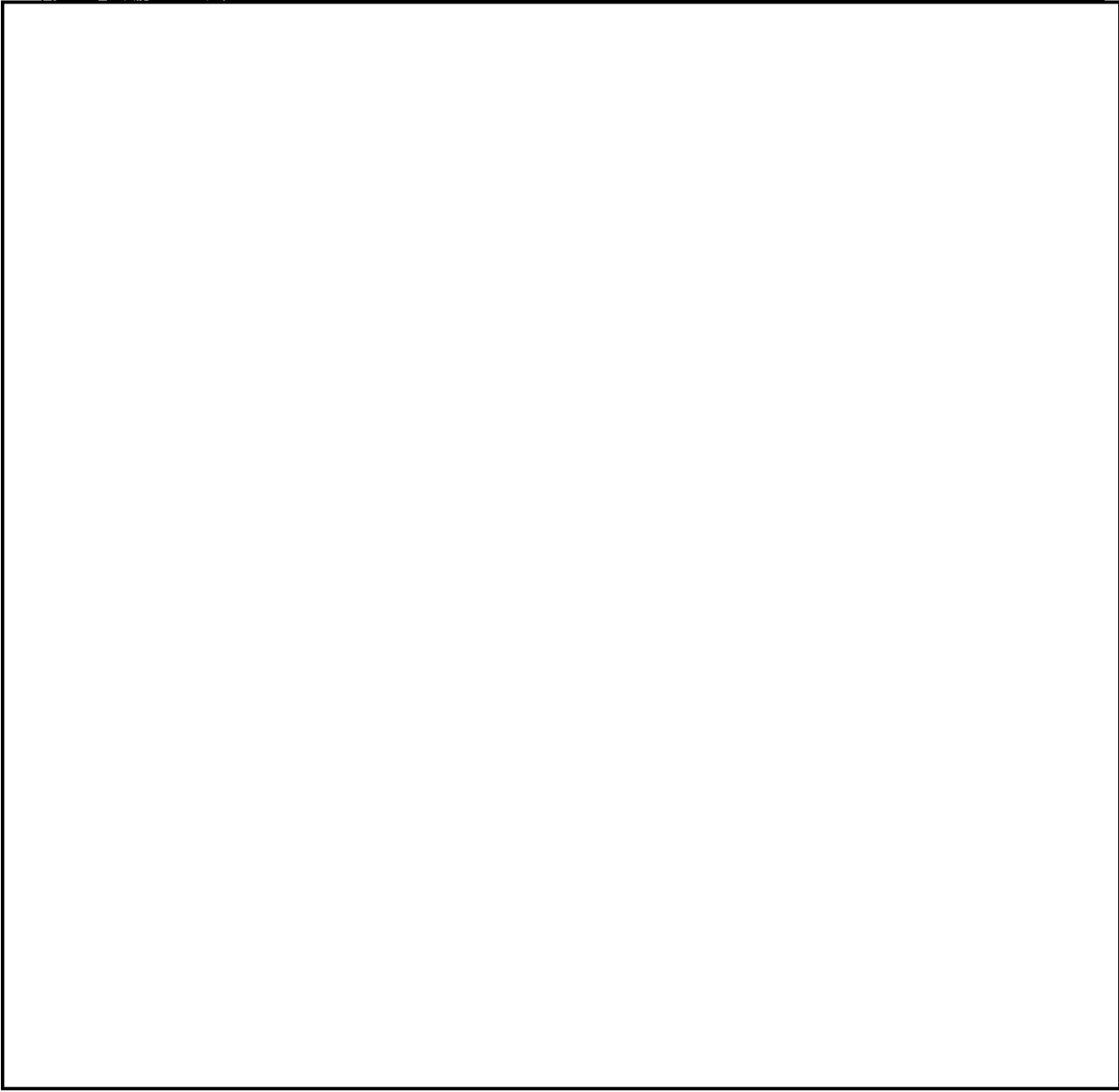
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IOBs FY 2004

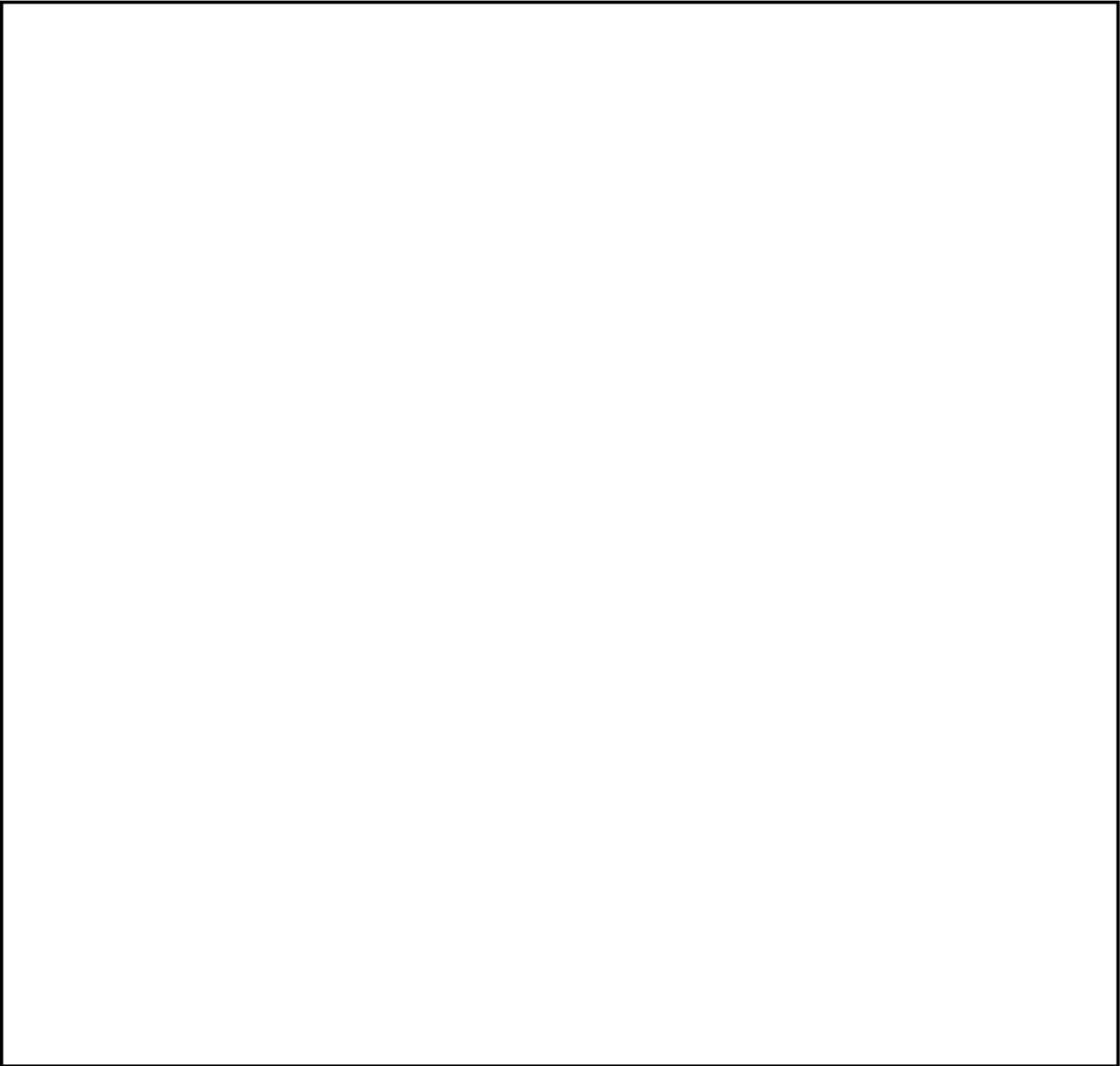


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NSL VIO-23466

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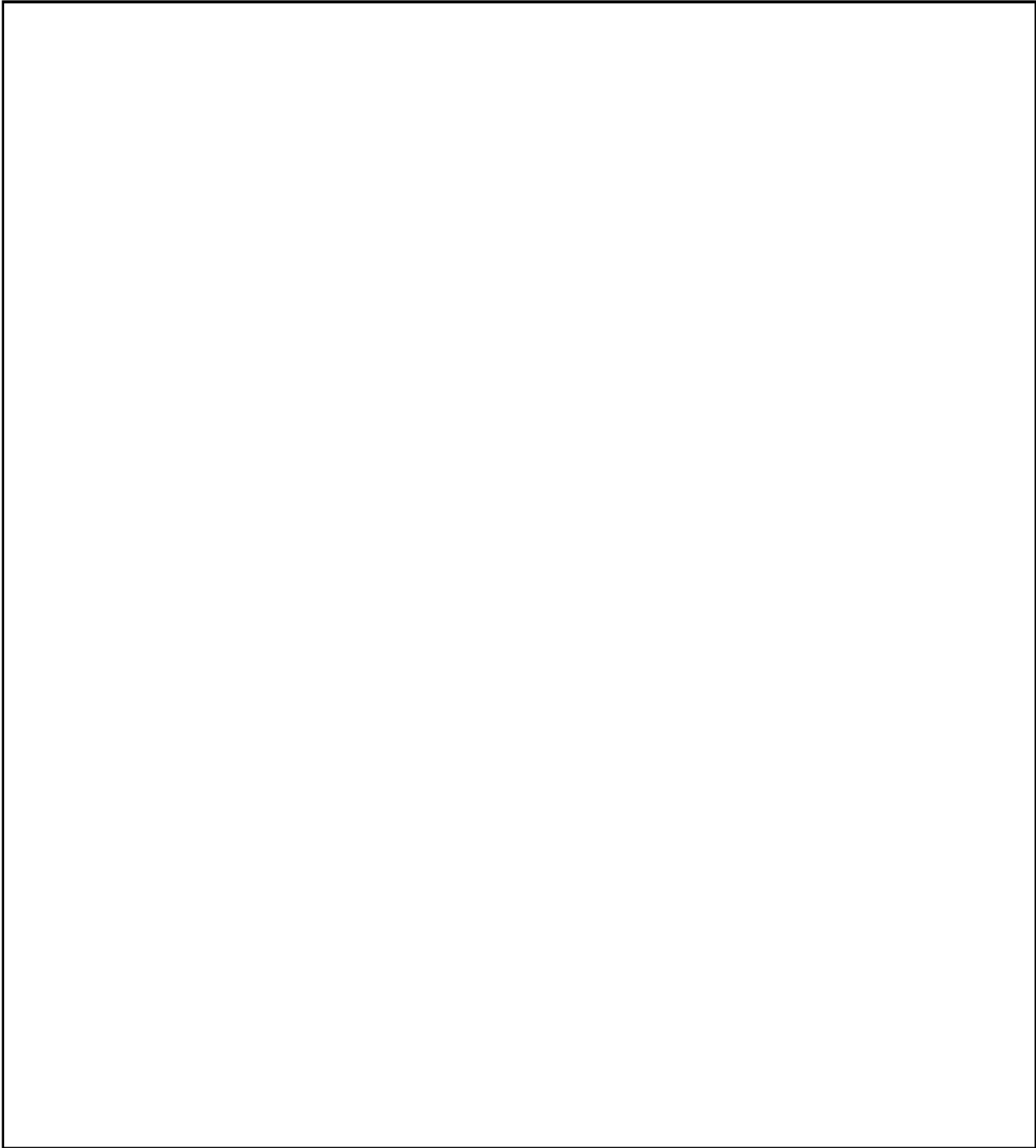
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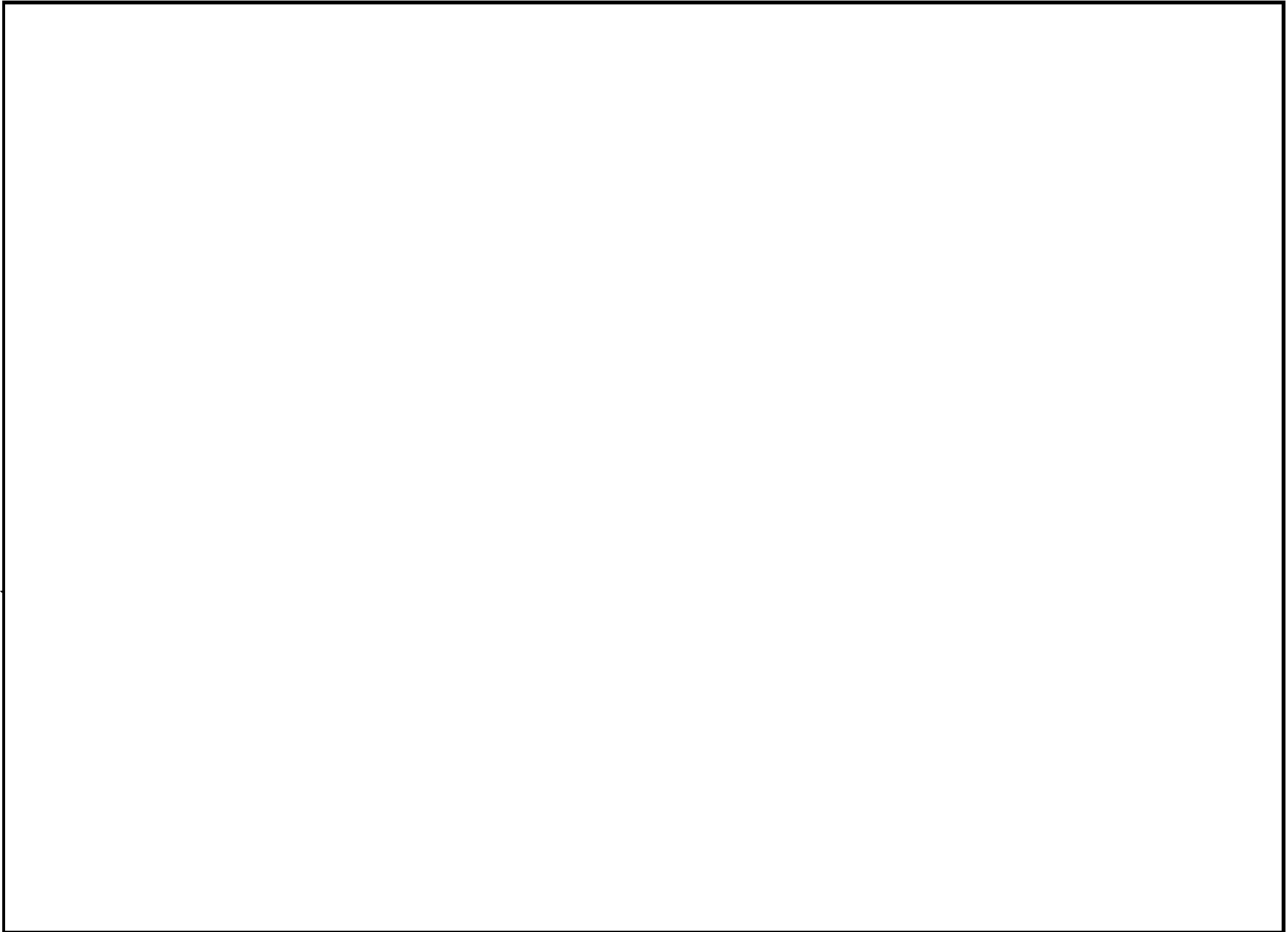
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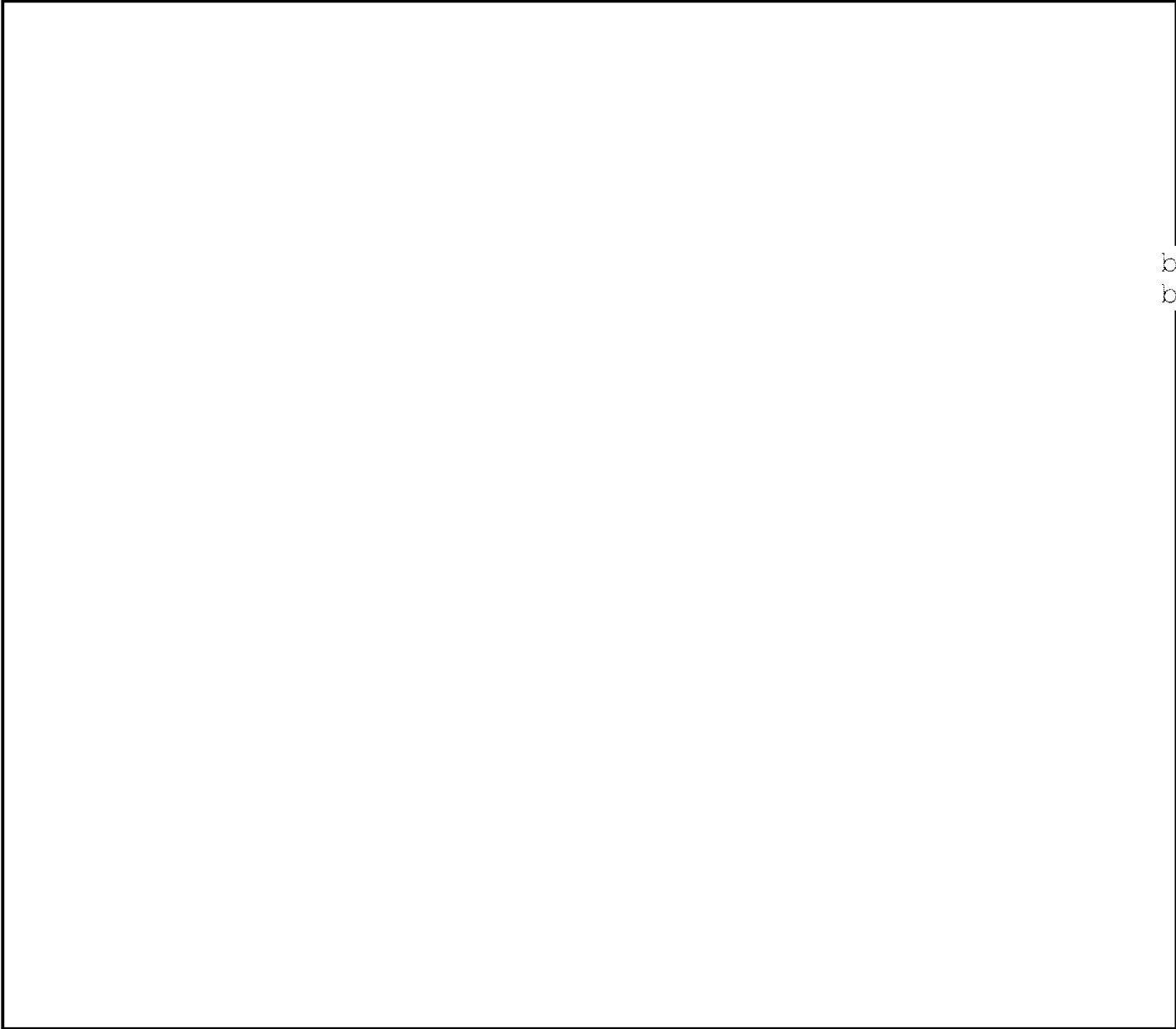


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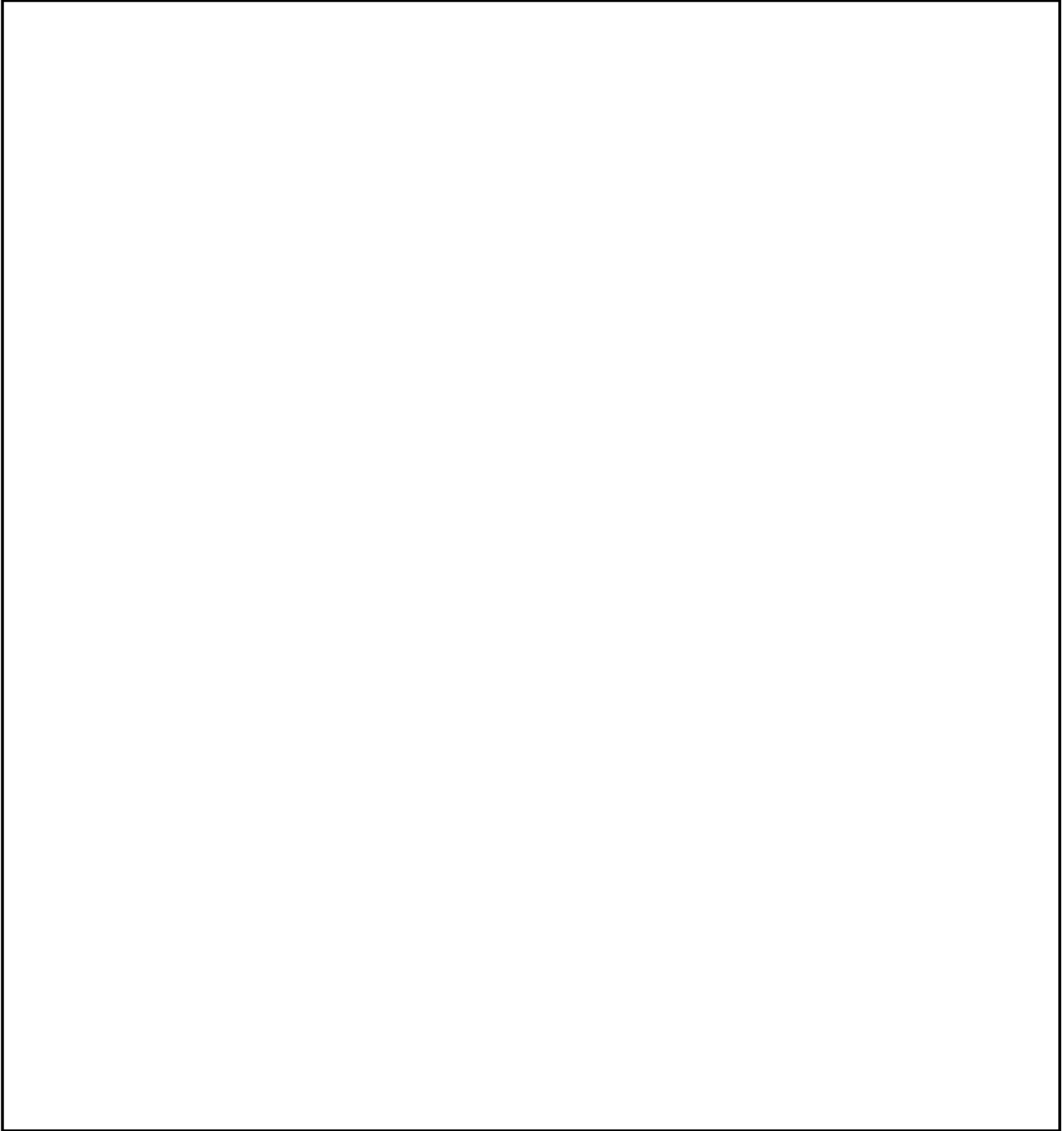
IOBs FY 2004



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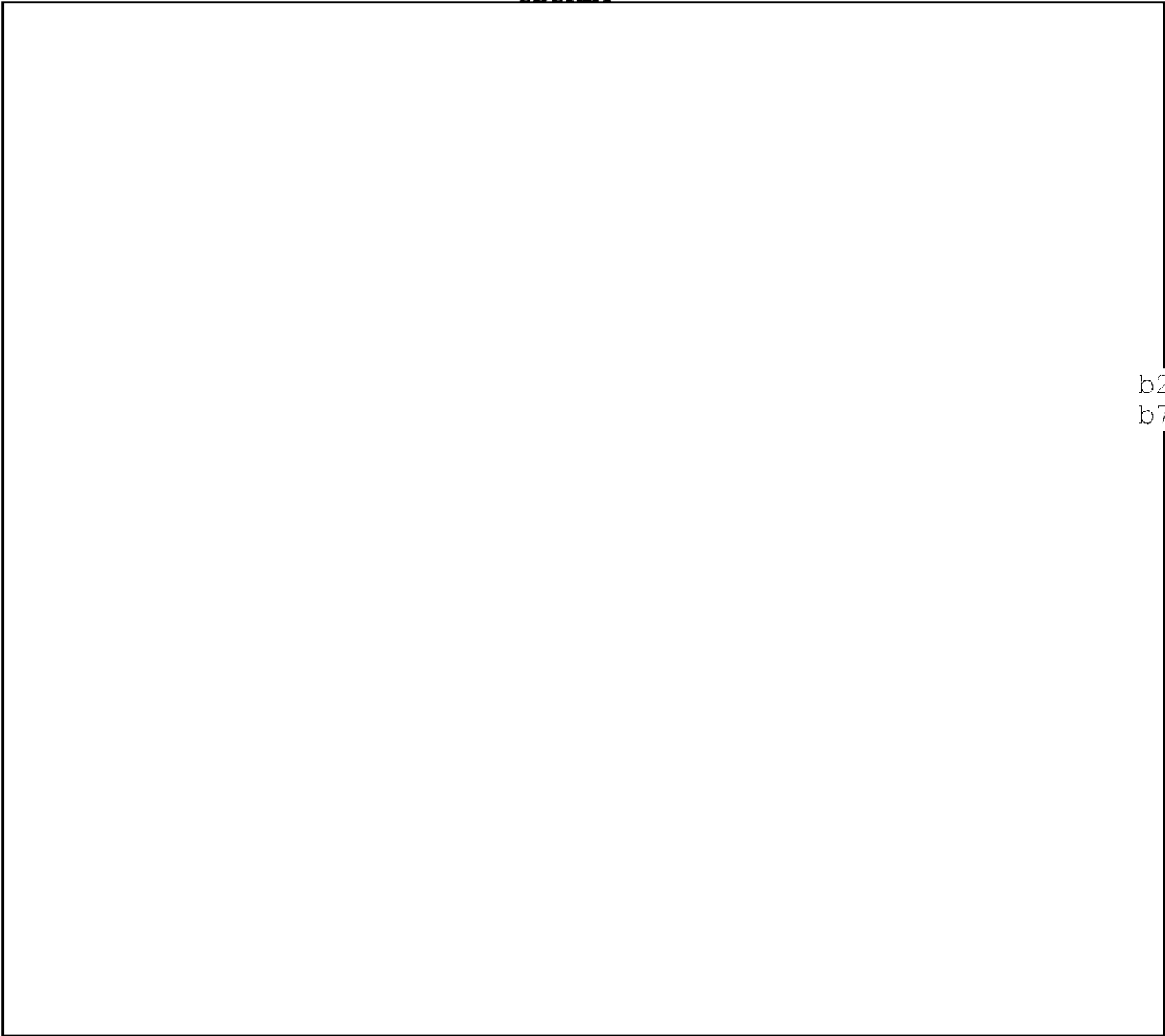
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NSL VIO-23472

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NSL VIO-23473

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NSL VIO-23474

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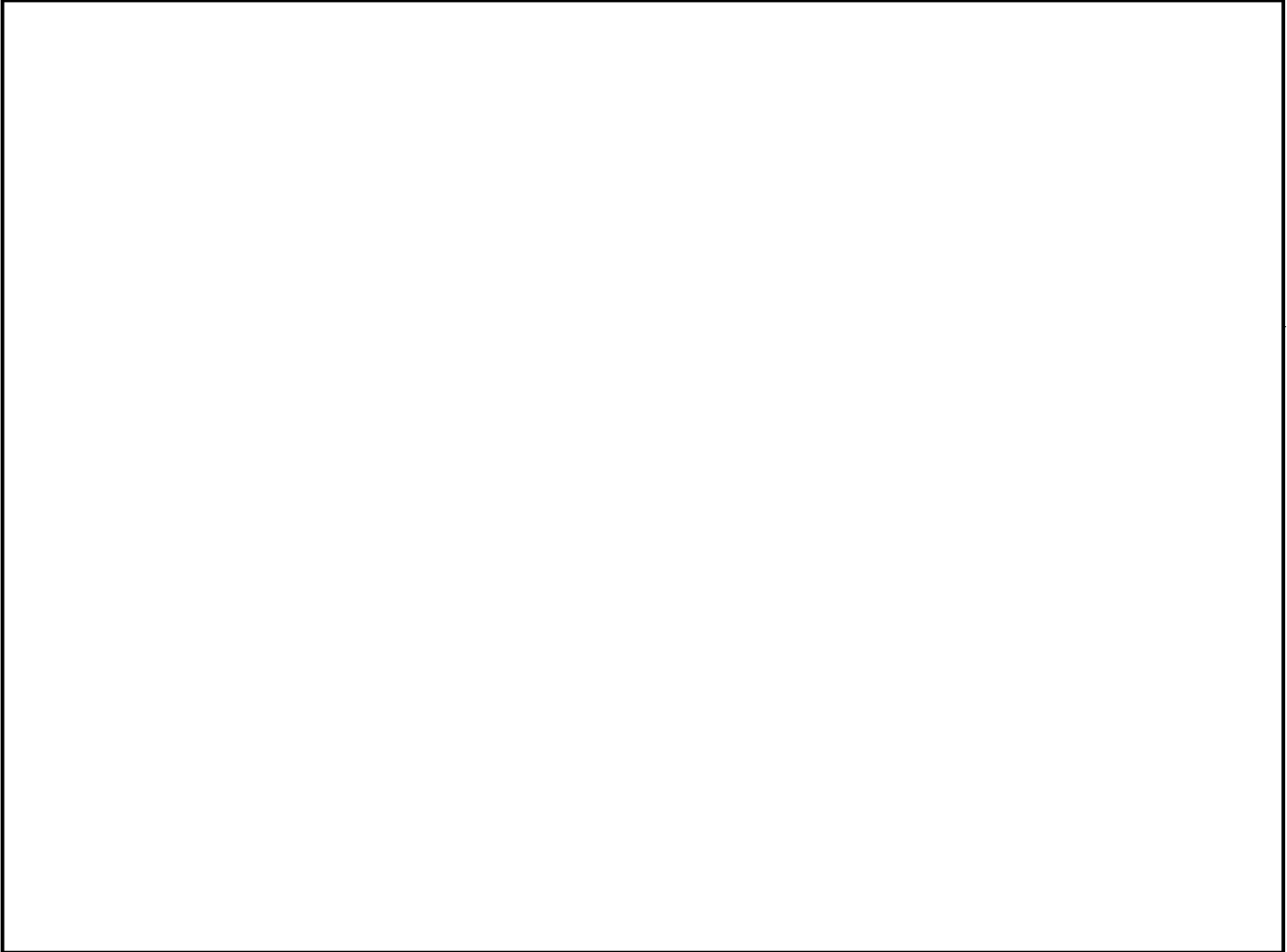
IOBs FY 2004



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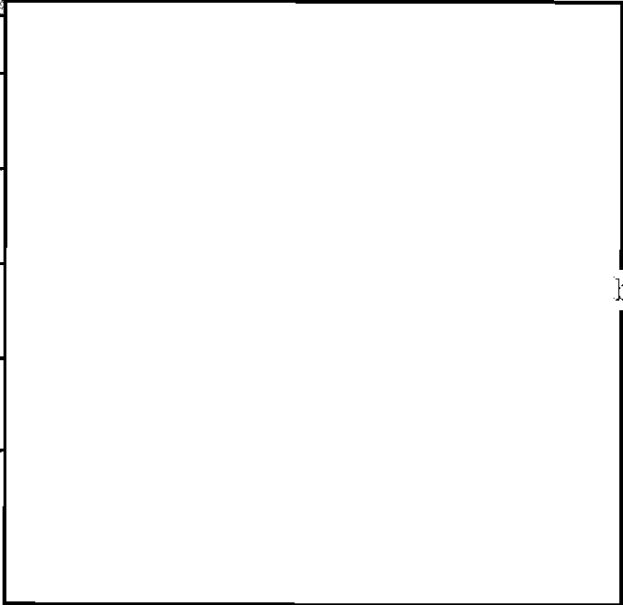


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IOB Categories:

| Category | 2004 | 2005 |
|---|------|------|
| 1- FBI errors in FISA ELSUR and FISA PS. | | |
| 2 - FBI Error in the use of National Security investigative tools (i.e., mail covers and NSLs). | | |
| 3- Third-Party or Technical errors in the use of FISA ELSUR. | | |
| 4- Third-Party or Technical errors in the use of National Security investigative tools. | | |
| 5- Miscellaneous administrative errors resulting in unauthorized investigative activities. | | |

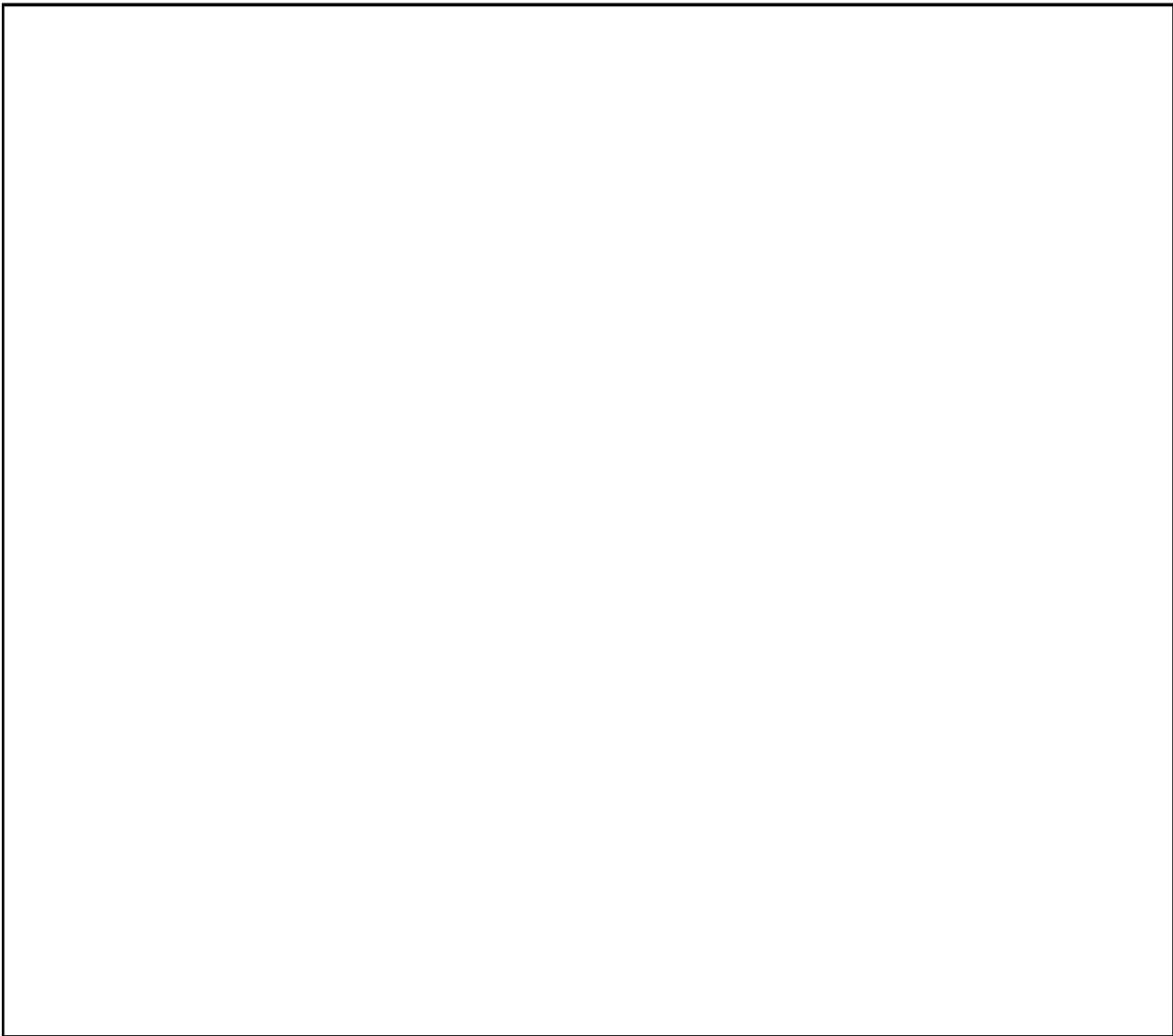


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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-13-2007 BY 65179/DMH/KSR/RW

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IOBs FY 2005



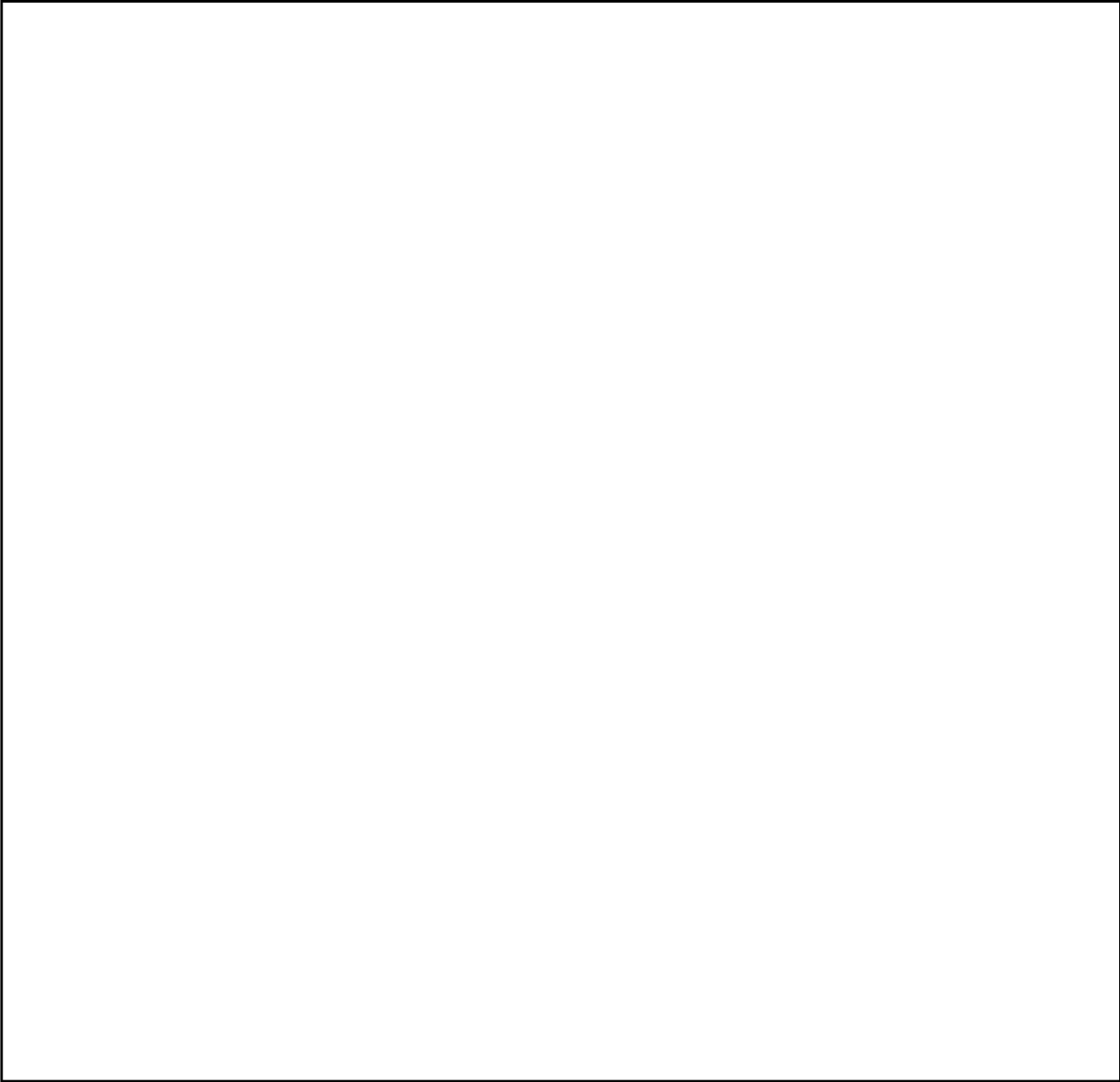
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DATE: 08-13-2007
CLASSIFIED BY: 65179/DMH/KSR/RU
REASON: 1.4 (c)
DECLASSIFY ON: 08-13-2032

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

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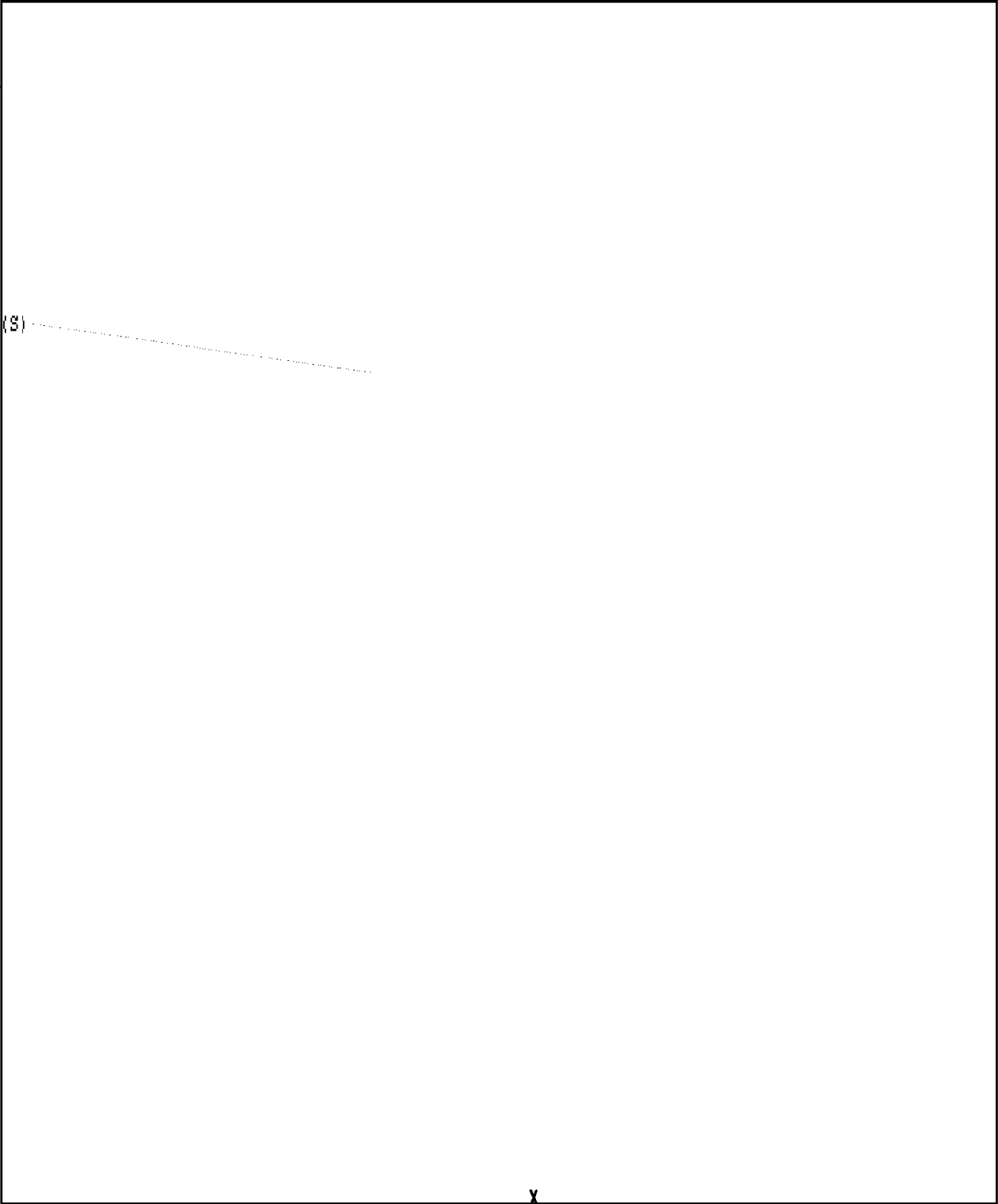
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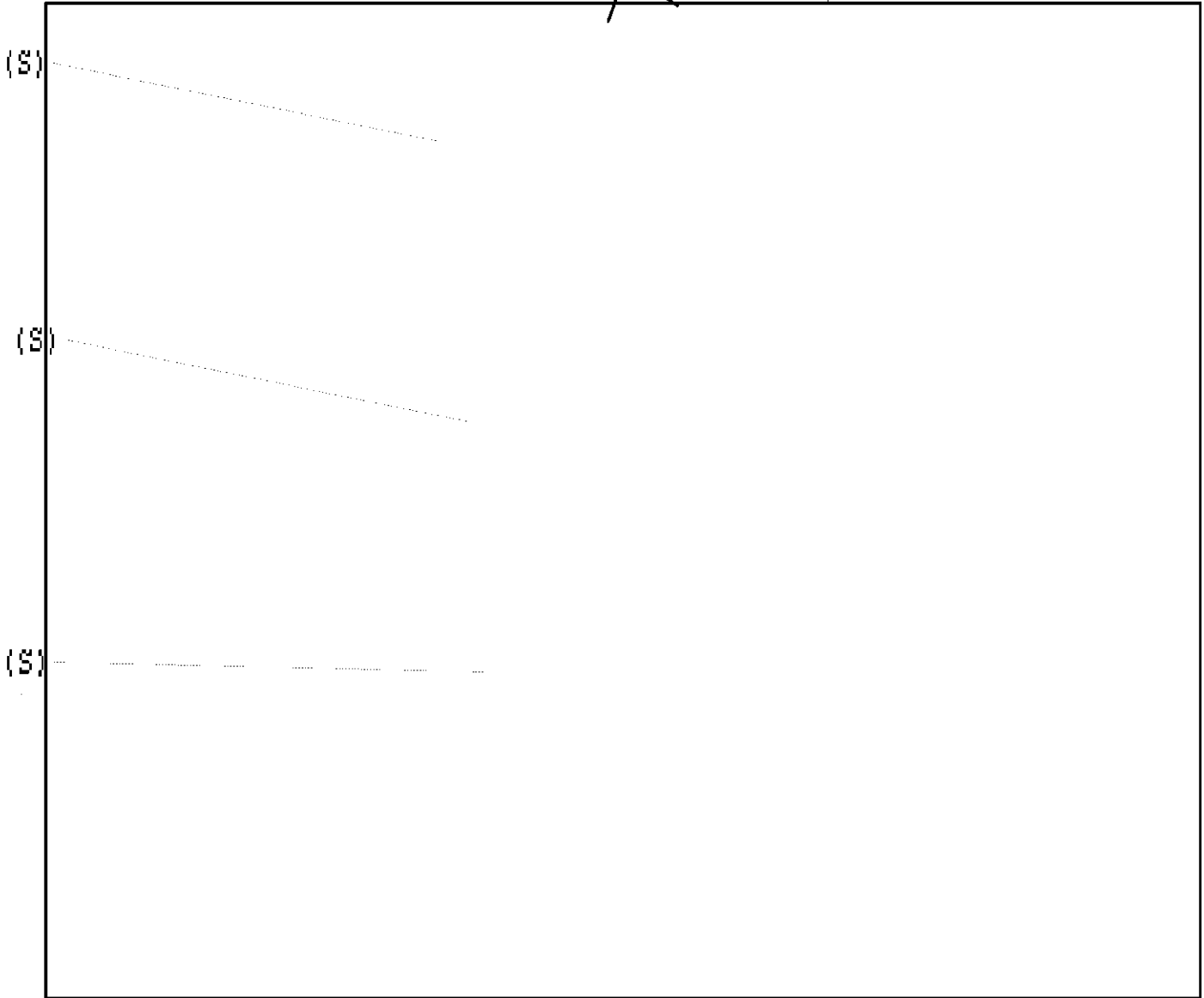
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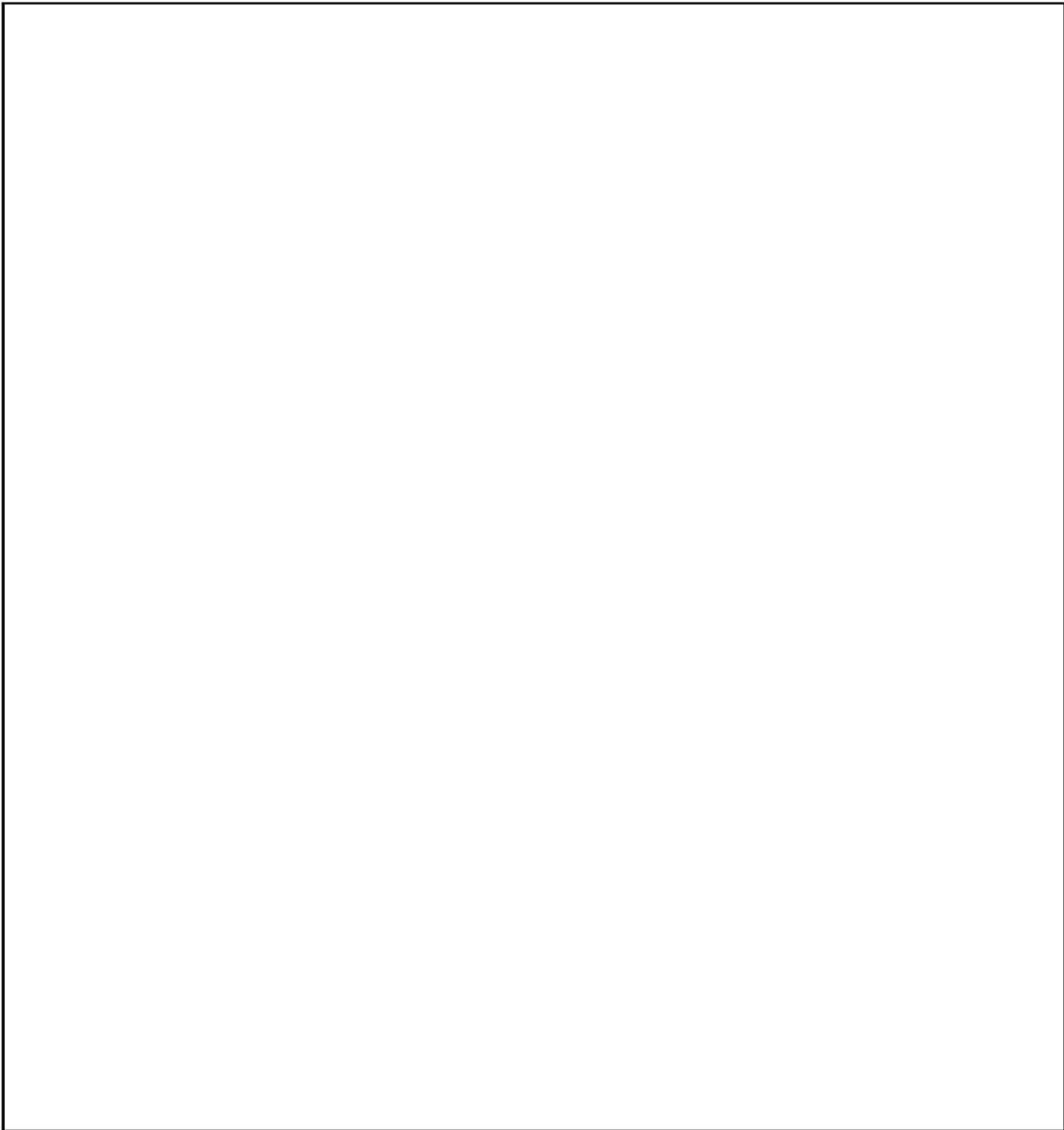


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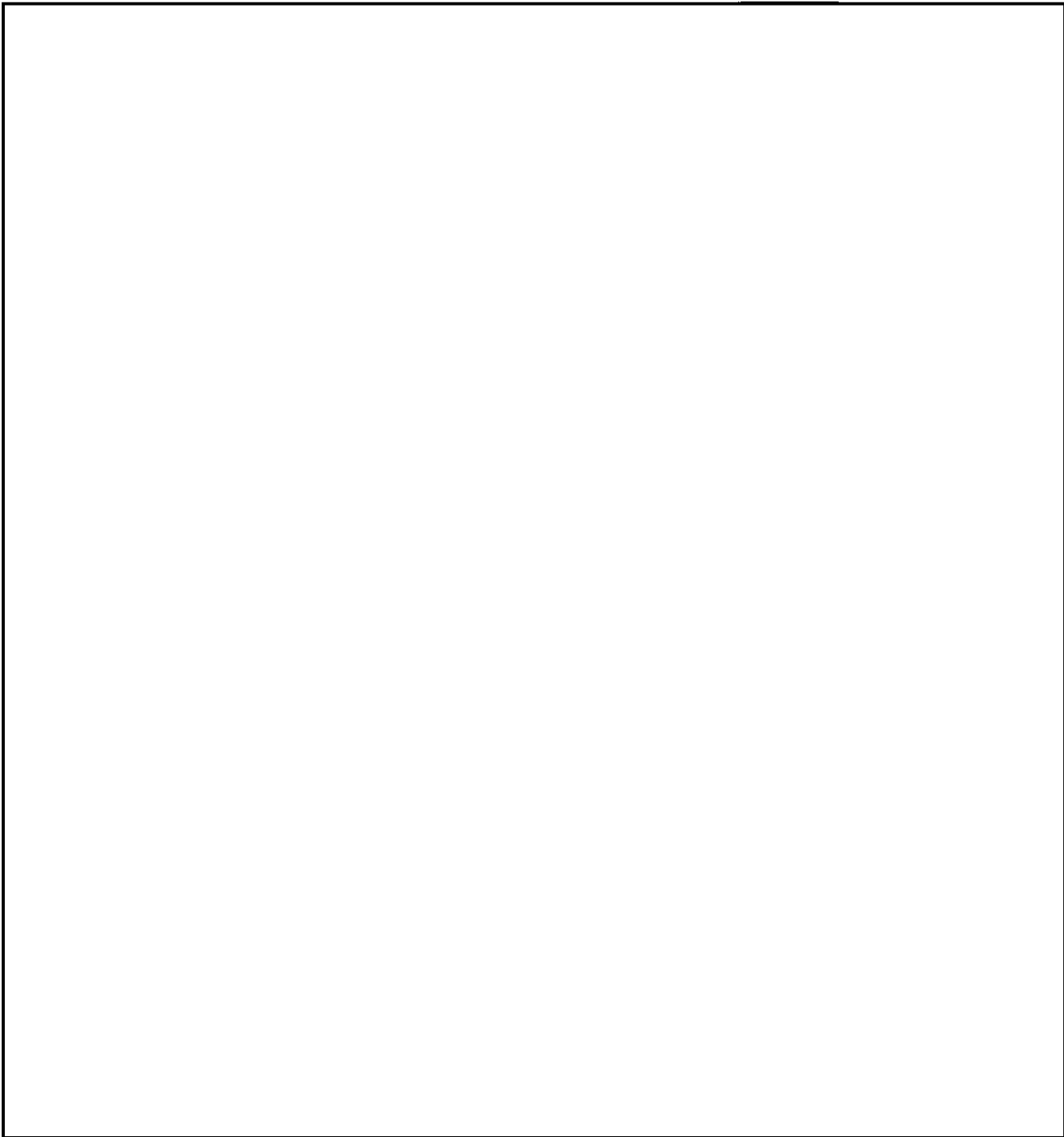
IOBs FY 2005



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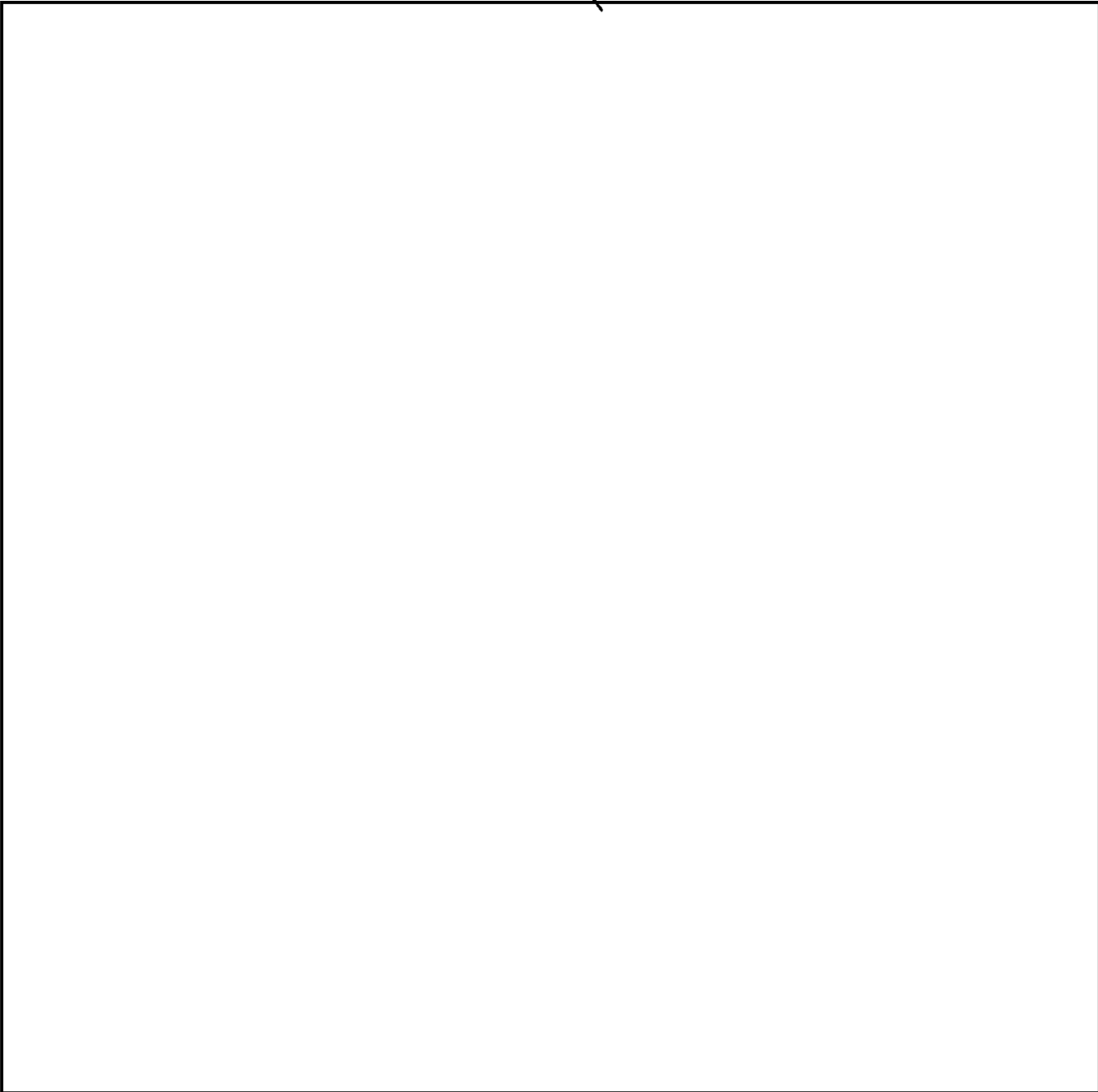


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NSL VIO-23484

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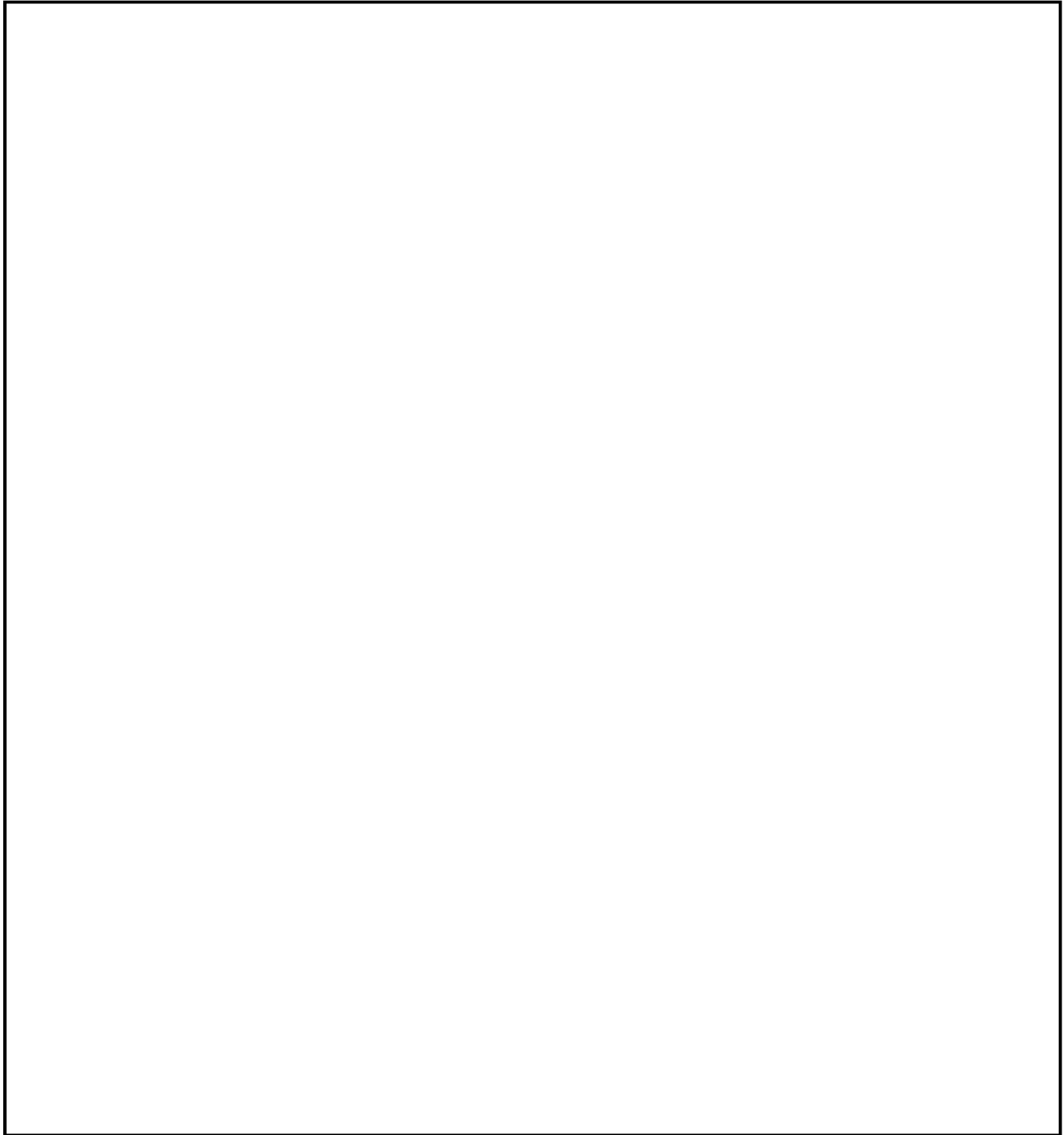


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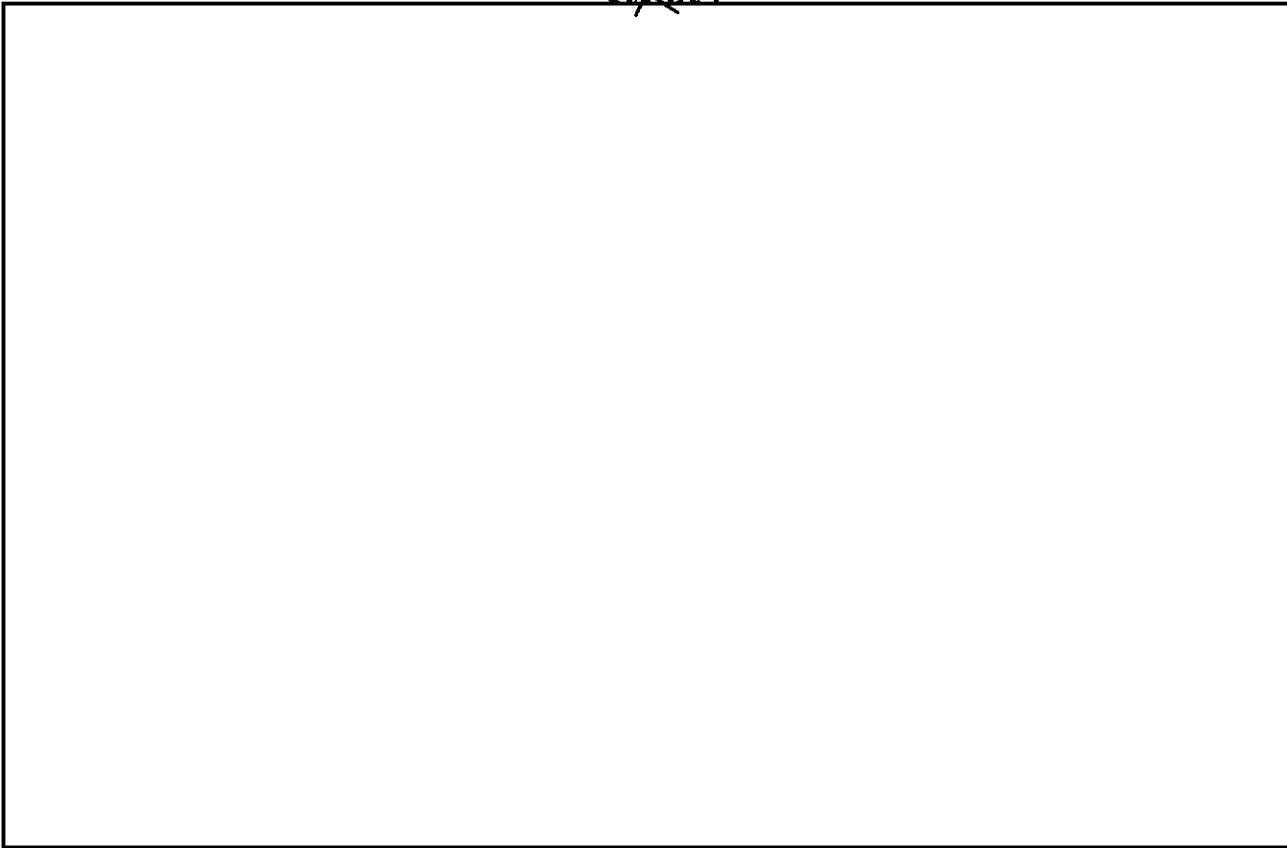
IOBs FY 2005



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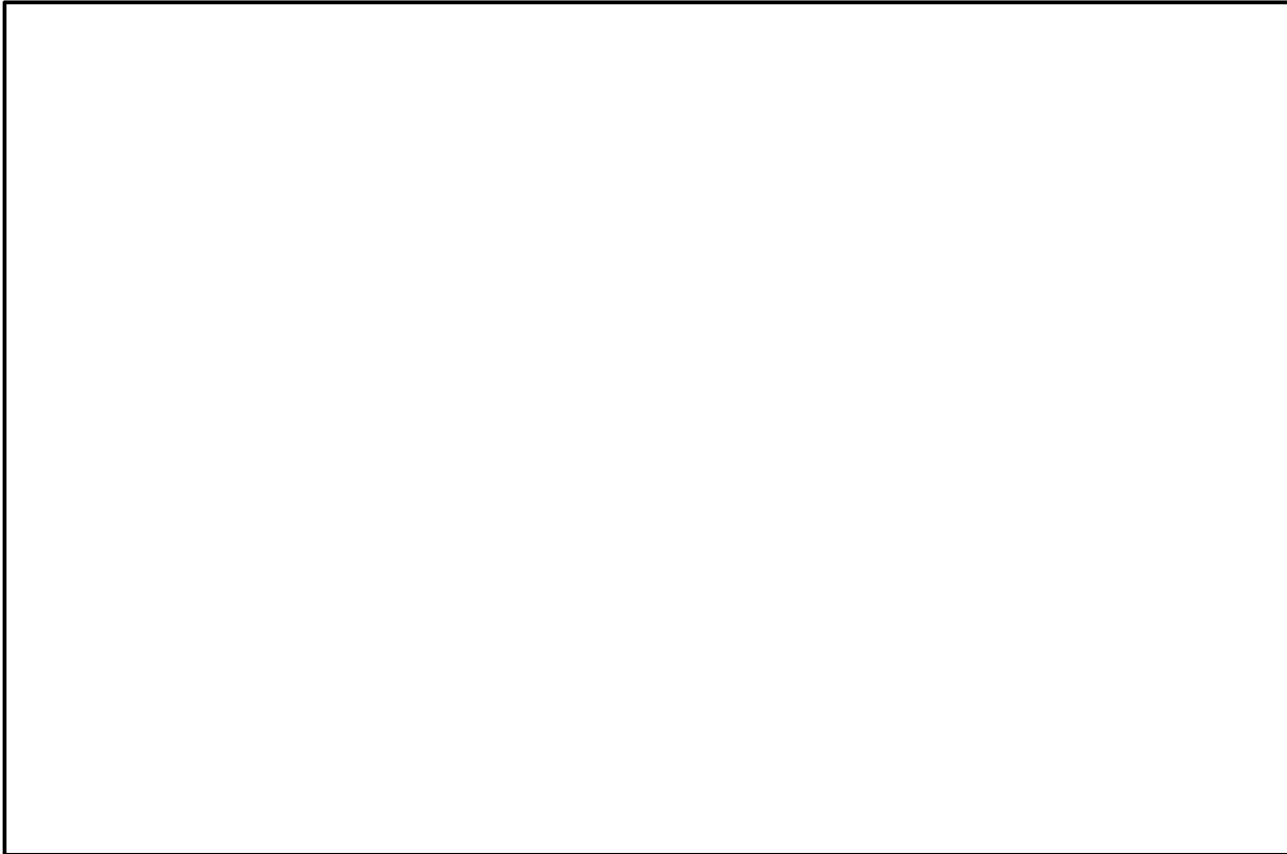


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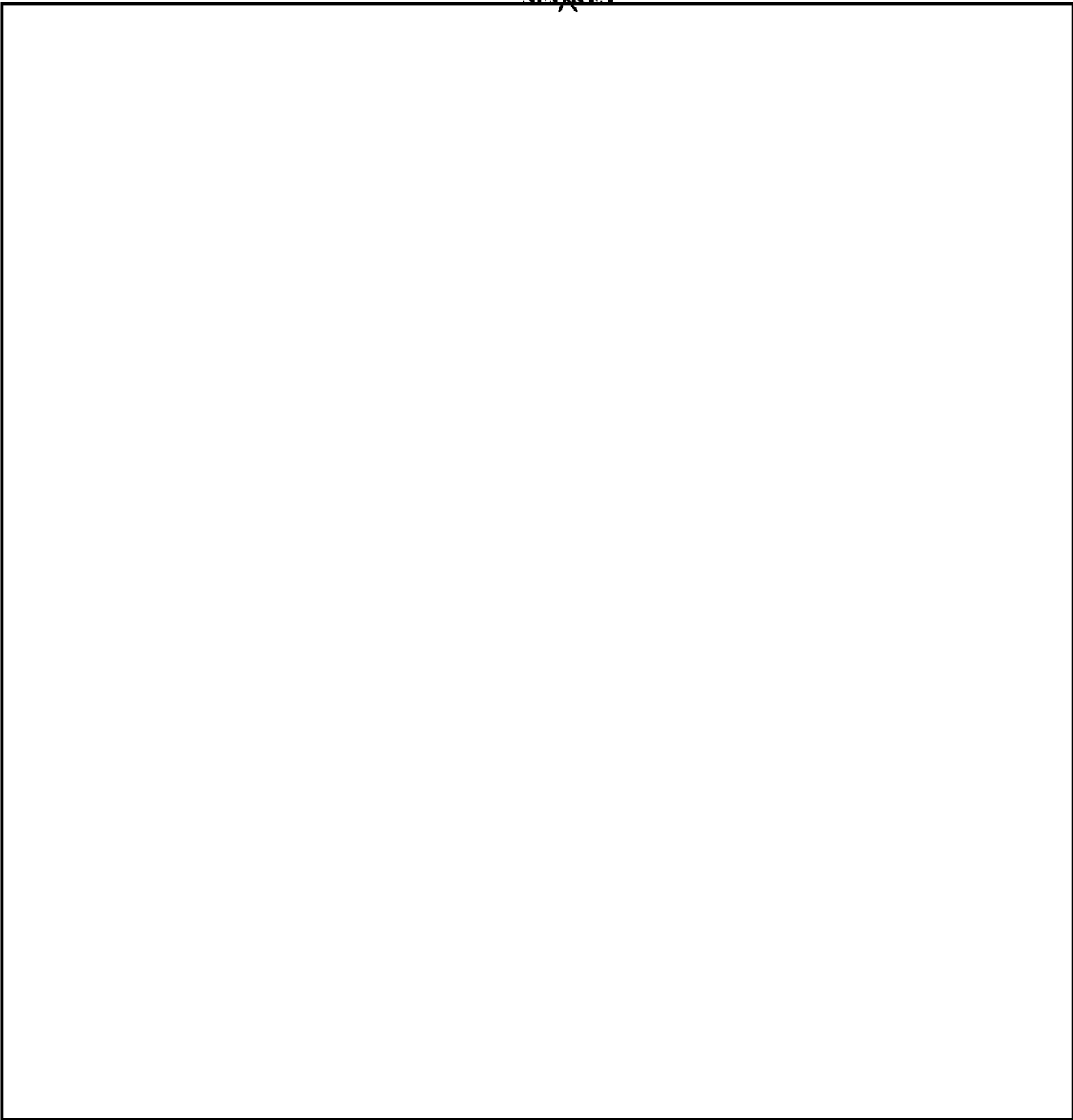
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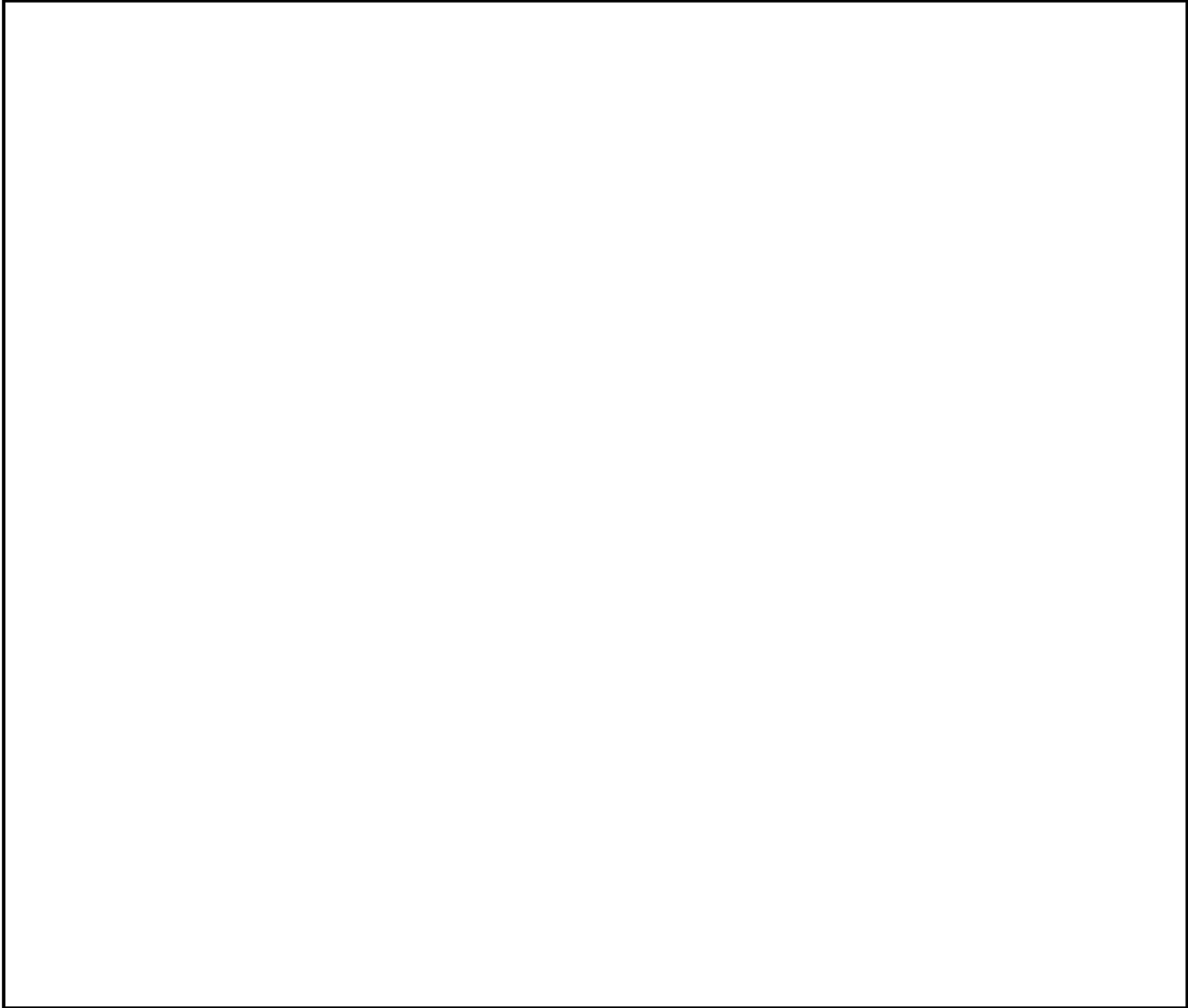
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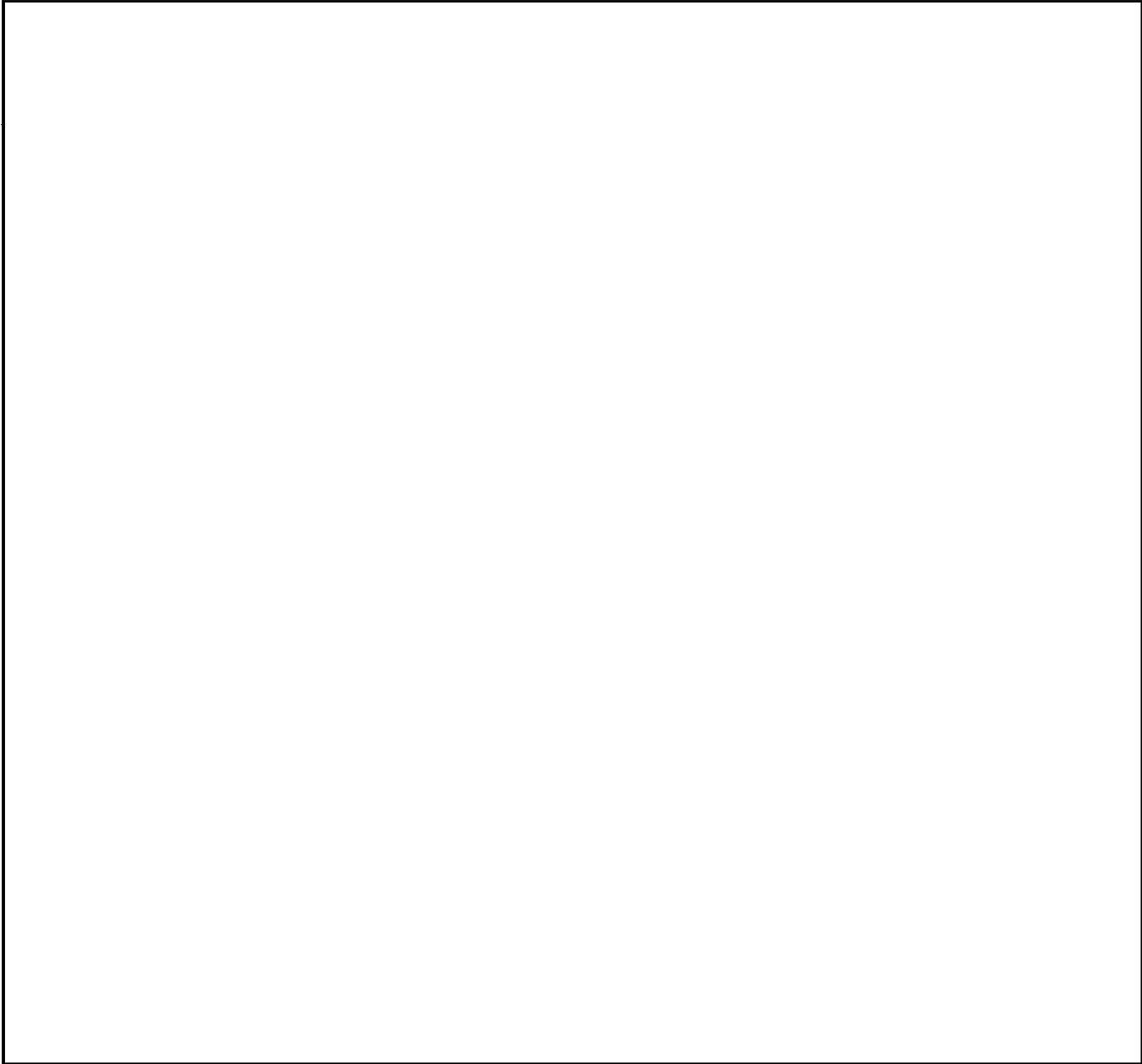


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IOBs FY 2005



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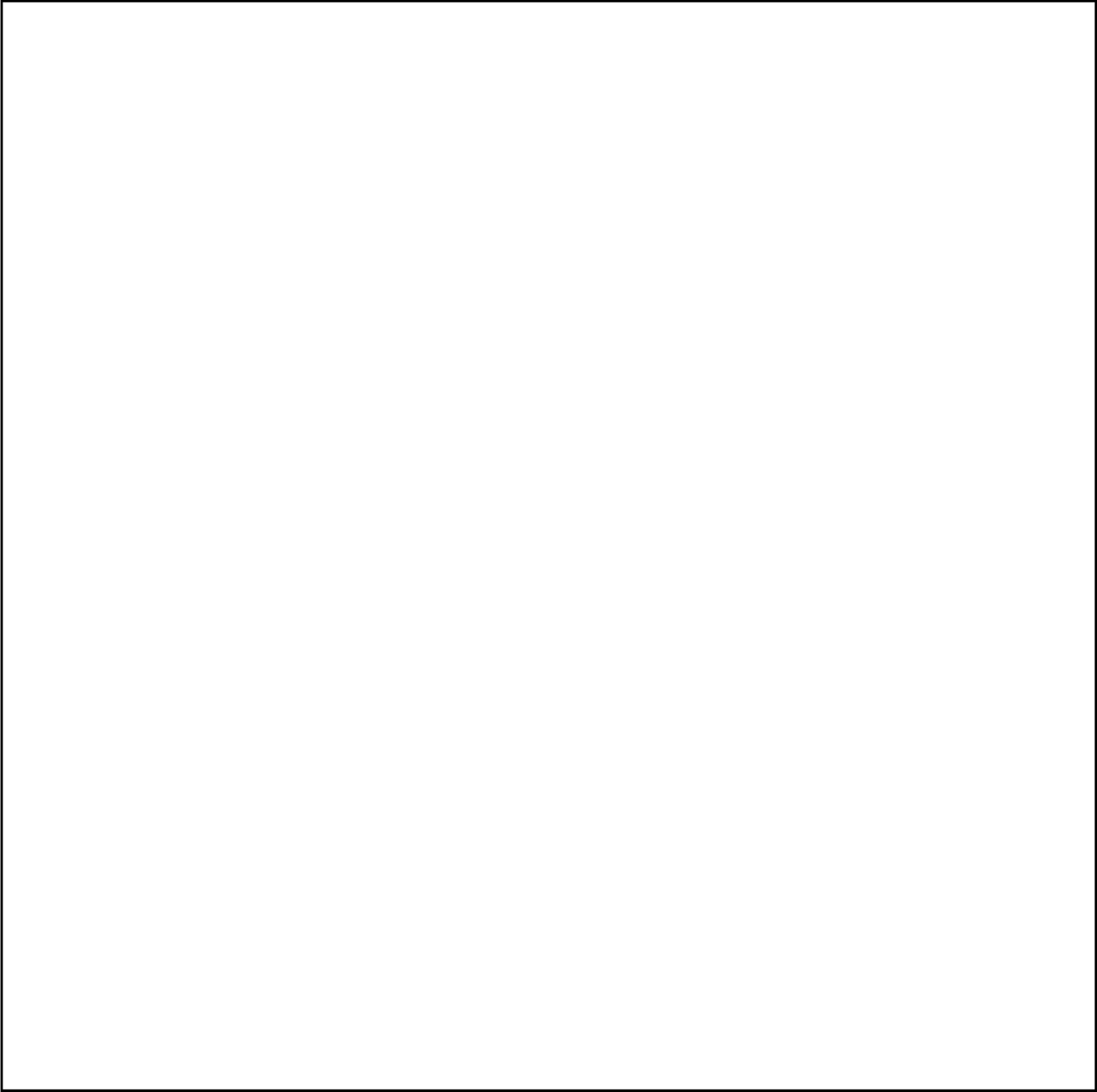
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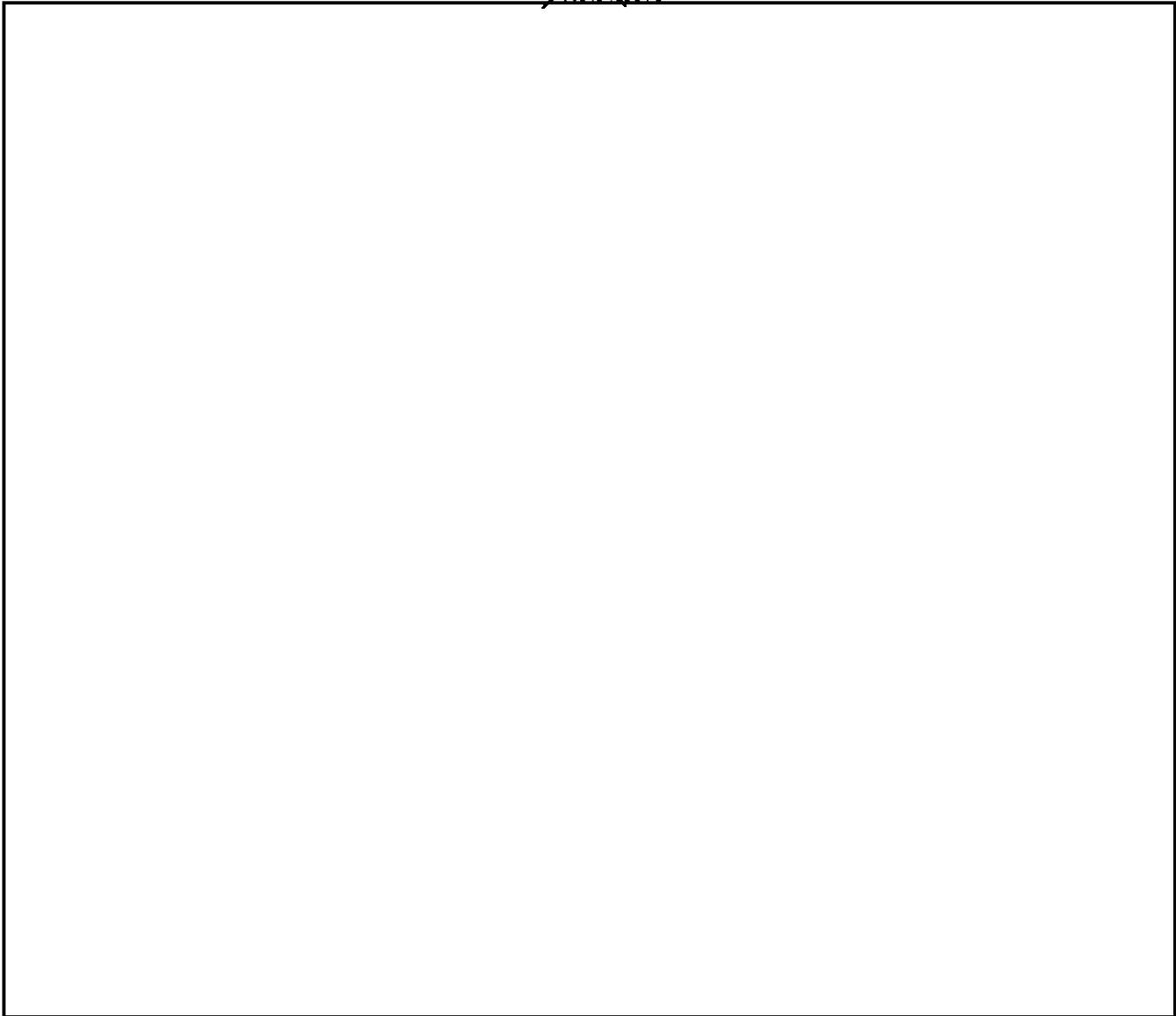
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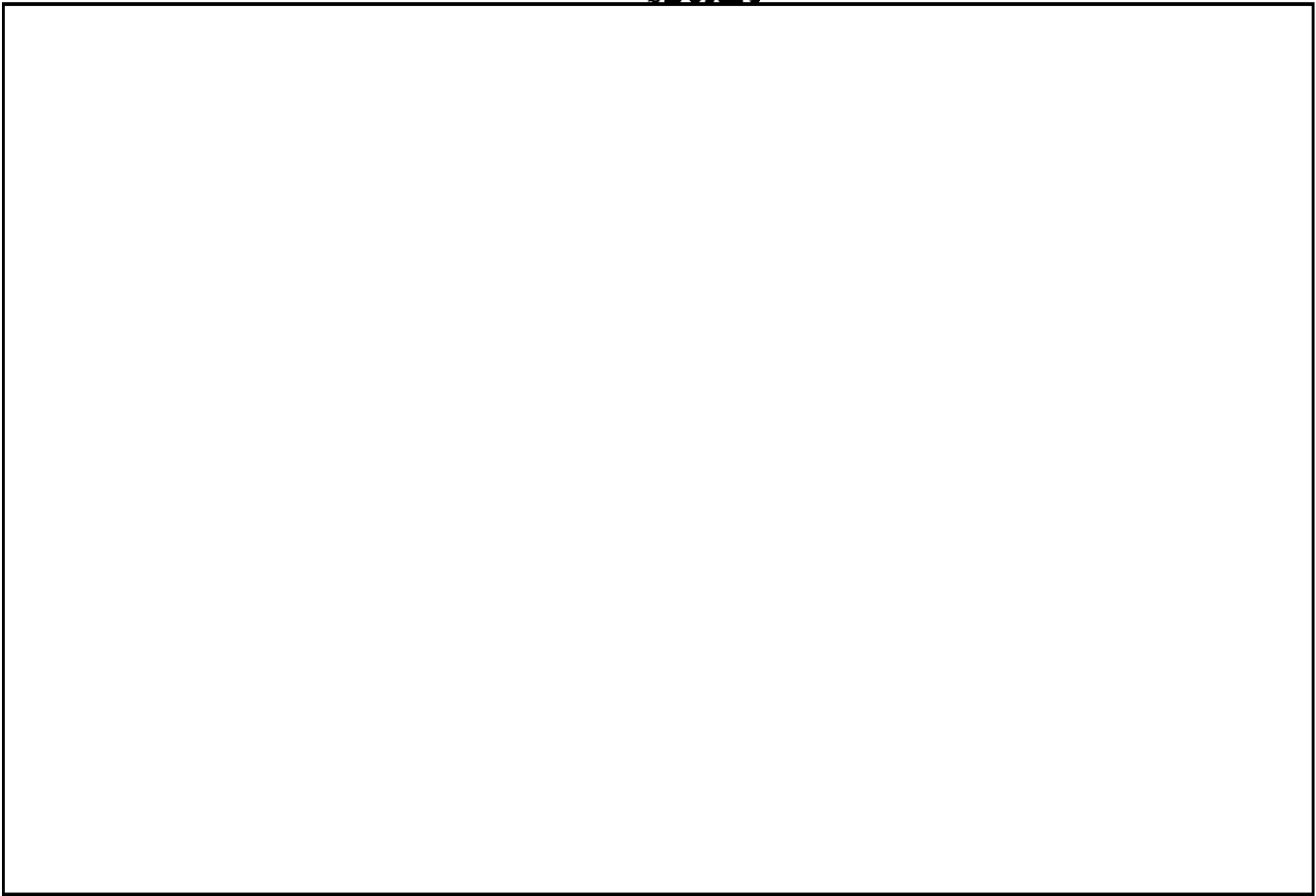
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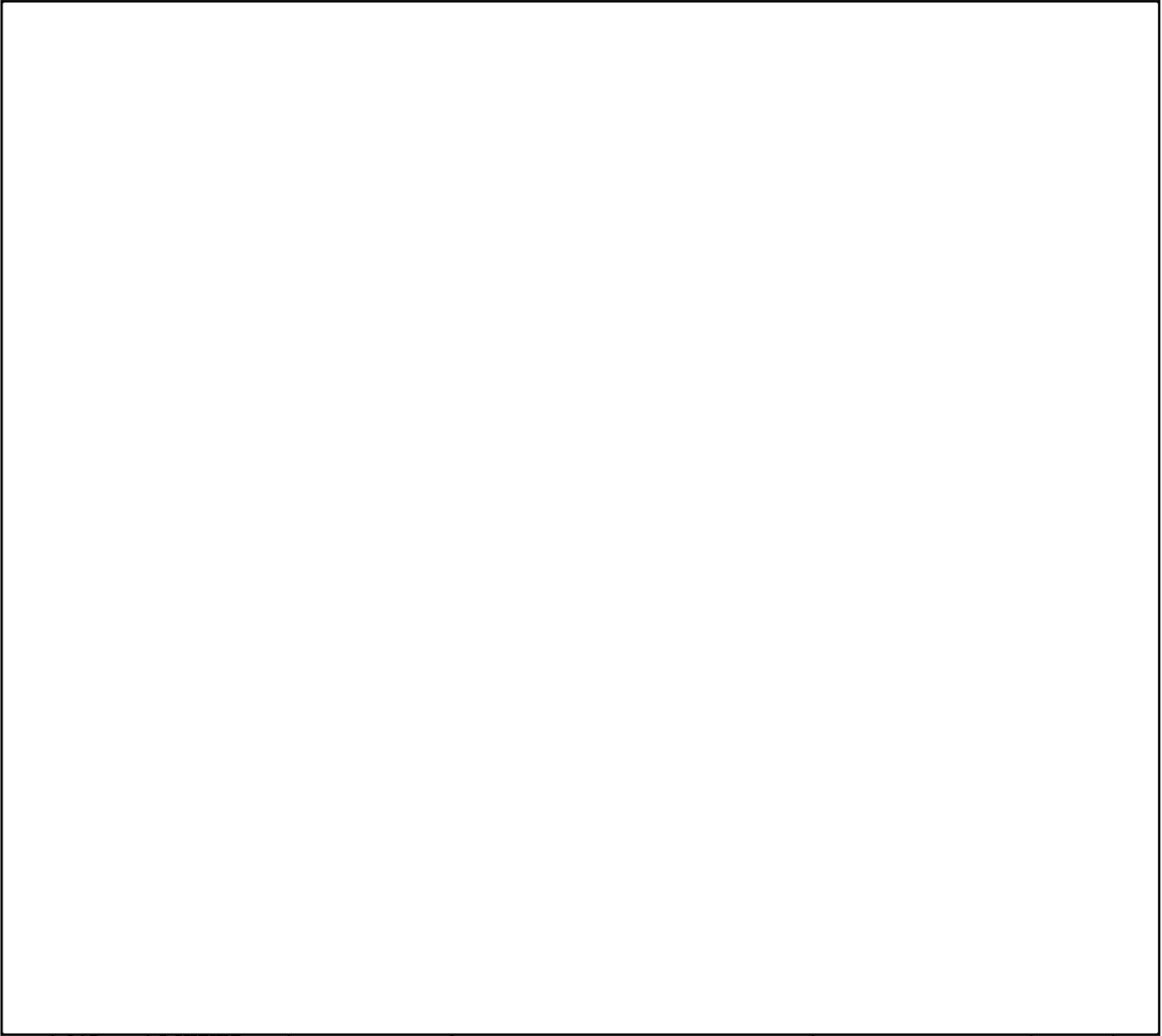
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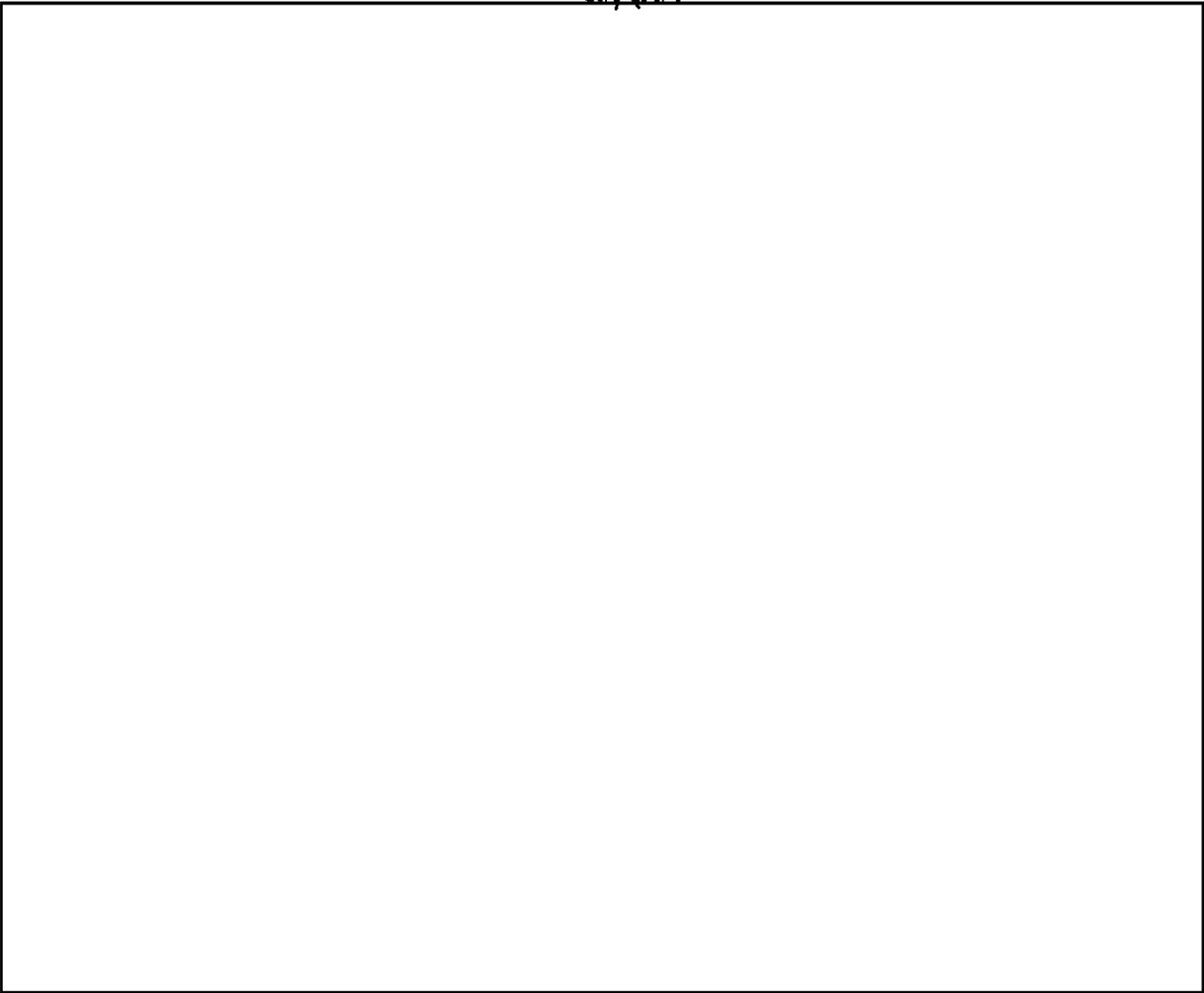
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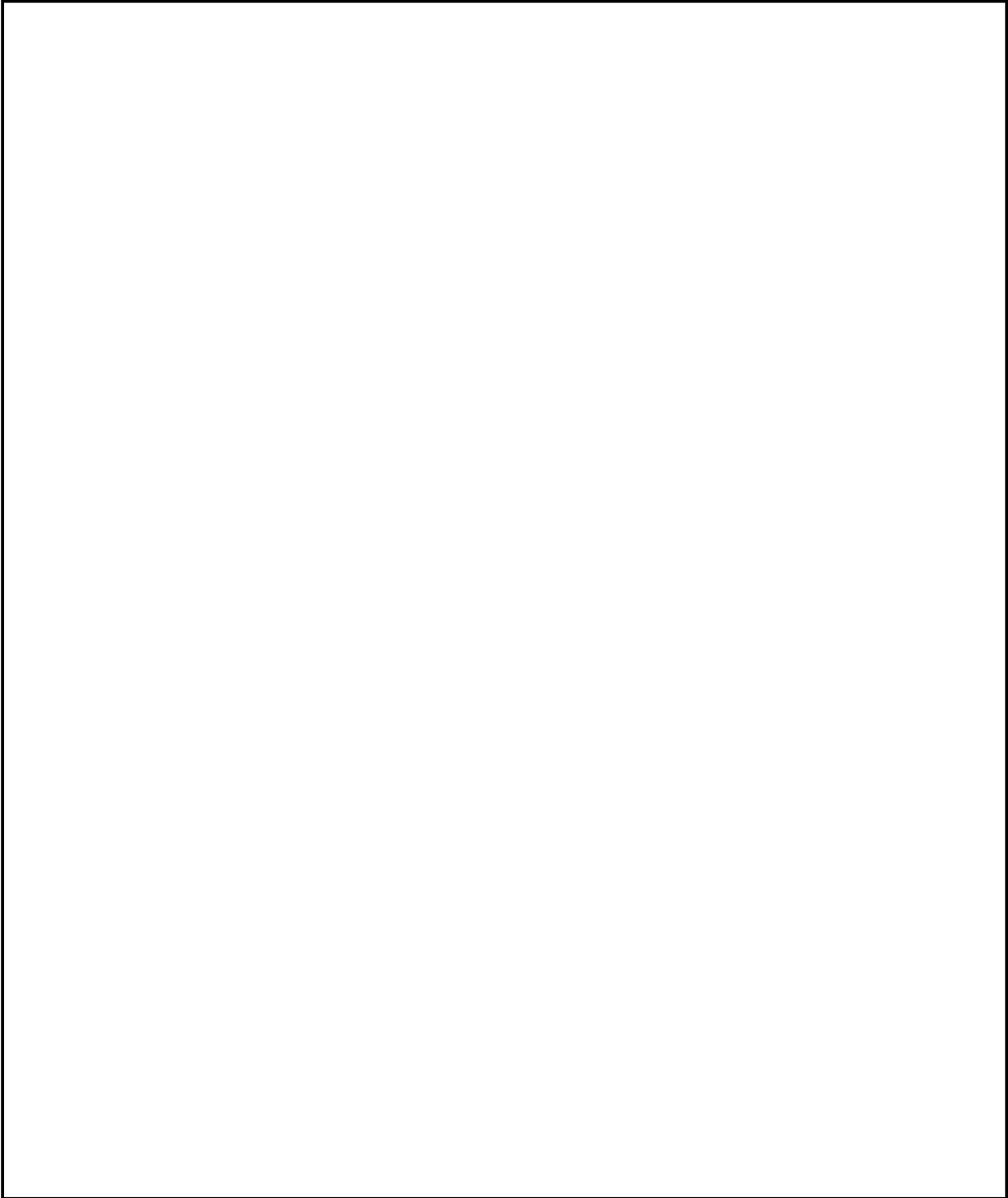
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IOBs FY 2005



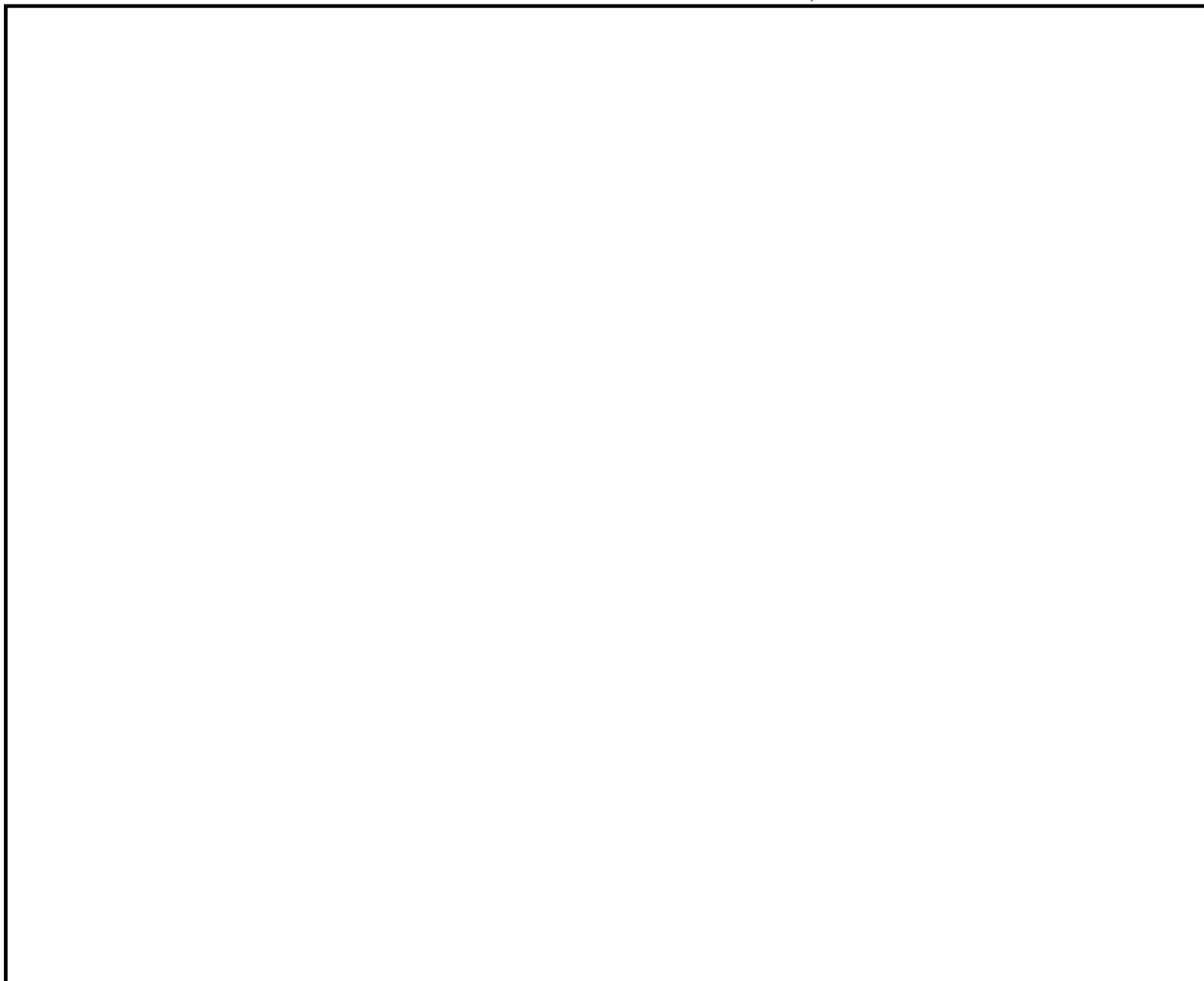
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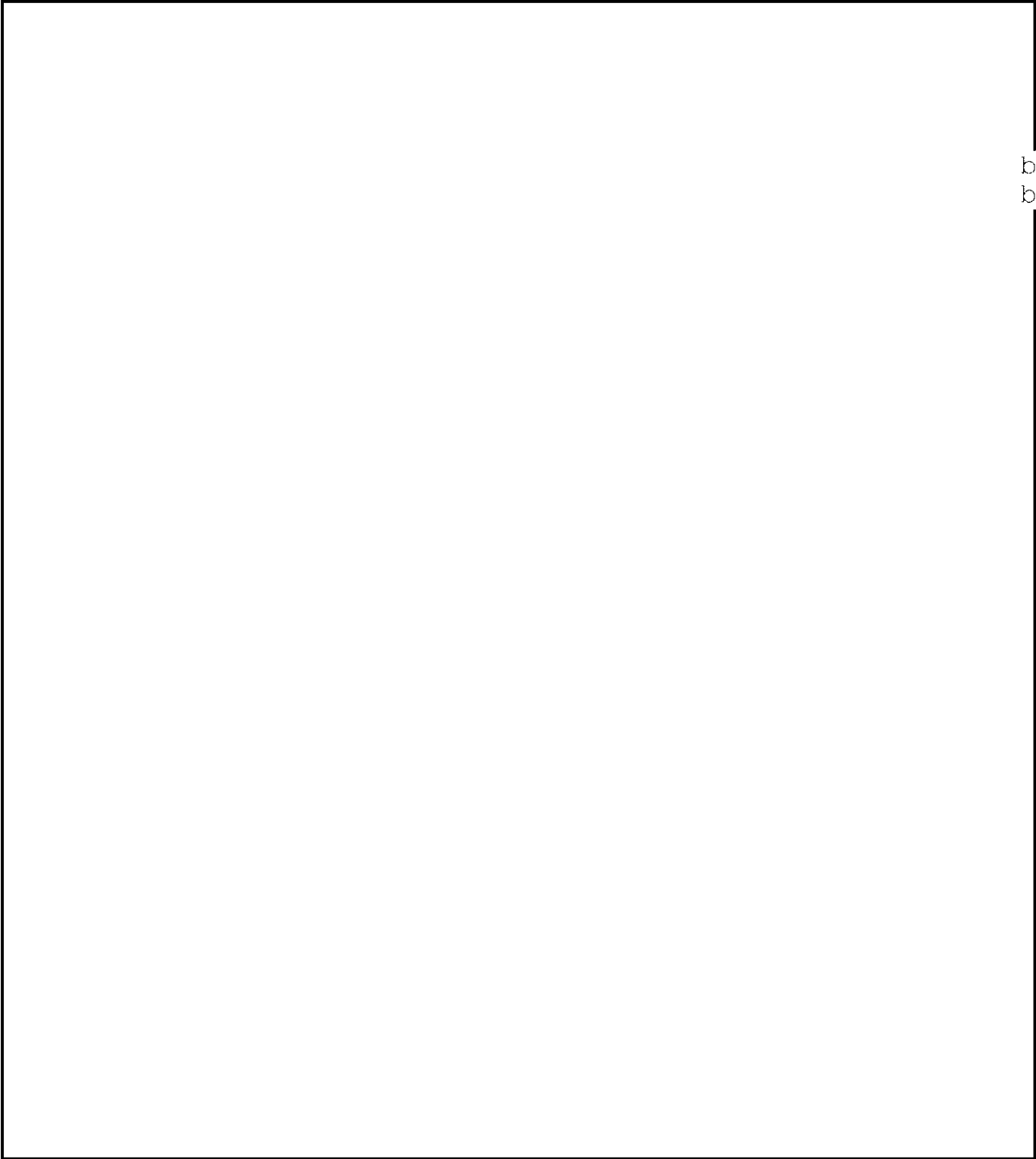


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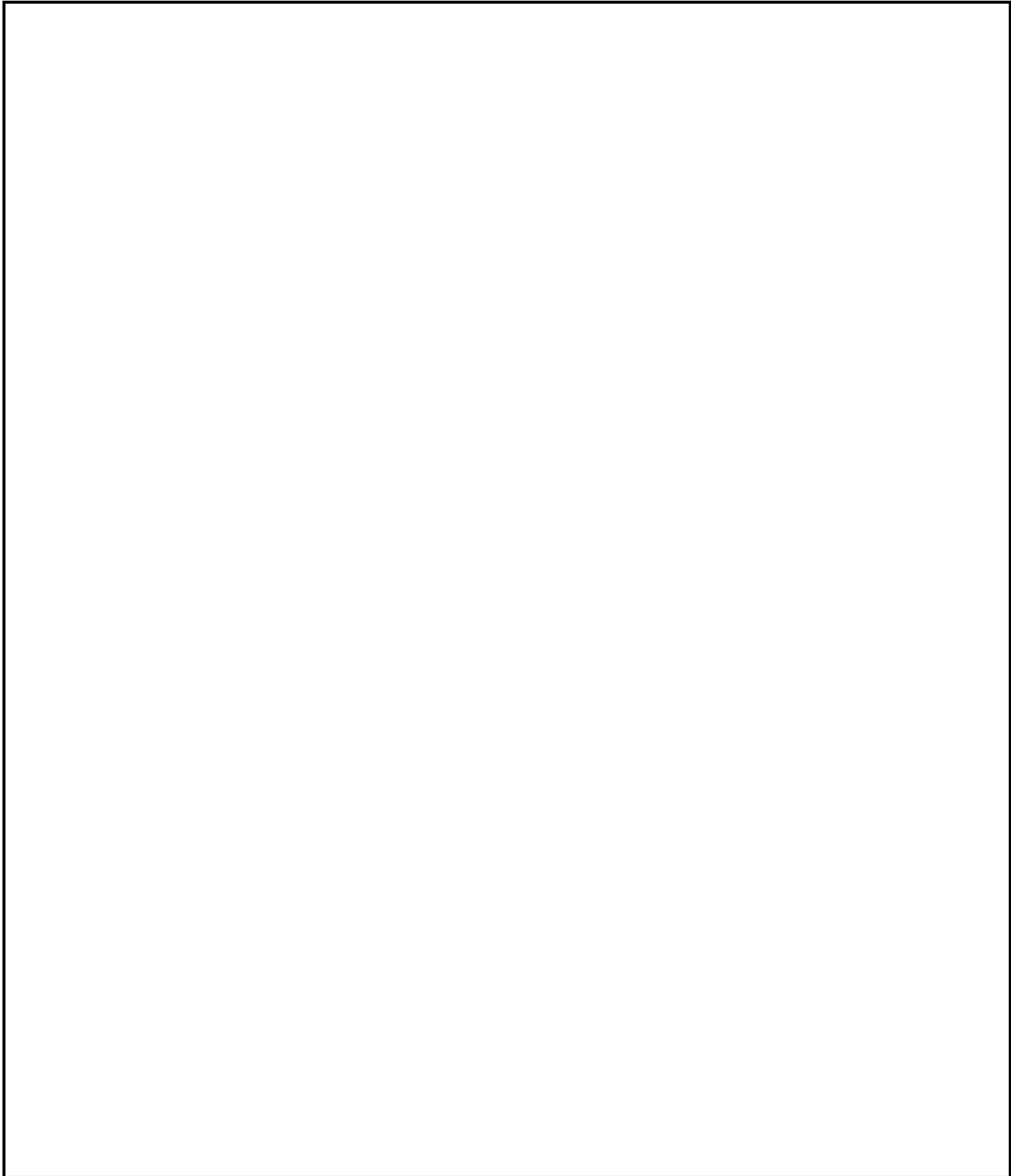


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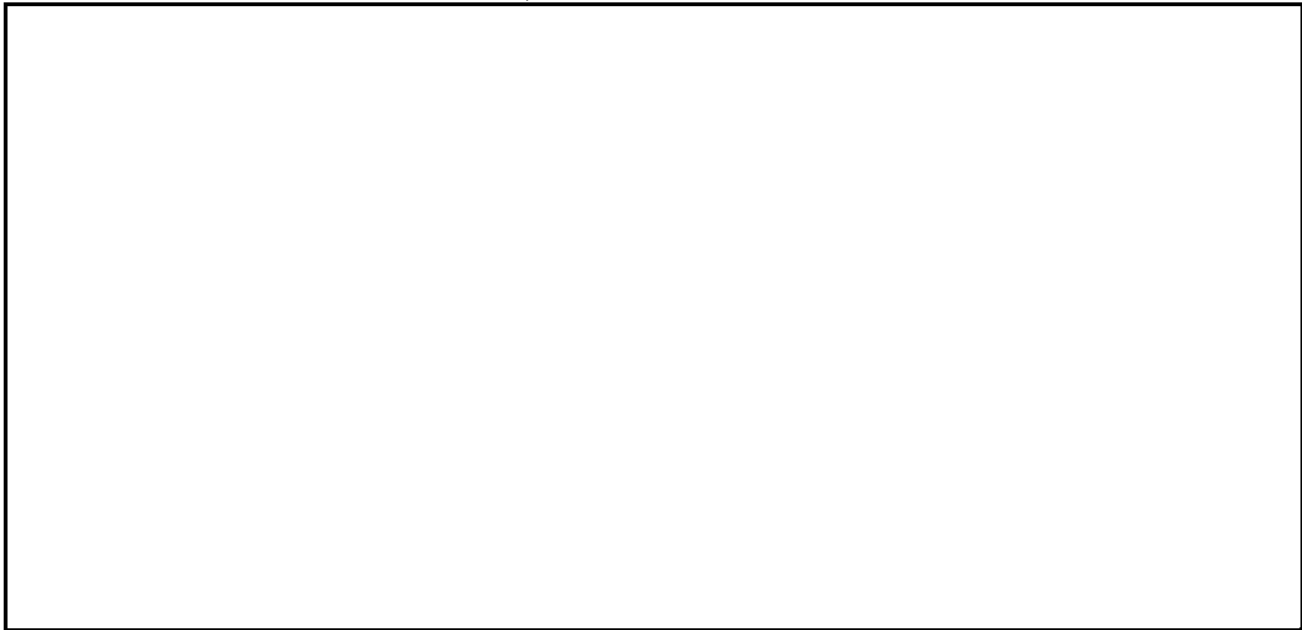
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CAT ✓



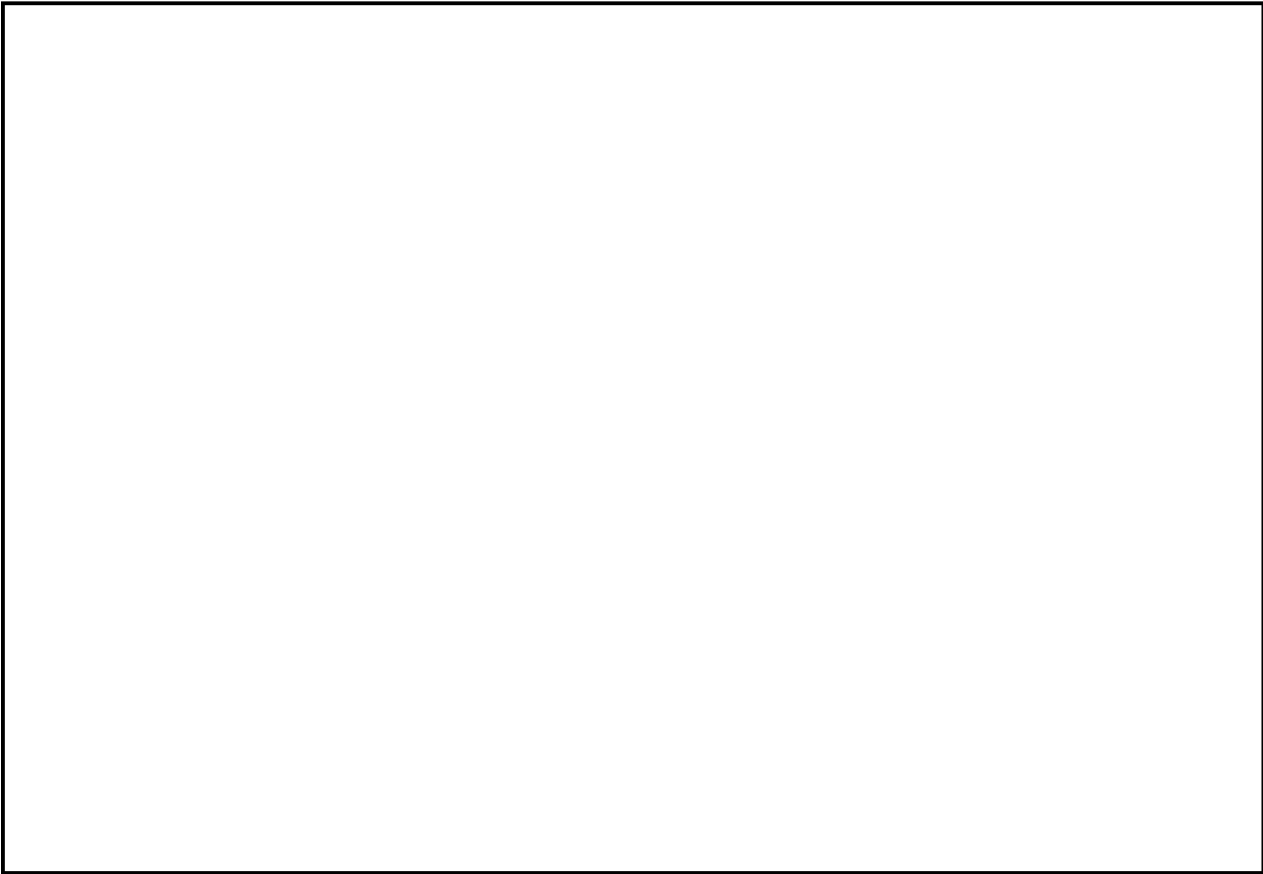
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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 06/01/2005

To: Inspection
Counterterrorism

Attn: IIS
Attn: AD
Attn: SAC, CDC

[Redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

From: General Counsel
Counterterrorism Law Unit II

Contact: [Redacted]

Approved By: Thomas Julie F

[Redacted]

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Drafted By: [Redacted]

DATE: 08-01-2007
CLASSIFIED BY: 65179/DMH/KSR/RW
REASON: 1.4 (c)
DECLASSIFY ON: 08-01-2032

(U)

Case ID #: (S) 278-HQ-C1229736-VIO-869
(S) [Redacted]

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Title: (S) SA [Redacted]
SSA [Redacted]
POSSIBLE INTELLIGENCE OVERSIGHT BOARD MATTER
IOB 2005-[Redacted]

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(U)

Synopsis: (S) It is the opinion of the Office of the General Counsel (OGC) that this matter need not be reported to the Intelligence Oversight Board (IOB), but, rather, that a record of this decision should be maintained in the investigative control file for review by the Counsel to the IOB.

(U)

~~(S) Derived from: G-3
Declassify On: X-25-1~~

(U)

Reference: (S) 278-HQ-C1229736-VIO Serial 823

Administrative: (U) This communication contains one or more footnotes. To read the footnotes, download and print the document in WordPerfect 8.0.

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Details: (S) [Redacted]

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To: Inspection From: General Counsel
Re: ~~(S)~~ 278-HQ-C1229736-VIO, 05/10/2005

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[Redacted]

(S)

[Redacted]

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(U)

~~(S)~~ Immediately upon reviewing the subscriber information, SA [Redacted] discontinued his review of the records. At no time did he or his supervisor, SSA [Redacted] view the contents of the CD or any of the toll records. Rather, he has submitted the results of the NSL to OGC, for final disposition.

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(U) Section 2.4 of Executive Order (EO) 12863, dated 09/13/1993, mandates that Inspectors General and General Counsel of the Intelligence Community components (in the FBI, the Assistant Director, INSD, and the General Counsel, OGC, respectively) report to the IOB concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive. This language was adopted verbatim from EO 12334, dated 12/04/1981, when the IOB was known as the President's Intelligence Oversight Board (PIOB). By longstanding agreement between the FBI and the IOB (and its predecessor, the PIOB), this language has been interpreted to mandate the reporting of any violation of guidelines or regulations approved by the Attorney General in accordance with EO 12333, dated 12/04/1981, if such provision was designed in full or in part to ensure the protection of the individual rights of U.S. persons. Violations of provisions that are essentially administrative in nature need not be reported to the IOB. The FBI is required, however, to maintain records of such administrative violations so that the Counsel to the IOB may review them upon request.

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To: Inspection From: General Counsel

(U) Re: ~~(S)~~ 278-HQ-C1229736-VIO, 05/10/2005

(U) ~~(S)~~ In the instant matter, SA [redacted] erroneously issued an NSD for an incorrect phone number. However, he did so in good faith, while relying upon an investigative source for his information. Further, immediately upon reviewing the subscriber information, he discontinued his review of the records and properly sequestered the information.

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(U) ~~(S)~~ Consequently, based on the above analysis, this matter will be treated by OGC as essentially administrative in nature. In accordance with the above guidance, OGC will maintain a record of this matter for possible future reference by the Oversight Board and forward the CD-ROM to OIPR to be sequestered. Inspection is also requested to maintain a copy of this opinion, documenting the nonreportable nature of this issue.

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To: Inspection From: General Counsel
(U) Re: (S) 278-HQ-C1229736-VIO, 05/10/2005

LEAD (s):

Set Lead 1: (Action)

INSPECTION

AT WASHINGTON, DC

(U) For action deemed appropriate.

Set Lead 2: (Action)

COUNTERTERRORISM

AT WASHINGTON DC

(U) Read and clear.

Set Lead 3: (Action)

[Redacted]

At [Redacted]

(U) For action deemed appropriate.

1 - [Redacted]

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Page 1

~~SECRET~~

BY COURIER

General Brent Scowcroft (USAF Retired)
Chairman
Intelligence Oversight Board
Room 5020
New Executive Office Building
725 17th Street, N.W.
Washington, D.C. 20503

DECLASSIFIED BY 65179/DMH/KSR/RG
ON 11-15-2007

Dear General Scowcroft:

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

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

~~DATE: 08-15-2005
CLASSIFIED BY 65179/DMH/JW/05 CV-0845
REASON: 1.4 (C)
DECLASSIFY ON: 08-15-2030~~

~~UNCLASSIFIED WHEN
DETACHED FROM
CLASSIFIED ENCLOSURE~~

~~ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE~~

- ~~1 - Ms. Thomas~~ 1 - IOB Library
- ~~1 -~~ 1 - 278-HQ-C1229736-VIO
- ~~1 -~~

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

~~SECRET
SECRET
-2-~~

Case ID : 278-HQ-C1229736-VIO

Serial : 601

~~SECRET~~

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Page 2

General Brent Scowcroft (USAF Retired)

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

Sincerely,

Julie Thomas
Deputy General Counsel

Enclosure

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

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INTELLIGENCE OVERSIGHT BOARD (IOB) MATTER
IOB 2004-77 (U)

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----- Working Copy -----

Page 3

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~~(S)~~ Investigation of this IOB matter has determined that ~~(S)~~

(U)

~~(S)~~

(U)

~~(S)~~ Such information is relevant in national security investigations of this type. However, the proper method for obtaining bank records is through a National Security Letter under Title 12, United States Code, Section 3414(a)(1)(A). Access to financial records by government authorities through means not provided by law is prohibited under Title 12, United States Code, Section 3402. (U)

~~(S)~~

(U)

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(U) This matter has been referred to the FBI's Office of Professional Responsibility for such action as may be appropriate.

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

~~SECRET~~

~~SECRET~~

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-10-2005 BY 65179/DMH/JW 05-CV-0845

FAILED TO FILE A 90 DAY LHM
+ ANNUAL LHM THAT SHOULD HAVE BEEN
PREPARED & FORWARDED BY 8/17/03 WAS NOT
REC'D UNTIL 10/20/03. A LHM WAS
PREPARED ON 7/18/03, BUT NOT UPLOADED.

NO TEXT...

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DATE: _____
ORIG: _____
ORIG: _____
ORIG: _____

Precedence: ROUTINE

Date: 06/11/04

To: Director's Office

Attn: OPR

Counterterrorism

Attn: AD

[Redacted]

Attn: SAC
CDC

ALL INFORMATION CONTAINED
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WHERE SHOWN OTHERWISE

From: General Counsel

National Security Law Branch/Room 7947

Contact: [Redacted] ext. [Redacted]

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Approved By: Curran John F

[Redacted]

DATE: 08-01-2007
CLASSIFIED BY 65179/DMH/RSP
REASON: 1.4 (c)
DECLASSIFY ON: 08-01-2032

Drafted By:

[Redacted]

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

(U) Title: (S) INTELLIGENCE OVERSIGHT BOARD
MATTER 2004- [Redacted]

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(U) Synopsis: (S) It is the opinion of the Office of the General Counsel (OGC) that this matter must be reported to the Intelligence Oversight Board (IOB) and to the Office of Professional Responsibility (OPR). OGC will prepare and deliver the required correspondence to the IOB. Our analysis follows.

(U) References: (1) (S) 278-HQ-C1229736-VIO Serial 419

Administrative: (U) This communication contains one or more footnotes. To read the footnotes, download and print the document in WordPerfect 8.0.

(U) (S) ~~Derived From : G-3
Declassify On: X1-25~~

(S) Details: (S) The [Redacted] Division [Redacted]

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[Redacted] On 10/03/03, [Redacted] issued a National Security Letter (NSL) to an internet service provider requesting the name, address, length of service, and electronic communication transactional records for a website. The NSL authority did not include a request for email content.

(U) (S) The FBI investigation revealed that potential

Case ID : 278-HQ-C1229736-VIO

Serial : 503

(S)

[redacted]
[redacted] the actual server is located at [redacted] in [redacted] On October 3, 2003, [redacted] issued a National Security Letter to Pegasus requesting the following:

Name, address, length of service, and electronic communication transactional records, to include existing transaction/activity logs and all e-mail header information (not to include message content and/or subject fields), for domain [redacted] (Emphasis added).

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(S)

~~(S)~~ The NSL contained the appropriate warning to Pegasus:

This National Security Letter does not request, and you should not provide, information pursuant to this request that should disclose the content of any electronic communications as defined in Title 18, United States Code, Section 2510(8).

(U)

~~(S)~~ The [redacted] Division delivered the NSL to [redacted] and subsequently forwarded [redacted] response (1 CDROM) to [redacted] on 2/11/04. Upon review, [redacted] discovered that [redacted] response appeared to go beyond the NSL request by including content. [redacted] extracted, and saved to a separate CDROM, the website logs authorized by the NSL. [redacted] then sealed the original CDROM and forwarded it to Cyber, FBI Headquarters for delivery to the Office of Intelligence Policy and Review.

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(U) Section 2.4 of Executive Order (E.O.) 12863, dated 09/13/1993, mandates that Inspectors General and General Counsel of the Intelligence Community components (in the FBI, the Assistant Director, INSD, and the General Counsel, OGC, respectively) report to the IOB all information concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive. This language was adopted verbatim from E.O. 12334, dated 12/04/1981, when the IOB was known as the President's Intelligence Oversight Board.

(U) Title 18, United States Code, Section 2709, provides the mechanism for obtaining counterintelligence access to transactional records. It states in part that a wire or electronic communication service provider shall comply with a request for subscriber information and ... electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation. The production of email content by the service provider is not authorized under the statute.

~~(S)~~ In this instance, as a result of the errors by the communications carrier, it appears the FBI unintentionally

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obtained email content. Thus, the information was not authorized under Title 18, United States Code, Section 2709. Although [redacted] [redacted] took the appropriate preliminary steps to sequester the unauthorized information to prevent its use or further dissemination, in accordance with the reporting requirements of Section 2.4 of E.O. 12863, the matter must be reported to the IOB. OGC will prepare the correspondence required to report this matter to the IOB.

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LEAD (s)

Set Lead 1: (Action)

DIRECTOR'S OFFICE

AT OPR FO, DC

(U) For action deemed appropriate.

Set Lead 2: (Action)

CYBER DIVISION

AT WASHINGTON, DC

(U) ~~(S)~~ If it has not already accomplished, coordinate with the [redacted] Division, to ensure that all information related to the unauthorized production is collected, sequestered, sealed and delivered to FBIHQ for submission to the Office of Intelligence Policy and Review, Department of Justice.

Set Lead 3: (Action)

[redacted]

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(U) ~~(S)~~ Coordinate with FBIHQ, to ensure that all information related to the unauthorized production is collected, sequestered, sealed and delivered to FBIHQ for submission to the Office of Intelligence Policy and Review, Department of Justice.

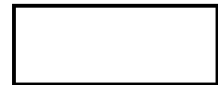
1 - Mr. Curran

1 - [redacted]

1 - IOB Library

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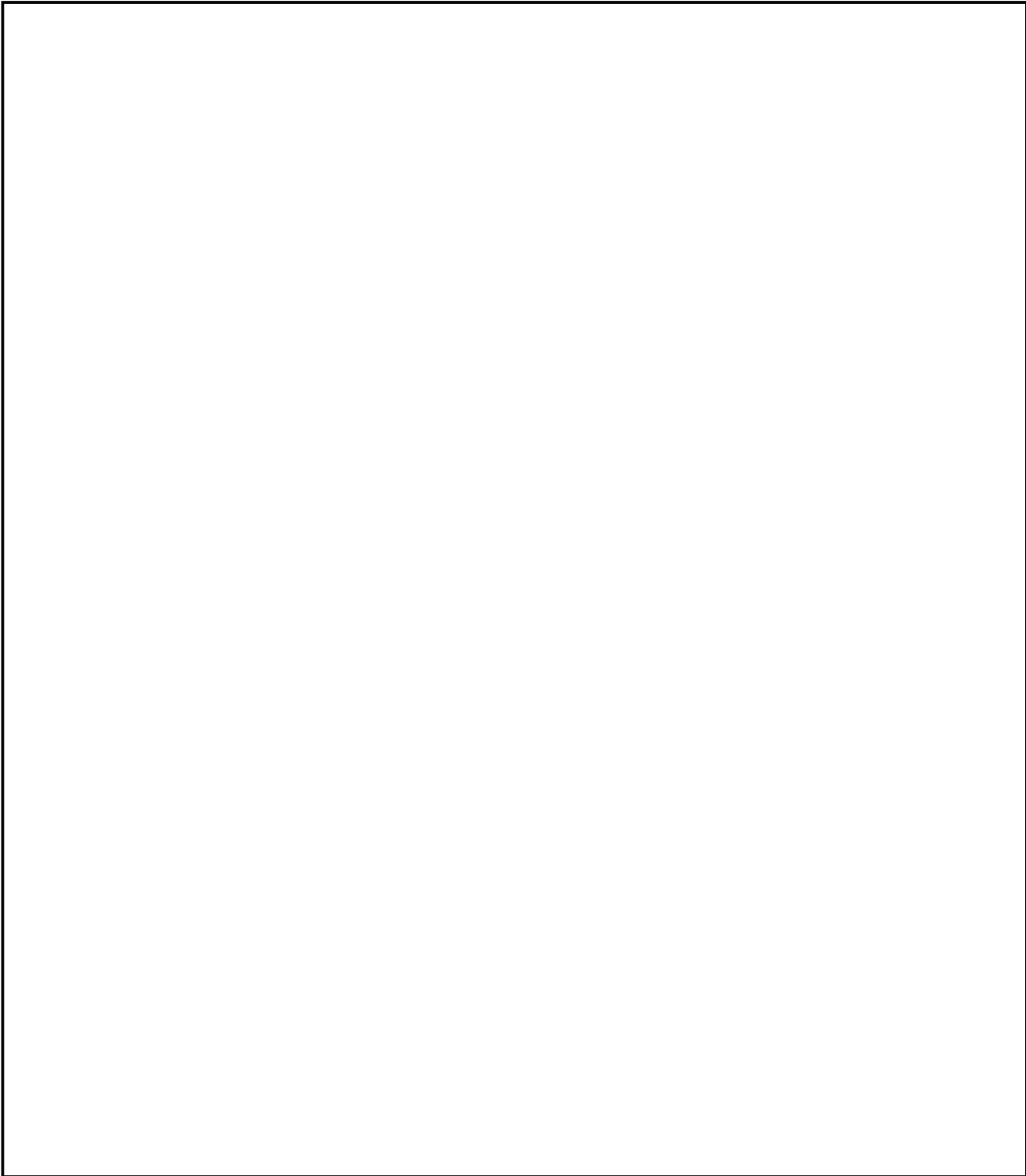
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106 Chart 2004-5



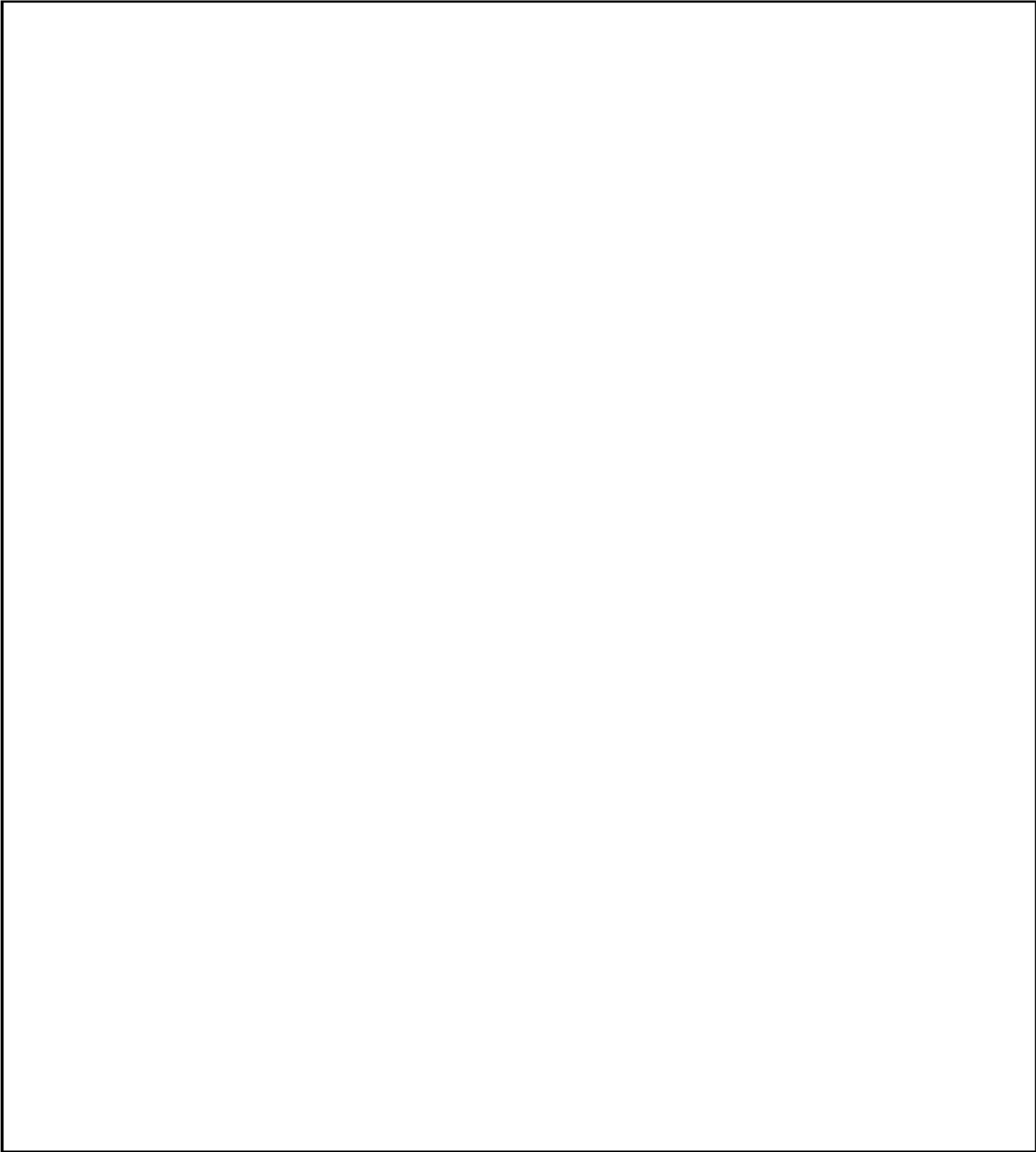
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Intelligence Oversight Board Matters

Office of the General Counsel
National Security Law Branch

(202) 324-



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2004

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(1)

Overview

- Intelligence Oversight Board (IOB)
- The FBI Responsibilities Regarding IOB Matters
- The FBI's IOB Process
- Examples of Common Reportable Matters

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Intelligence Oversight Board Matters

Office of the General Counsel
National Security Law Branch

(202) 324-



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DATE: 11-15-2007
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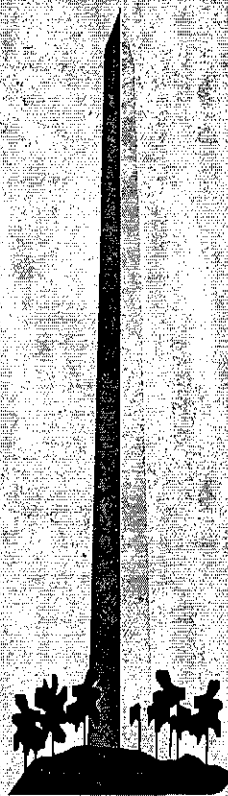
NSL VIO-23530

Overview

- Intelligence Oversight Board (IOB)
- The FBI Responsibilities Regarding IOB Matters
- The FBI's IOB Process
- Examples of Common Reportable Matters

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The Intelligence Oversight Board (IOB)



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Authorities

- Executive Order 12863 (Sept. 13, 1993)
- National Foreign Intelligence Program Manual (NFIPM) § 2-56.G
- Manual of Administrative Operations and Procedure (MAOP), Part I, § 1-22

Executive Order 12863

- Superseded Executive Order 12334
(December 4, 1981)
- Name changed from PIOB to IOB

EO established IOB as a standing committee of the President's Foreign Intelligence Advisory Board (PFIB)

responsibilities remain largely unchanged

Composition of the IOB

- Composed of not more than four members of the President's Foreign Intelligence Advisory Board (PFIAB)
- Authority derived from another EO, 12863

Responsibilities of the IOB

- Prepare reports for the President concerning intelligence activities that the IOB believes “may be unlawful or contrary to Executive order or Presidential directive”
- Forward to the Attorney General reports received about intelligence activities that the IOB believes “may be unlawful or contrary to Executive order or Presidential directive”

IOB Responsibilities (Cont.)

- Review the internal guidelines of each agency within the Intelligence Community that concern lawfulness of intelligence activities.
- Review the practices and procedures of each agency within the Intelligence Community for discovering and reporting intelligence activities that may be IOB matters

IOB Responsibilities (Cont.)

- Conduct such investigations as the IOB deems necessary to carry out its functions.

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The FBI's Responsibilities Regarding IOB Matters



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The FBI's Obligations under Executive Order 12863

- “Inspectors General and General Counsel of the Intelligence Community, *to the extent permitted by law*, shall report to the IOB, at least on a quarterly basis and from time to time as necessary or appropriate, concerning intelligence activities that they have reason to believe may be *unlawful or contrary to Executive order or Presidential directive.*” (Section 2.4)

“to the extent permitted by law”

- This phrase is identical to the language contained in EO 12334
- The IOB has determined that this language was inserted to ensure compliance with FISA Court orders and to protect Grand Jury Information.
- The IOB has stated that the phrase does not mean the FBI may withhold information that would otherwise be reported to the IOB because of its classification or sensitivity.

“unlawful or contrary to Executive Order or Presidential Directive”

- This phrase is identical to the language used in E.O. 12334
- This phrase sets the standard for reporting IOB matters
- Moreover, . . .

Reporting Requirements

- On July 14, 1982, Director Webster, in agreement with the IOB, instituted the following four reporting requirements:

Reporting Requirement One

- A provision of the FCIG or other AG approved guidelines or regulations which was *designed in full or in part to ensure the protection of individual rights [of U.S. persons]*, must be regarded as incorporated by reference within the Executive Order.
- A violation of such provision would therefore constitute a breach of the Executive Order, and would therefore be reportable to the IOB

Reporting Requirement Two

- Provisions which are essentially *administrative in nature* and are not covered by the description in Item 1 above need not be reported to the Board.
- Uncertainty as to the reportability of an incident shall be resolved by reporting it to the Board. [See Mary Lawton memo.]

Reporting Requirement Three

- Professional judgment should be exercised by the Assistant Director, Inspection Division, and the General Counsel, FBI, in deciding whether a particular incident is reportable to the Board

Reporting Requirement Four

- A record of decisions not to report incidents according to this understanding shall be maintained by the FBI and the record shall be subject to review by the Counsel to the IOB on request

And . . .

- Don't forget the Mary Lawton memo:
 - “The words ‘may be unlawful’ in the EO should be interpreted to include violations of agency procedures issued under the EO”
Counsel for Intelligence Policy, OIPR (1983)

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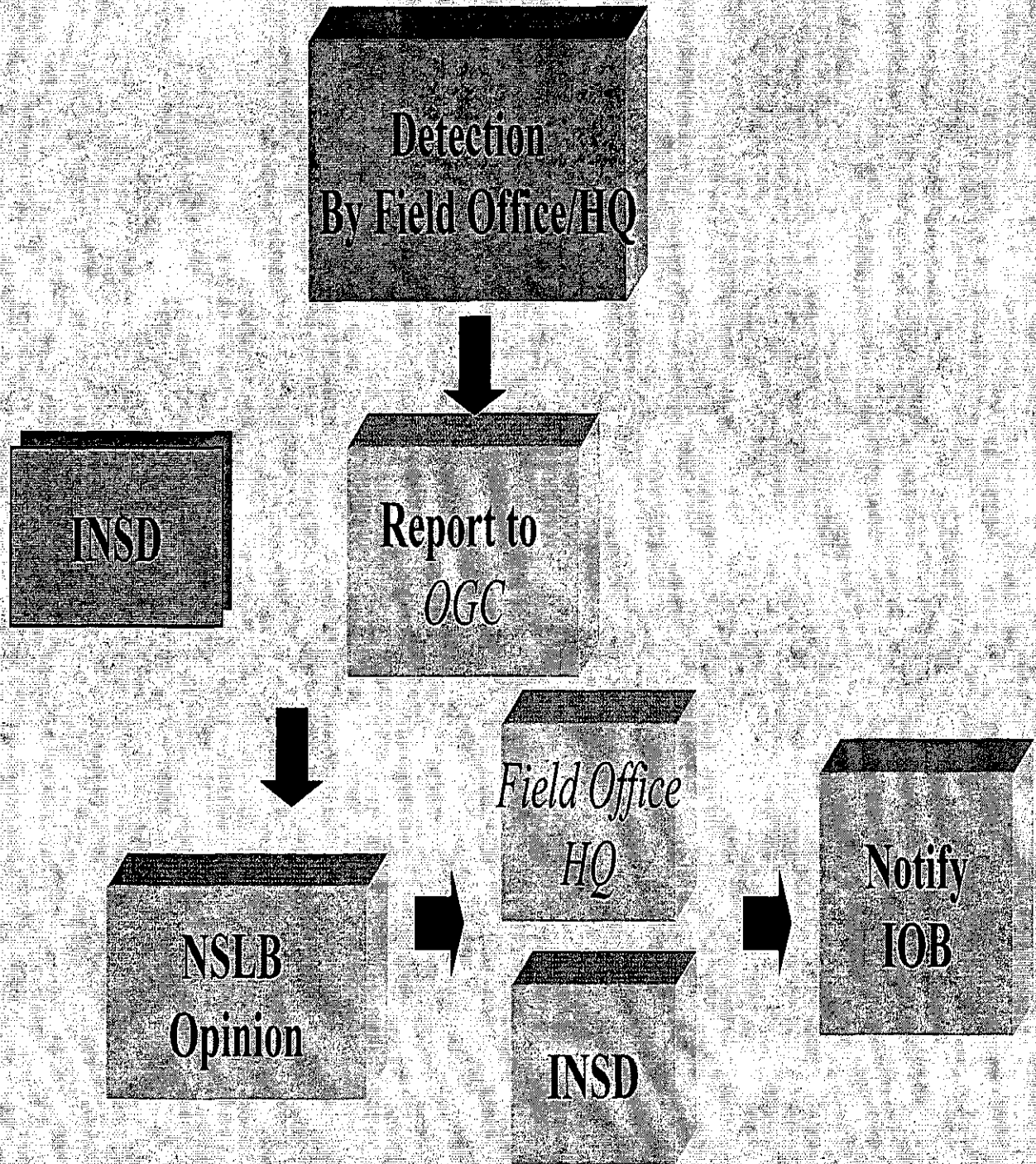
The FBI's IOB Process



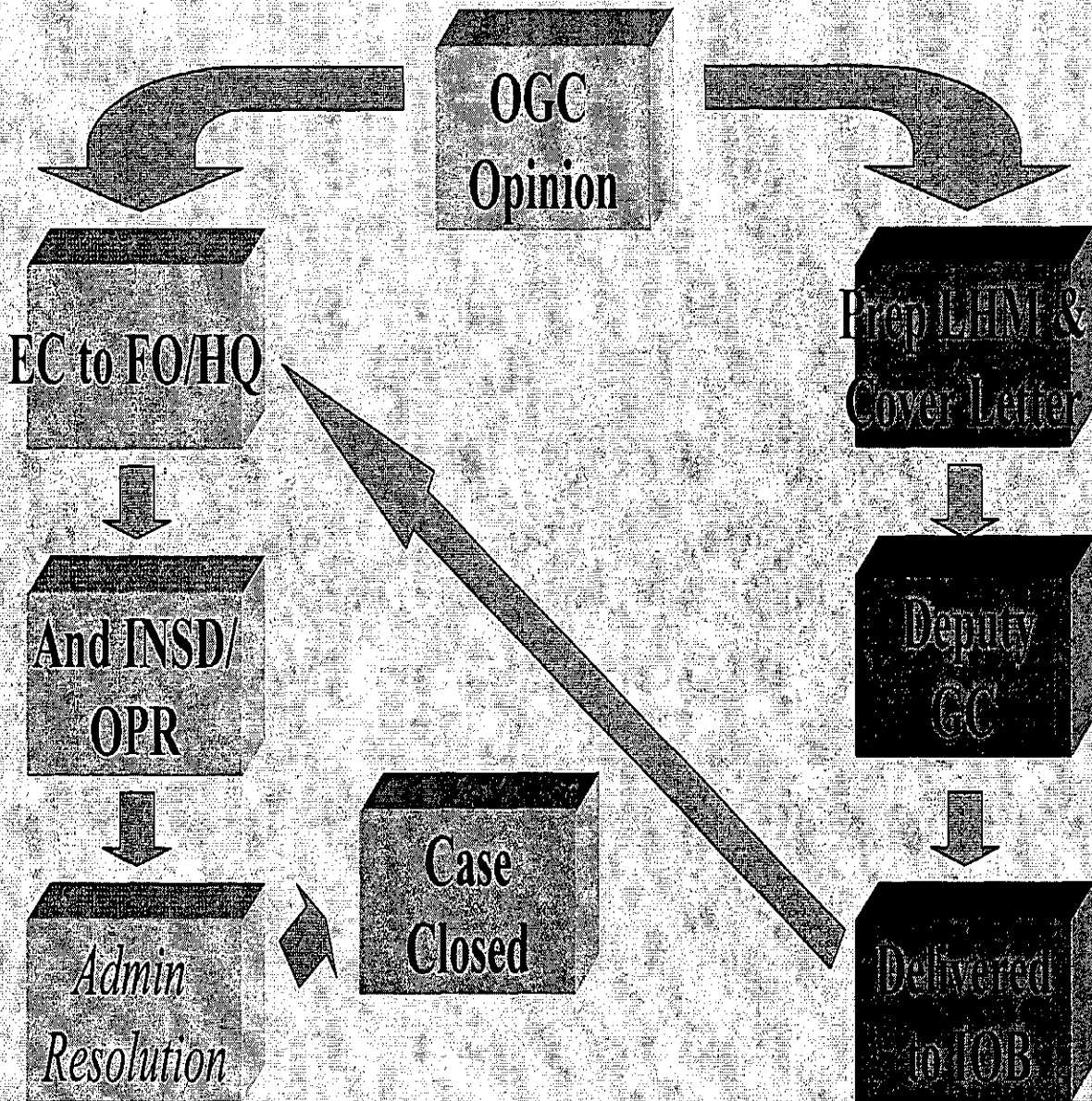
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(R) VIO-23549

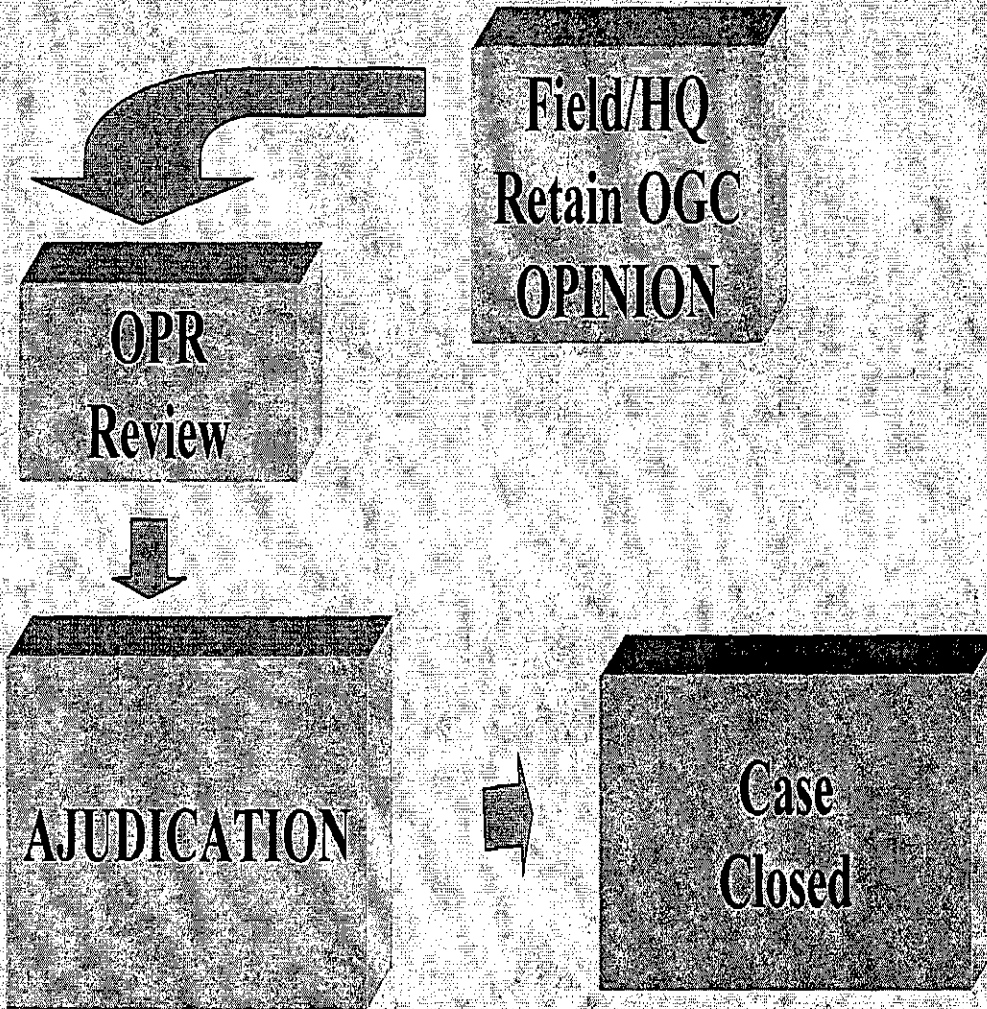
FBI's IOB Procedures



Reportable?



Not Reportable?



Examples of IOB Violations

Unauthorized investigations

Unauthorized techniques

ELSUR overruns

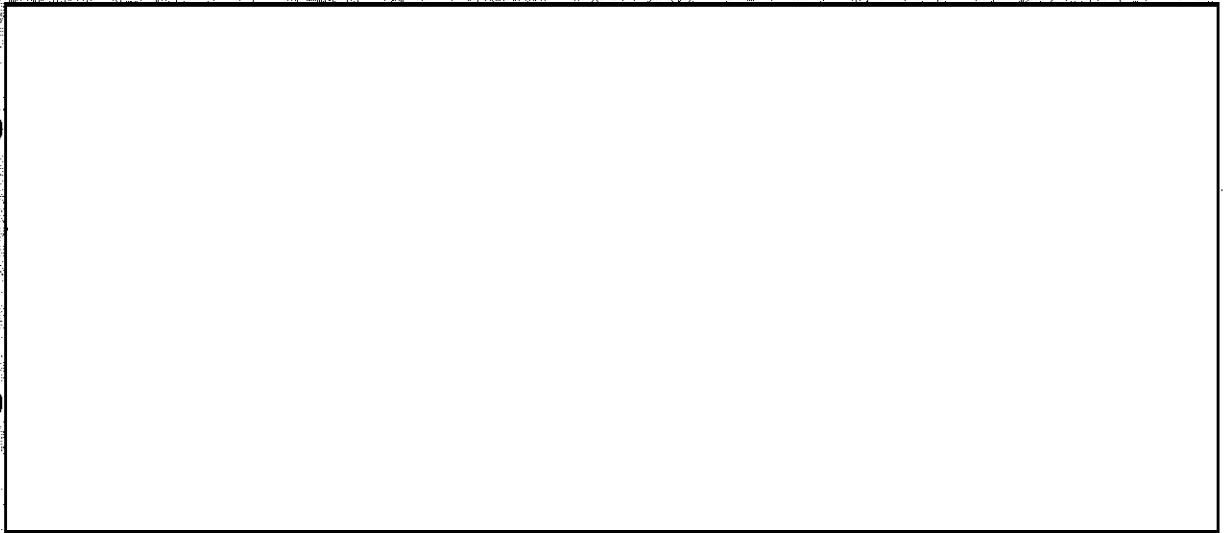
Dissemination/minimization

errors

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Pre-Oct 31, 2003 Errors Preliminary Inquiry/Full Overruns:

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- These provisions were intended to protect the individual rights of USPERs

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Preliminary Inquiry/Full Overruns

- However, the IOB has indicated that the FBI need not report PI or Full Investigation overruns that were *both* “inadvertent” and *de minimis* in time.”
- “*De minimis* in time” means 90 days or less.

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FISA Overruns

- 18 U.S.C. § 2511(2)(f) states that FISA is the exclusive means by which electronic surveillance and the interception of domestic wire and oral communications may be conducted
- E.O. 12333, § 2.5 provides that electronic surveillance shall be conducted in accordance with FISA

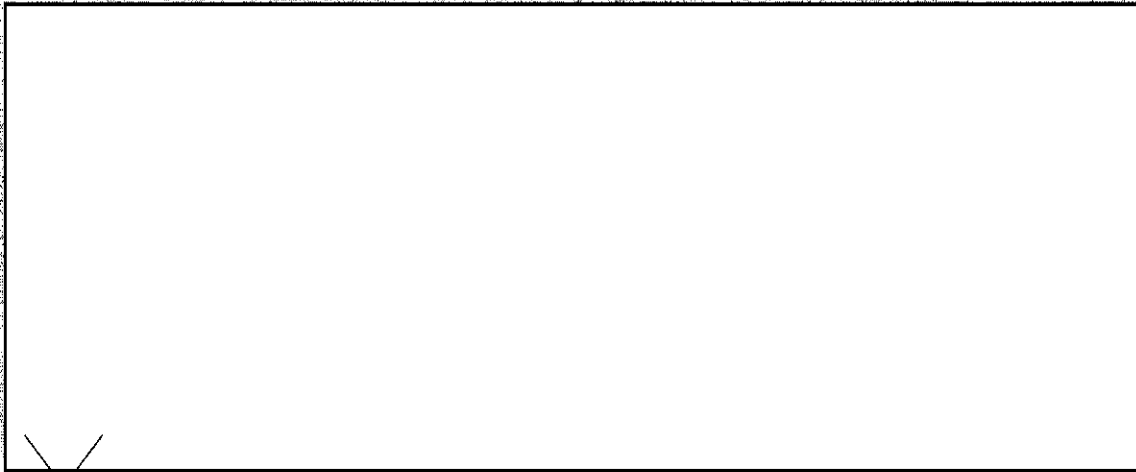
FISA Overruns

- NSIGs state that the FBI may conduct electronic surveillance only in accordance with FISA or Title III
- Thus, an ELSUR or search done without authorization (or the consent of the party to the intercepted communications) is a violation of the statute and must be reported

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Operations Outside the U.S. Without DCI or AG Approval

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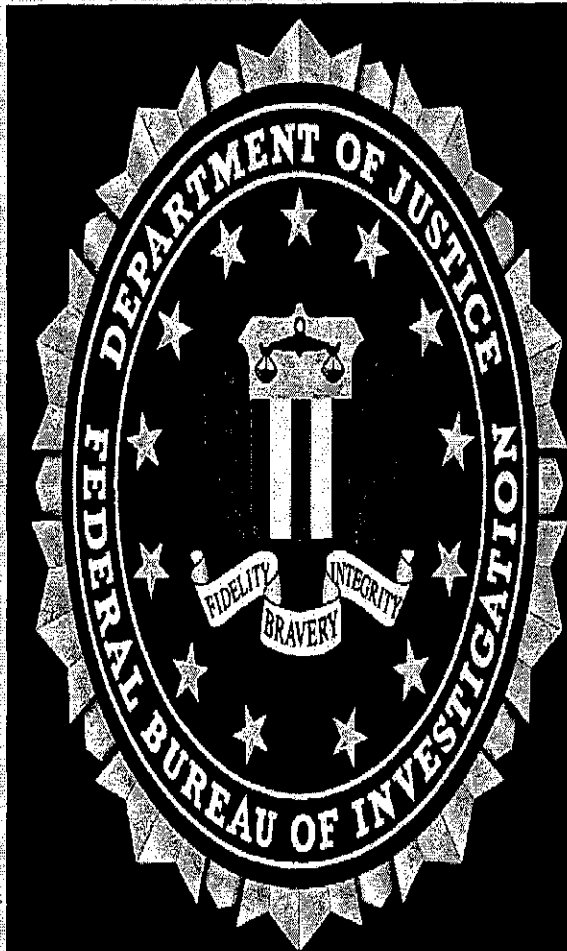
- This is a purely administrative provision that does not affect individual rights
- Still, the IOB has requested that the FBI report all violations of this provision

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Summary



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Summary

- E.O. 12863 is the controlling authority regarding IOB violations
- The IOB is responsible for reviewing the practices and procedures for discovering and reporting on IOB matters
- The FBI must report on at least a quarterly basis concerning intelligence activities that may be contrary to law, Executive Orders, or Presidential Directives

Summary

- The FBI can't claim that a matter is too sensitive or classified to report to the IOB
- Violations of the NSIGs are reportable to the IOB if they are designed to ensure the protection of individual rights of USPERs
- In some limited circumstances, some NSIG provisions that protect individual rights are not reportable if they are both inadvertent and *de minimis in time*

Summary

- NSIG provisions that are administrative in nature are not reportable, unless the IOB has requested the FBI to report them
- Non-reported IOB matters are kept on file for review by the IOB counsel
- NSLB is POC for legal advice on possible IOB matters

Summary

- Reporting possible IOB matters is a responsibility shared by every FBI employee
- Administrative errors can result in reportable violations (e.g. group surveillance w/o HQ approval)
- Statutory violations will always be reported to the IOB

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Questions?



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Intelligence Oversight Board

Federal Bureau of Investigation
Office of the General Counsel
National Security Law Branch

(202) 324-



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08/2005

NSL VIO-23565

Today's Presentation

1. Intelligence Oversight Board (IOB)
2. Responsibilities Regarding IOB Matters
3. Examples of Common Reportable Matters

The Intelligence Oversight Board (IOB)

- History
- Authorities
- Composition
- Responsibilities

Brief History

- "Executive discretion" really meant little or no oversight
- Sweeping interpretations of "national security"
- Real potential for abuse
- Church and Pike Commissions
- Congressional Oversight & FISA
(HASC + SSCI)

• 1940 (Roosevelt) - ELSUR for "grave national defense matters" + limit to minimum + "attempt to limit to aliens"

• AG Brownell's 1954 memo to Director Hoover expands policy to permit ELSUR whenever the "national interest" requires it

Authorities

- Executive Order 12334 (December 4, 1981)
- Executive Order 12863 (Sept. 13, 1993)
- Agency-Specific Guidelines

Executive Order 12863

- Superseded EO 12334 (December 4, 1981)
- Name changed from PIOB to IOB
- Established IOB as a standing committee of the President's Foreign Intelligence Advisory Board (PFIAB)
- Responsibilities remain largely unchanged

Composition of the IOB

- Composed of not more than four members of the President's Foreign Intelligence Advisory Board (PFIAB)
- Appointed by the Chairman of the PFIAB

Stephen Friedman

IOB Responsibilities: Report

- Prepare reports for the President concerning intelligence activities that the IOB believes “may be unlawful or contrary to Executive order or Presidential directive”
- Forward to the Attorney General reports received about intelligence activities that the IOB believes “may be unlawful or contrary to Executive order or Presidential directive”

IOB Responsibilities: Review

- Review the internal guidelines of each agency within the Intelligence Community that concern lawfulness of intelligence activities.
- Review the practices and procedures of each agency within the Intelligence Community for discovering and reporting intelligence activities that may be IOB matters

IOB Responsibilities: Investigate

- Conduct such investigations as the IOB deems necessary to carry out its functions.

Agency Responsibilities

- Obligations Under EO 12863
- Reporting Requirements

Obligations Under EO 12863

- “Inspectors General and General Counsel of the Intelligence Community, ***to the extent permitted by law***, shall report to the IOB, at least on a quarterly basis and from time to time as necessary or appropriate, concerning intelligence activities that they have reason to believe may be ***unlawful or contrary to Executive order or Presidential directive.***”

(Section 2.4)

“to the extent permitted by law”

- The IOB has determined that this language was inserted to ensure compliance with FISA Court orders and to protect Grand Jury Information.
- The IOB has stated that the phrase does not mean the FBI (or any other IC agency) may withhold information that would otherwise be reported to the IOB because of its classification or sensitivity.

“unlawful or contrary to Executive Order or Presidential Directive”

- Sets the standard for reporting IOB matters

Reporting Requirement One

- A provision AG approved guidelines or regulations ***designed in full or in part to ensure the protection of individual rights*** must be regarded as incorporated by reference within the Executive Order.
- Therefore, a violation of such provision would constitute a breach of the Executive Order and would be reportable to the IOB.

Reporting Requirement Two

- Provisions which are essentially ***administrative in nature*** and are not covered by the description in Item 1 above need not be reported to the IOB.
- Uncertainty as to the reportability of an incident shall be resolved by reporting it.

Reporting Requirement Three

- Professional judgment should be exercised by the General Counsel in deciding whether a particular incident is reportable to the IOB.

Reporting Requirement Four

- A record of decisions not to report incidents according to this understanding shall be maintained by the FBI and the record shall be subject to review by the Counsel to the IOB on request

Don't Forget...

“The words ‘may be unlawful’ in the EO should be interpreted to include violations of agency procedures issued under the EO”

- Counsel for Intelligence Policy, OIPR (1983)

Examples of IOB Violations

- Constitutional violations
- Unauthorized investigations
- Unauthorized techniques
- FISA overruns
- Dissemination/minimization errors

Summary

- EO 12863 is the controlling authority regarding IOB violations.
- The IOB is responsible for reviewing the practices and procedures for discovering and reporting on IOB matters.
- Each agency in the Intelligence Community must report on at least a quarterly basis concerning intelligence activities that may be contrary to law, Executive Orders, or Presidential Directives.

Questions?



[Redacted]

From: [Redacted] (Div09) (FBI)
Sent: Tuesday, April 27, 2004 2:16 PM
To: [Redacted] (Div09) (FBI); Curran, John F. (Div09) (OGA); BOWMAN, MARION E. (Div09) (FBI); [Redacted] (Div09) (FBI); [Redacted] (Div09) (FBI); [Redacted] (Div09) (FBI); [Redacted] (Div09) (FBI)
Subject: RE: Reporting Carrier Errors

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[Redacted]

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

From: [Redacted] (Div09) (FBI)
Sent: Tuesday, April 27, 2004 12:55 PM
To: Curran, John F. (Div09) (OGA); BOWMAN, MARION E. (Div09) (FBI); [Redacted] (Div09) (FBI); [Redacted] (Div09) (FBI); [Redacted] (Div09) (FBI); [Redacted] (Div09) (FBI)
Subject: Reporting Carrier Errors

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[Redacted]

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Historically -- i.e., for at least two dozen years -- we have reported such errors. The reason for this lies not so much in the requirements found in the language of Executive Order 12863 -- which requires that Inspectors General and the GCs of the Intelligence Community to report "intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directives" -- but, rather, in the interpretation of the words "may be unlawful" by Mary Lawton, former Counsel for Intelligence Policy, OIPR, whose opinions were generally held in very high regard. In her touchstone 1983 memorandum which became departmental policy, she said:

The more difficult area of interpretation concerns activities that "may be unlawful." The very language incorporates an element of uncertainty and indicates an intention to encompass situations where there exists some doubt as to the legality of an activity. It is, accordingly, not possible to establish in the abstract and in advance a clear standard that must be adhered to in every circumstance. Some reasonable sense of discretion and judgment is expected on the part of reviewing officials.

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[Redacted]

[Redacted] In such cases, we chose to err -- if that's the correct word -- on the side of caution, and thus have opted to advise the Board of essentially all errors involving intelligence operations unless, in Ms. Lawton's words, "[such errors] involve purely [minor] administrative errors" In the two decades since Ms. Lawton first addressed this issue, we have sought to temper her "When-in-Doubt-Report rule" in only two instances: viz., we do not report violations of security regulations for which there exists another prescribed departmental or FBI-reporting mechanism; and we do not report errors involving court orders where the court itself has prescribed a notification requirement. (The filing

of late search returns would be an example of the latter. In such cases, the oversight mechanism for error reporting is the FISA Court itself.)



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DATE: 08-14-2007
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REASON: 1.4 (c)
DECLASSIFY ON: 08-14-2032

OFFICE OF THE GENERAL COUNSEL
INSPECTION INTERROGATORY

DATES OF INSPECTION: 04/04/2005 - 04/15/2005
INSPECTION PERIOD: 10/14/2000 - 04/15/2005

This responds to the "Field Division Interrogatory" for the periods listed above.

FIELD DIVISION INSPECTION

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FIELD DIVISION INTERROGATORY

INTELLIGENCE OVERSIGHT BOARD (IOB)

The IOB process is the means by which the FBI reports to the Board intelligence activities conducted by the FBI which may be unlawful or contrary to Executive Orders, Presidential Directives, Departmental guidelines or the investigative procedures and techniques set forth in the National Foreign Intelligence Program Manual (NFIPM). The IOB procedures outlined in the NFIPM are unique unto themselves and only apply to the FBI's intelligence activities. That uniqueness, when combined with personnel transfers, inter-divisional reassignments and the integration of new agents and support personnel into the FBI's intelligence programs and operations, creates the potential for recurring errors which must be reported to the Board. Many of those errors can be anticipated, and thus avoided, by reviewing certain fundamental aspects of the IOB process.

Background. The Intelligence Oversight Board was established as a standing committee of the President's Foreign Intelligence Advisory Board by Executive Order (EO) 12863 dated 9/13/95. Among its other responsibilities, the IOB is given authority to review the FBI's practices and procedures relating to foreign intelligence and foreign counterintelligence collection. Such activities, of course, must be conducted in accordance with the applicable EOs, Presidential Directives, rules, statutes, Departmental guidelines and the investigative procedures and techniques set forth in the NFIPM.

Section 2.4 of EO 12863 further requires that the Inspectors General and General Counsel of the Intelligence

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Community components (in the FBI, the Assistant Director, Inspection Division (INSD), and the General Counsel (OGC), respectively) report to the IOB concerning intelligence activities that they have reason to believe "may be unlawful or contrary" to Executive order or Presidential directive. This language was adopted verbatim from E.O. 12334 when the IOB was known as the President's Intelligence Oversight Board (PIOB). By longstanding agreement between the FBI and the IOB (and its predecessor, the PIOB), this language has been interpreted to mandate the reporting of any violation of a provision of the foreign counterintelligence guidelines or other guidelines or regulations approved by the Attorney General, in accordance with E.O. 12333, if such provision was designed in full or in part to ensure the protection of the individual rights of a U.S. person. Counsel for Intelligence Policy, Office of Intelligence Policy and Review (OIPR), Department of Justice (DOJ), has further opined that the words "may be unlawful" in the Executive Order should be interpreted to include "violations of agency procedures issued under [the Executive Order], unless they involve purely administrative matters."

Reporting Procedures. The Inspection Management Unit (IMU), Inspection Division (INSD), is responsible for coordinating the procedures relating to the reporting and collection of information pertaining to all possible violations of law, Executive Orders, Presidential Directives or other regulations which require reporting to the IOB. FBI Headquarters (FBIHQ) divisions and field offices, in turn, are responsible for monitoring intelligence activities and reporting violations to IMU upon detection.

Most potential IOB matters are detected by unit and field office supervisors. Reports of potential IOB matters detected by field offices or FBIHQ divisions are to be reported to IMU, INSD, by electronic communication (EC) within 14 days of discovery of the possible violation. The reporting requirements are stated in Section 2-56 of the NFIPM. A copy of the communication should also be directed to OGC.

In addition to the foregoing, on a quarterly basis, each field office and FBIHQ division is required to submit to FBIHQ (Attn: IMU, INSD), an EC certifying that all employees of the office or division were contacted concerning the requirement to report possible IOB matters.

Reportable Matters. Examples of potential IOB matters which should be reported include:

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a. Investigation of persons or organizations before an investigation has been authorized. (See Section 2-56 NFIPM.)

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c. Failing to submit to the Headquarters' substantive unit a 90-day and/or an annual letterhead memorandum (LHM) for each full investigation of a U.S. person within the periods prescribed by regulation. (See Section XI.C of the Attorney General Guidelines.)

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e. Initiating a form of electronic surveillance or a search without authorization from the Foreign Intelligence Surveillance Court, or failing to terminate an authorized surveillance at the time prescribed by the Court. (See 50 U.S.C. §§ 1805, 1824.)

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f. Failing to adhere to the minimization requirements or dissemination limitations prescribed by the Court. (See 50 U.S.C. § 1806.)

This list of examples is not all-inclusive of intelligence activities which may be deemed illegal or improper. The examples, however, illustrate areas where training and field office supervision are essential.

In order to assist the Inspector in the review of IOB matters in your division, you are requested to respond to the following questions:

1. Identify your IOB control file.

278-HQ-C1229736-VIO

2. Describe the administrative procedures and controls employed by you to ensure that any intelligence activity reportable under EO 12863 is identified and reported to INSD, FBIHQ.

As required by the Part 1, Section 1-22, of the Manual of Administrative Operations and Procedures (MAOP), and Section 2-56 of the National Foreign Intelligence Program

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Manual (NFIPM), on a quarterly basis, each person in OGC is directed by e-mail to report any known or suspected IOB errors reportable under EO 12863. Individual responses are provided to the unit chiefs who, in turn, report their canvassing results to the Chief of Staff, OGC. A consolidated response is then submitted to INSD. The responsibility to monitor OGC's IOB reporting requirements has been assigned to an NSLB Paralegal Specialist, who has a data base dedicated to that purpose.

3. Identify specific training which has been provided to Agents, supervisors, and staff regarding their responsibilities in complying with established IOB reporting policies and procedures.

Background: By memorandum from the Deputy Director titled "Intelligence Oversight Board," dated 07/01/1982, the FBI's Office of Professional Responsibility (OPR) was assigned responsibility for all administrative procedures, including training and notifications, related to the FBI's IOB reporting requirements. (See, Part I, Sec. 6-7.3, of the National Foreign Intelligence Program Manual (NFIPM)(1995). On 04/18/1997, responsibility for the collection of IOB documentation was transferred to the Compliance Management Unit (later the Inspection Management Unit [IMU]), INSD, where it remained until 03/08/2004. (Id.) Until March, 2003, the NFIPM required allegations of IOB errors detected by field offices and FBIHQ divisions be reported to INSD, which was responsible for preparing a memorandum to OGC to request a determination as to whether the questionable activity was a matter required to be reported to the IOB. Except for the preparation of that advice and, when necessary, the preparation of correspondence to the IOB, all other administrative matters, including training responsibilities regarding the IOB process, remained matters solely within the cognizance of INSD. (See Sec. 6-7.3(1) of the NFIPM.) These responsibilities included the requirement that IMU, INSD, solicit reports of potential IOB matters FBI-wide on a quarterly basis. (Id.) As noted in our response to Question 2, above, the IOB reporting requirements stated in the MAOP and NFIPM are promulgated to all OGC personnel by e-mail on a quarterly basis.

In addition to soliciting reports of potential IOB matters within OGC, the NSLB has for years taken an affirmative role in providing legal advice and assistance to IMU personnel in the administration of the IOB process. For example, beginning in 2001, the National Security Law Unit prepared ECs to field and FBIHQ divisions "to remind all divisions concerning the responsibility to report IOB matters promptly and to provide guidance concerning the reporting procedures." (See, e.g., OGC ECs to All Divisions, titled "Intelligence Oversight Board (IOB) Matters," dated 04/16/2001 and 04/11/2002.) That practice was discontinued in 2003 at the request of the Unit Chief, IMU, INSD, who advised NSLB personnel that he wanted his unit to be the sole source of guidance concerning IOB reporting requirements. NSLU personnel continued to provide periodic instruction to the Chief Division Counsel regarding reporting procedures during annual training sessions conducted at the Academy and FBI HQ. NSLB also prepared, and

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maintains, a current PowerPoint presentation for training purposes.

On 03/08/2004, responsibility for the FBI's IOB process was transferred from IMU, INSD, to NSLB, OGC. (See, All Division EC from OGC to Records Management Division (Attn: Manuals Desk), dated 03/08/2004, titled "Proposed Changes in the National Foreign Intelligence Program Manual (NFIPM) and Manual of Administrative Operations and Procedures (MAOP)", 66F-HQ-A1247863 Serial 150. The referenced EC provided notification of the changed procedures and provided IOB guidance to all field office and FBI Headquarters personnel conducting counterintelligence and counterterrorism investigations. It and Part 1, Section 1-22, of the Manual of Administrative Operations and Procedures (MAOP), describe the authorized practice and procedures for complying with EO 12863. These two sources of instruction were prepared, and have been kept current, by NSLB. Consistent with its new responsibilities, OGC began issuing ECs soliciting quarterly reports of potential reports of IOB errors FBI-wide beginning in June, 2004.

On 02/10/2005, the IOB process was changed again, this time to require the submission of initial reports of potential IOB errors to the FBI's Internal Investigations Section (IIS), INSD and NSLB, OGC. (See All Division EC from Inspection Division (Attn: ADIC/SAC; Chief Division Counsel; and FBIHQ, Manuals Desk), dated 02/10/2005, titled "Revised Procedures for the Submission of Reports of Potential Intelligence Oversight Board (IOB) Matters.") The requirement to solicit reports of potential IOB errors on a quarterly basis has not changed and rests with NSLB.

Additional comments: In preparing this response to INSD's IOB interrogatory, we noted that the interrogatory's paragraphs titled "Reporting Procedures" and "Reportable Matters" are not current. More specifically, these portions of the interrogatory do not conform to either the 2003 or 2004 changes to Part 1, Section 1-22, of the Manual of Administrative Operations and Procedures (MAOP), or Section 2-56 of the National Foreign Intelligence Program Manual (NFIPM). The current manual provisions also list "non-reportable matters" which we believe should be included in a separate section of INSD's interrogatory to provide additional guidance to those being inspected. NSLB will assist IIS, INSD, in updating the IOB interrogatory.

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NSL VIO-23593

[Redacted] (OGC) (FBI)

From: [Redacted] (OGC) (FBI)
Sent: Tuesday, February 15, 2005 10:31 AM
To: HQ-Div09-NSLB
Subject: Changes in IOB Processing

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RECORD 66F-HQ-G1384970~~

Morning all:

In May of last year, the Department's Associate Deputy AG John Davis met with representatives of OIPR, the Dept's OPR, FBI OGC (Mr. Curran), FBI OPR, and Inspection Division personnel to discuss the procedures the FBI had adopted for handling Intelligence Oversight Board matters.

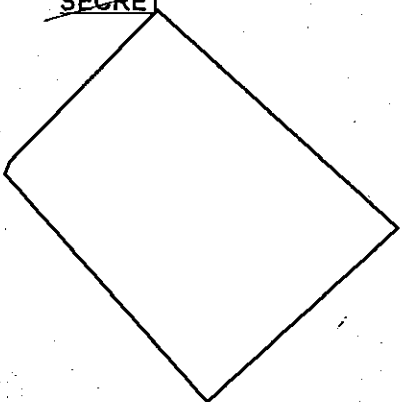
Mr. Davis's paramount concern was that no component of the Department was analyzing the reports systematically to determine whether they showed any patterns which should be addressed by the Department. Additionally, while there was a general consensus that the great majority of the reports involved "management" issues, there was concern that - owing to the changes the FBI had put in place in 2003 - there was no apparent means of assessing potential disciplinary matters which might arise.

As a result of subsequent discussions with INSD, it was decided in October 2004 that the FBI would return to the basic procedures for the review of IOB matters that the Bureau had observed for approximately two decades. To that end, a new entity was created within INSD, the Internal Investigations Section (IIS), which is responsibility for the review of IOB reports for "overall trends." IIS is also a component of our OPR. The revised procedures for handling IOB matters were promulgated by INSD by EC last week. A copy of that EC is attached here.

I suggested to the UCs that it might be helpful if I discussed the EC on Friday following our Branch meeting, and they've taken me up on the offer. This shouldn't take more than 10-15 minutes. If you download the EC, you'll see that it was prepared in "line-in, line out" fashion. (Actually, I sent it to INSD that way as a draft. They opted to publish it that way, which is fine; it actually makes it easier to follow the changes.) I'll try to answer any questions you have on Friday.

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