

Wiegmann, Brad (SMO)

From: (b)(6)
Sent: Tuesday, March 24, 2009 8:50 PM
To: Wiegmann, Brad; Blum, Stephanie <TSA OCC>; (b)(6)
Subject: RE: Preventive Detention Subgroup Paper (UNCLASSIFIED)

Attachments: (b)(6) Edits-Preventive Detention Memo.doc

(b)(6)

(b)(6)
Preventive Deten

Classification: UNCLASSIFIED

Caveats: ~~FOUO~~

Stephanie and Brad--good work and collaboration. Please see my edits and comments in the attached. I think we're ready to circulate for tomorrow's Subgroup meeting.

Stephanie--am looking forward to working with you.

Best regards,

(b)(6)

CAUTION: Information contained in this message may be protected by the deliberative process, attorney/client, attorney work product, or other privileges. Do not disseminate outside the Executive Branch without approval from the Co-Chairs and Executive Secretary of the Task Force on Detention Policy.

NSD ACLU Goodman 000001

Wiegmann, Brad (SMO)

From: Boyd, Dean
Sent: Tuesday, April 21, 2009 8:17 PM
To: (b)(6); Wiegmann, Brad; Monaco, Lisa (ODAG); Miller, Matthew
Subject: RE: DoD letter to AI re: detainees at Bagram

thanks

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

From: (b)(6)
Sent: Tuesday, April 21, 2009 8:07 PM
To: Wiegmann, Brad; Boyd, Dean; Monaco, Lisa (ODAG); Miller, Matthew A
Subject: Re: DoD letter to AI re: detainees at Bagram

I concur with Brad, Dean. Thanks for the opportunity to comment.

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

From: Wiegmann, Brad
To: Boyd, Dean; Monaco, Lisa (ODAG); Miller, Matthew A; (b)(6)
Sent: Tue Apr 21 19:32:23 2009
Subject: RE: DoD letter to AI re: detainees at Bagram

This no comment is OK by me, though they should refer to our TF now as the Task Force on Detention Policy rather than Detainee Disposition, despite what EO says, as it has been renamed. Thanks.

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

From: Boyd, Dean
Sent: Tuesday, April 21, 2009 4:13 PM
To: Wiegmann, Brad; Monaco, Lisa (ODAG); Miller, Matthew A; (b)(6)
Subject: FW: DoD letter to AI re: detainees at Bagram

FYI: DOD just sent the following letter over. It's a proposed draft letter to Amnesty International regarding Bagram detainees. Looks fine to me, but wondering if Brad & (b)(6) have any thoughts...

Dean Boyd
Spokesman
National Security Division
U.S. Department of Justice
(202) 514-2007 main
(b)(6)
dean.boyd@usdoj.gov

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

From: (b)(6) CIV OSD POLICY (b)(6)
Sent: Tuesday, April 21, 2009 3:19 PM
To: Miller, Matthew A; Boyd, Dean
Cc: (b)(6) CIV OSD POLICY
Subject: DoD letter to AI re: detainees
Importance: High

(b)(6) Dean:

I'm preparing DoD's reply to a very similar letter from AI. Could you please send me your SIPR addresses, so I can run our reply by you before I send it to our Under for signature?

Thanks,

(b)(6)

OSD Policy, Office of Detainee Affairs

(b)(6)

INSD ACLU Goodman 000003

(b)(6)

From: (b)(6)
Sent: Wed 4/1/2009 6:14 PM
To: Blum, Stephanie <TSA OCC>
Cc: Wiegmann, Brad
Subject: RE: memo on pre-judicial review

(b)(5),(b)(6)

Wiegmann, Brad (SMO)

From: Wiegmann, Brad
Sent: Monday, March 23, 2009 12:10 PM
To: Dick, Michael
Cc: (b)(6)
Subject: FW: Refined List of Issues (UNCLASSIFIED)

Attachments: Task Group Refined List of Issues.doc



Task Group Refined
List of Iss...

(b)(5)	(b)(5)
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From: (b)(6)
Sent: Friday, March 20, 2009 6:13 PM
To: 'Deeks, Ashley S'; 'johnsonj@dodgc.osd.mil'; (b)(6),(b)(7)(C)
(b)(6),(b)(7)(C); Carlin, John P. (FBI);
(b)(6),(b)(7)(C); (b)(6),(b)(7)(C)
David: 'david.a.martin@dhs.gov'; Hinnen, Todd (NSD);
(b)(6); 'donoghueje@state.gov';
(b)(6)
Wiegmann, Brad: (b)(6)
Cc: (b)(6)
Subject: Refined List of Issues

(b)(5)

(b)(5)

(b)(6)

Brad Wiegmann, and (b)(6)

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<<Task Group Refined List of Issues.doc>>

Classification: UNCLASSIFIED

Caveats: ~~FOUO~~

Classification: UNCLASSIFIED

Caveats: ~~FOUO~~

Tracking:

Recipient

(b)(6)

COL MIL USA OTJAG

Read

Read: 3/23/2009 12:16 PM

Wiegmann, Brad (SMO)

From: (b)(6)
Sent: Saturday, April 04, 2009 7:35 PM
To: Lederman, Marty; Wiegmann, Brad
Subject: RE: Law Of War Subgroup Meeting (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: ~~FOUO~~

(b)(5)

(b)(6)

-----Original Message-----
From: (b)(6)
Sent: Saturday, April 04, 2009 7:28 PM
To: (b)(6)
Subject: FW: Law Of War Subgroup Meeting

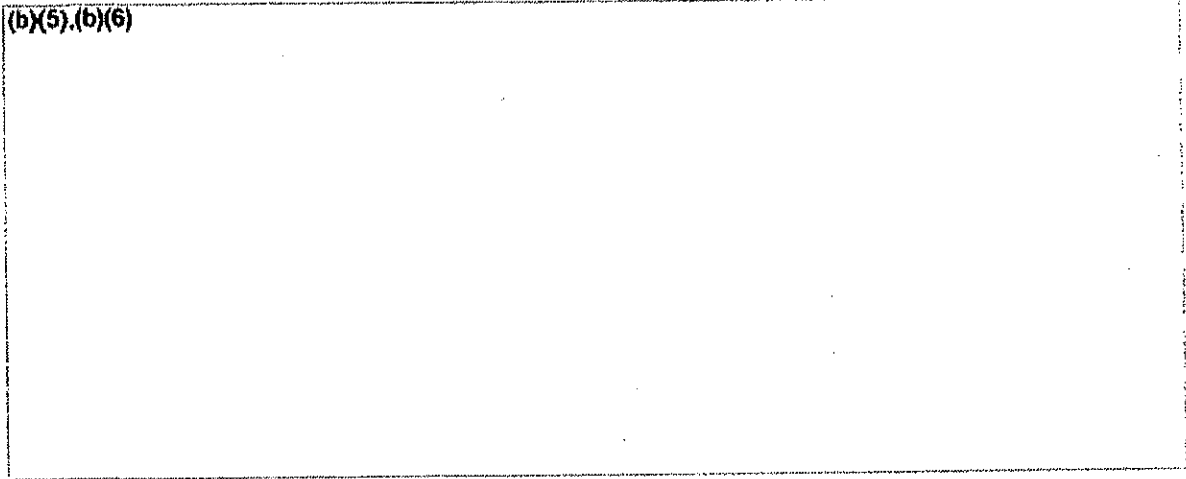
From: Lederman, Marty
Sent: Saturday, April 04, 2009 7:28:22 PM
To: (b)(5); Wiegmann, Brad
Subject: RE: Law Of War Subgroup Meeting Auto forwarded by a Rule

(b)(6) Brad: Wasn't someone in the larger group -- (b)(6) -- responsible for detainees at Bagram? If so, that person should be part of this discrete project, thanks

-----Original Message-----
From: (b)(6)
Sent: Saturday, April 04, 2009 4:49 PM
To: (b)(6)
'PomperSE2@state.gov'; (b)(6)
(b)(6)
(b)(6); (b)(6); (b)(6)
Lederman, Marty; Lue, Thomas; 'stephanie.blum@dhs.gov'; Barron, David;
(b)(6)
Force)
Subject: Law Of War Subgroup Meeting

(b)(5)

(b)(5), (b)(6)



(b)(6)

Classification: UNCLASSIFIED
Caveats: ~~FOUO~~

Wiegmann, Brad (SMO)

From: (b)(6)
Sent: Wednesday, April 08, 2009 4:55 AM
To: Wiegmann, Brad
Subject: RE: Any discussion at DoD this afternoon on the Bagram process issue? (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: ~~FOUO~~

(b)(5),(b)(6)

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

From: Wiegmann, Brad [mailto:Brad.Wiegmann@usdoj.gov]
Sent: Tuesday, April 07, 2009 10:31 PM
To: (b)(6)
Subject: Re: Any discussion at DoD this afternoon on the Bagram process issue? (UNCLASSIFIED)

(b)(5)

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

From: (b)(6)
To: Wiegmann, Brad
Sent: Tue Apr 07 22:18:06 2009
Subject: RE: Any discussion at DoD this afternoon on the Bagram prc (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: ~~FOUO~~

(b)(5)

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

From: (b)(6)
Sent: Tuesday, April 07, 2009 5:55 PM
To: (b)(6)
Subject: FW: Any discussion at DoD this afternoon on the Bagram process issue?

From: Wiegmann, Brad
Sent: Tuesday, April 07, 2009 5:54:36 PM
To: (b)(6)

Subject: Any discussion at DoD this afternoon on the Bagram process
issue?

Auto forwarded by a Rule

Classification: UNCLASSIFIED

Caveats: ~~FOUO~~

Classification: UNCLASSIFIED

Caveats: ~~FOUO~~

Wiegmann, Brad (SMO)

From: (b)(6)
Sent: Tuesday, April 07, 2009 10:18 PM
To: Wiegmann, Brad
Subject: RE: Any discussion at DoD this afternoon on the Bagram process issue? (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: ~~FOUO~~

(b)(5)

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

From: (b)(6)
Sent: Tuesday, April 07, 2009 5:55 PM
To: (b)(6)
Subject: FW: Any discussion at DoD this afternoon on the Bagram process issue?

From: Wiegmann, Brad
Sent: Tuesday, April 07, 2009 5:54:36 PM
To: (b)(6)
Subject: Any discussion at DoD this afternoon on the Bagram process issue?
Auto forwarded by a Rule

Classification: UNCLASSIFIED
Caveats: ~~FOUO~~

Wiegmann, Brad (SMO)

From: (b)(6)
Sent: Wednesday, April 15, 2009 5:52 PM
To: Wiegmann, Brad
Subject: RE: Bagram Procedures

Great. Talked to CENTCOM this morning, and we think we can deliver on all of these (pr v counsel and transcript v. media access, though). Pls get from (b)(6) a person with whom I could link up the experts I've got.

NSD ACLU Goodman 000012

Wiegmann, Brad (SMO)

From: Wiegmann, Brad
Sent: Monday, March 16, 2009 8:15 PM
To: (b)(6)
Subject: FW: Paper and Project Topics (UNCLASSIFIED)

Attachments: Task Group List of Topics for Further Study.doc; Assignment of Preventive Detention Study to Subgroup.doc; Assignment of MCA Study to Subgroup.doc



Task Group List of Topics for ... Assignment of Preventive Deten... Assignment of MCA Study to Sub...

Attached are my comments on the memo from the TF on assignment of projects. (Not sure whether we need formal separate memos assigning work to the sub-groups if we cover it all in the one memo from the TF on all the projects that identifies the groups, though we may wish to have a bit more granularity in the projects drawn from your memos if that is the way we go.) Anyway, see what you think. You'll see that I envision a few more sub-groups. I'd like to get it all done in the one memo if possible.

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

From: (b)(6)
Sent: Sunday, March 15, 2009 10:40 PM
To: Wiegmann, Brad
Subject: Paper and Project Topics (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: ~~FOUO~~

Brad - I went through the separate lists of topics, papers, projects, and meetings, and attempted to consolidate them into a draft memo we could send out to the membership for review.

(b)(5)

(b)(5)

See you at 9 a.m.

(b)(6)

Classification: UNCLASSIFIED
Caveats: ~~FOUO~~

Wiegmann, Brad (SMO)

From: (b)(6)
Sent: Tuesday, March 17, 2009 8:42 AM
To: Wiegmann, Brad
Subject: RE: Paper and Project Topics (UNCLASSIFIED)
Attachments: Task Group List of Topics for Further Study Changes Accepted.doc



Task Group List of

(b)(5)

(b)(6)

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

From: (b)(6)
Sent: Tuesday, March 17, 2009 8:19 AM
To: Wiegmann, Brad
Subject: RE: Paper and Project Topics (UNCLASSIFIED)

(b)(5)

(b)(6)

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

From: Wiegmann, Brad [mailto:Brad.Wiegmann@usdoj.gov]
Sent: Monday, March 16, 2009 8:15 PM

To: (b)(6)
Subject: FW: Paper and Project Topics (UNCLASSIFIED)

Attached are my comments on the memo from the TF on assignment of projects. (Not sure whether we need formal separate memos assigning work to the sub-groups if we cover it all in the one memo from the TF on all the projects that identifies the groups, though we may wish to have a bit more granularity in the projects drawn from your memos if that is the way we go.) Anyway, see what you think. You'll see that I envision a few more sub-groups. I'd like to get it all done in the one memo if possible.

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

From: (b)(6)
[mailto:(b)(6)]
Sent: Sunday, March 15, 2009 10:40 PM
To: Wiegmann, Brad
Subject: Paper and Project Topics (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: ~~FOUO~~

Brad--I went through the separate lists of topics, papers, projects, and meetings, and attempted to consolidate them into a draft memo we could send out to the membership for review.

(b)(5)

(b)(5)

See you at 9 a.m.

(b)(6)

Classification: UNCLASSIFIED
Caveats: FOUO

Wiegmann, Brad (SMO)

From: (b)(6)
Sent: Tuesday, March 17, 2009 8:19 AM
To: Wiegmann, Brad
Subject: RE: Paper and Project Topics (UNCLASSIFIED)

Attachments: Task Group List of Topics for Further Study (b) Edits.doc



Task Group List of
Topics for ...

Brad--I like your idea of the standing, separately named Subgroups. I also like your additional comments up front, as well as the idea of a single memo, if we include sufficient granularity in the one memo.

(b)(5)

Am creating a cleaned up copy, as Track Changes tends to disrupt bulleting.

(b)(6)

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

From: Wiegmann, Brad [mailto:Brad.Wiegmann@usdoj.gov]
Sent: Monday, March 16, 2009 8:15 PM
To: (b)(6)
Subject: FW: Paper and Project Topics (UNCLASSIFIED)

Attached are my comments on the memo from the TF on assignment of projects. (Not sure whether we need formal separate memos assigning work to the sub-groups if we cover it all in the one memo from the TF on all the projects that identifies the groups, though we may wish to have a bit more granularity in the projects drawn from your memos if that is the way we go.) Anyway, see what you think. You'll see that I envision a few more sub-groups. I'd like to get it all done in the one memo if possible.

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

From: (b)(6)
[mailto:(b)(6)]
Sent: Sunday, March 15, 2009 10:40 PM
To: Wiegmann, Brad
Subject: Paper and Project Topics (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: ~~FOUO~~

Brad--I went through the separate lists of topics, papers, projects, and meetings, and attempted to consolidate them into a draft memo we could send out to the membership for review.

(b)(5)

(b)(5)

See you at 9 a.m.

(b)(6)

Classification: UNCLASSIFIED
Caveats: ~~FOUO~~

Wiegmann, Brad (SMO)

From: (b)(6)
Sent: Tuesday, March 17, 2009 1:11 PM
To: Wiegmann, Brad
Subject: RE: (b)(6) Edits
Attachments: Task Group List of Topics for Further Study (b)(6) 1.doc

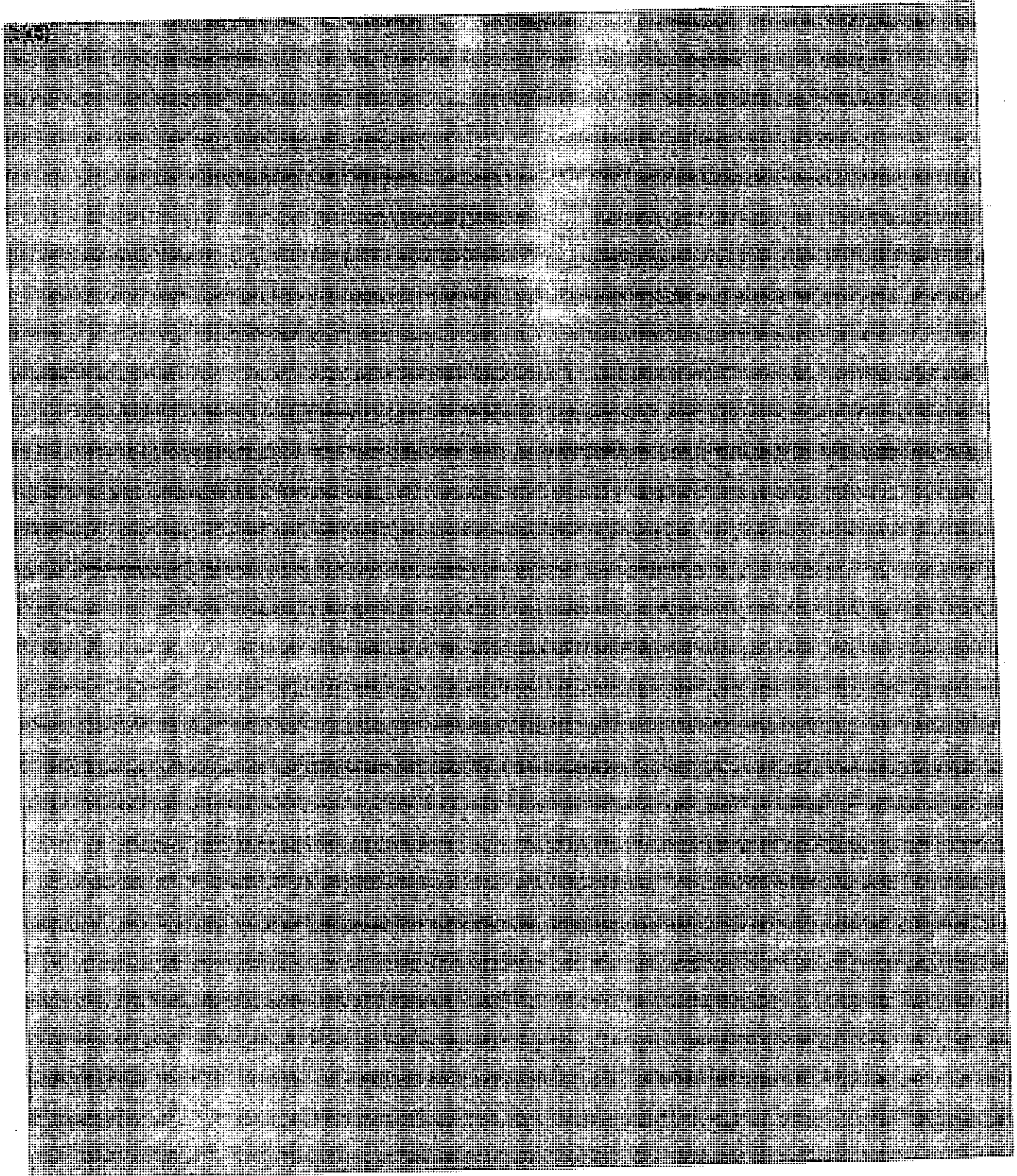


Task Group List of
Topics for ... Incorporating comment for Rendition/Transfers Subgroup re outright
releases.

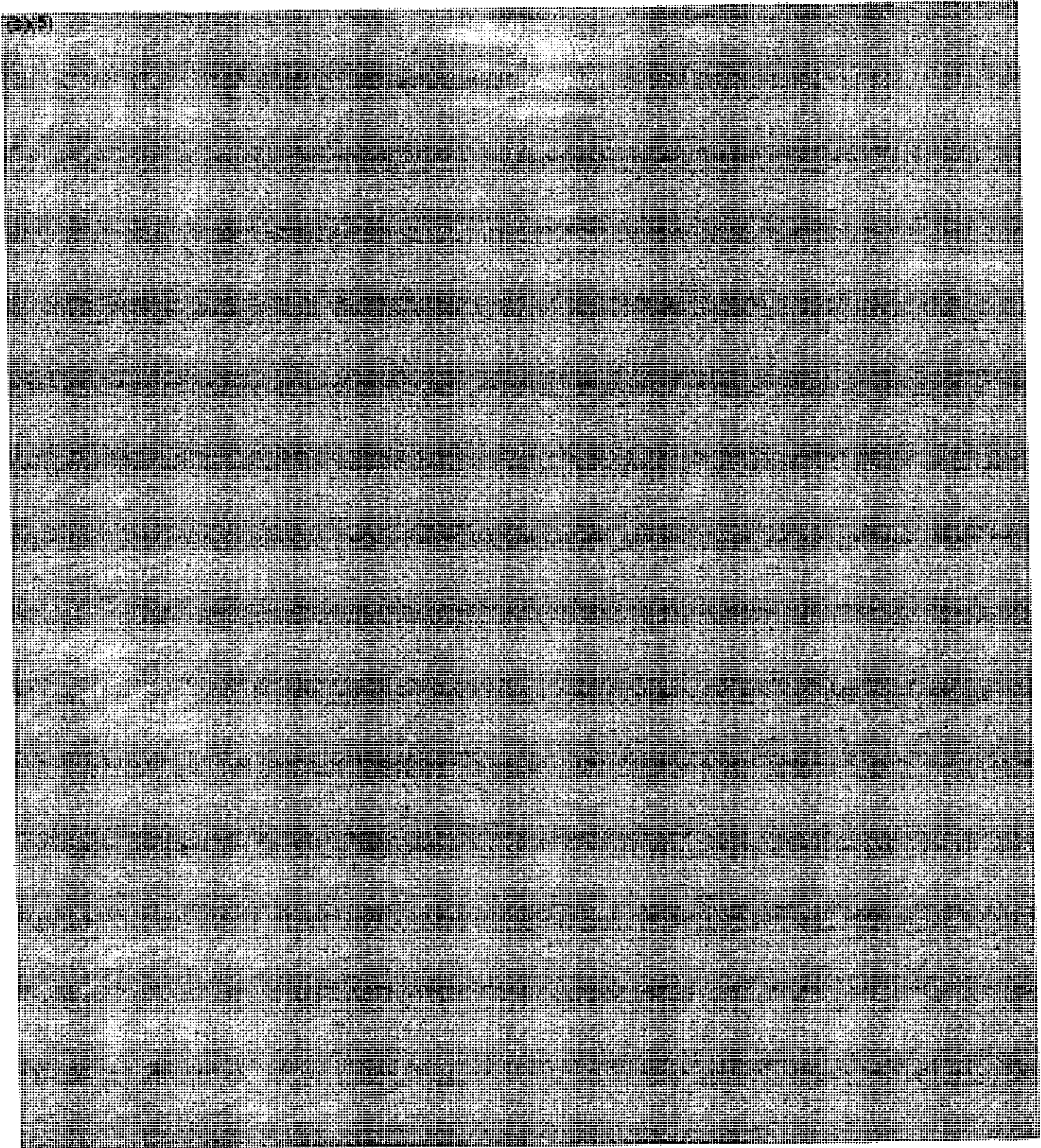
-----Original Message-----

From: (b)(6)
Sent: Tuesday, March 17, 2009 12:47 PM
To: 'Wiegmann, Brad'
Subject: (b)(6) Edits

Brad--if you're okay with these, I'll incorporate and publish to group.

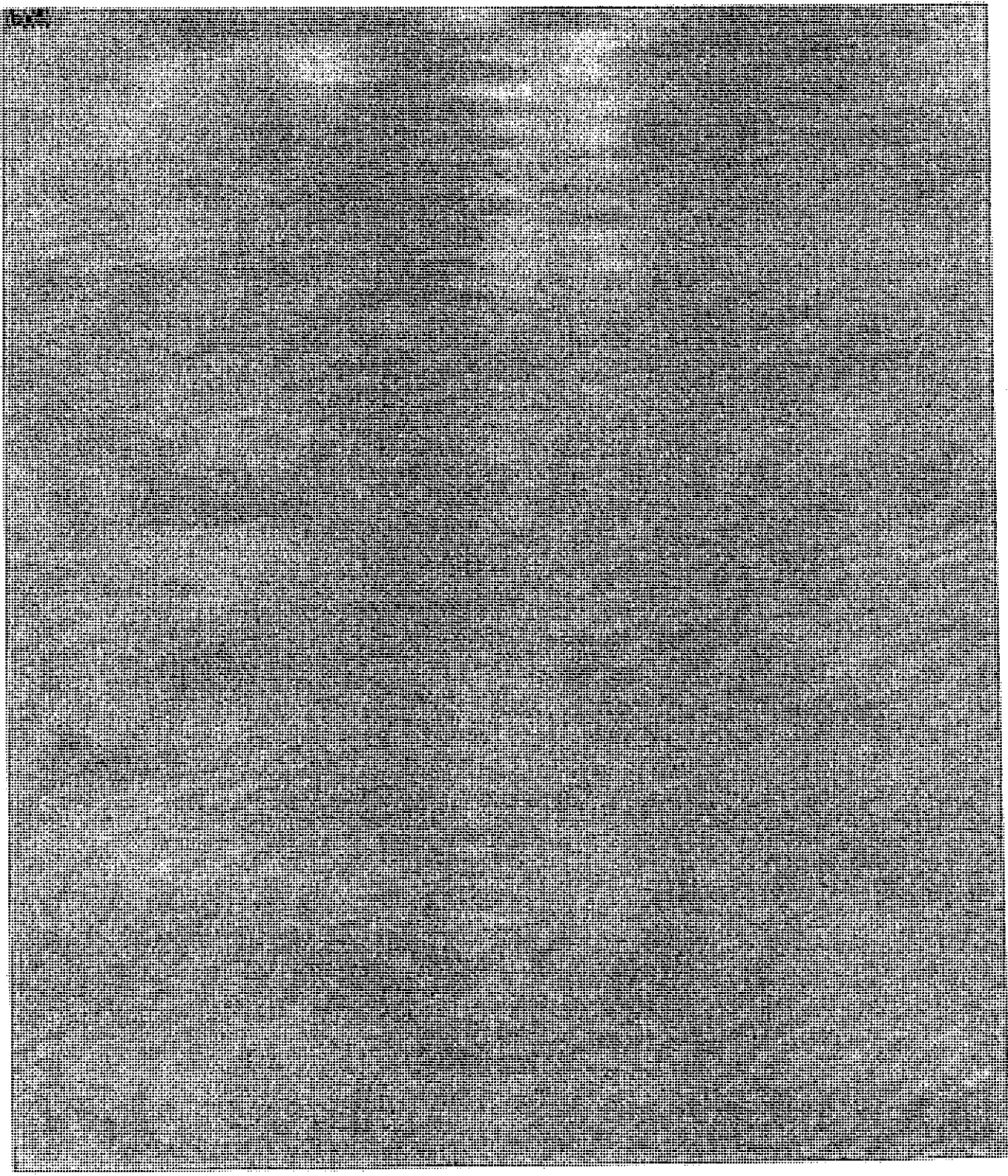


NSD ACLU Goodman 000022

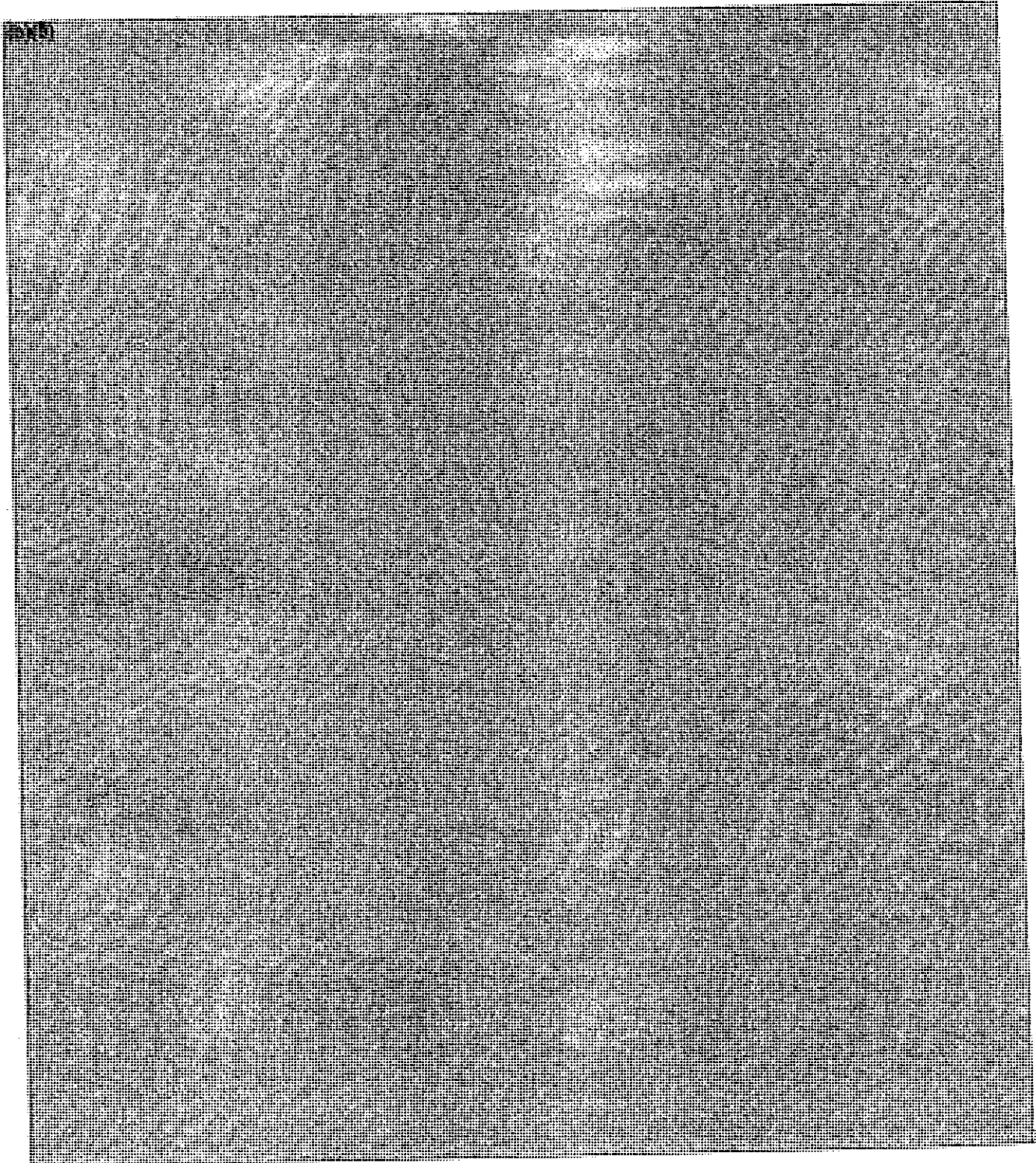


NSD ACLU Goodman 000023

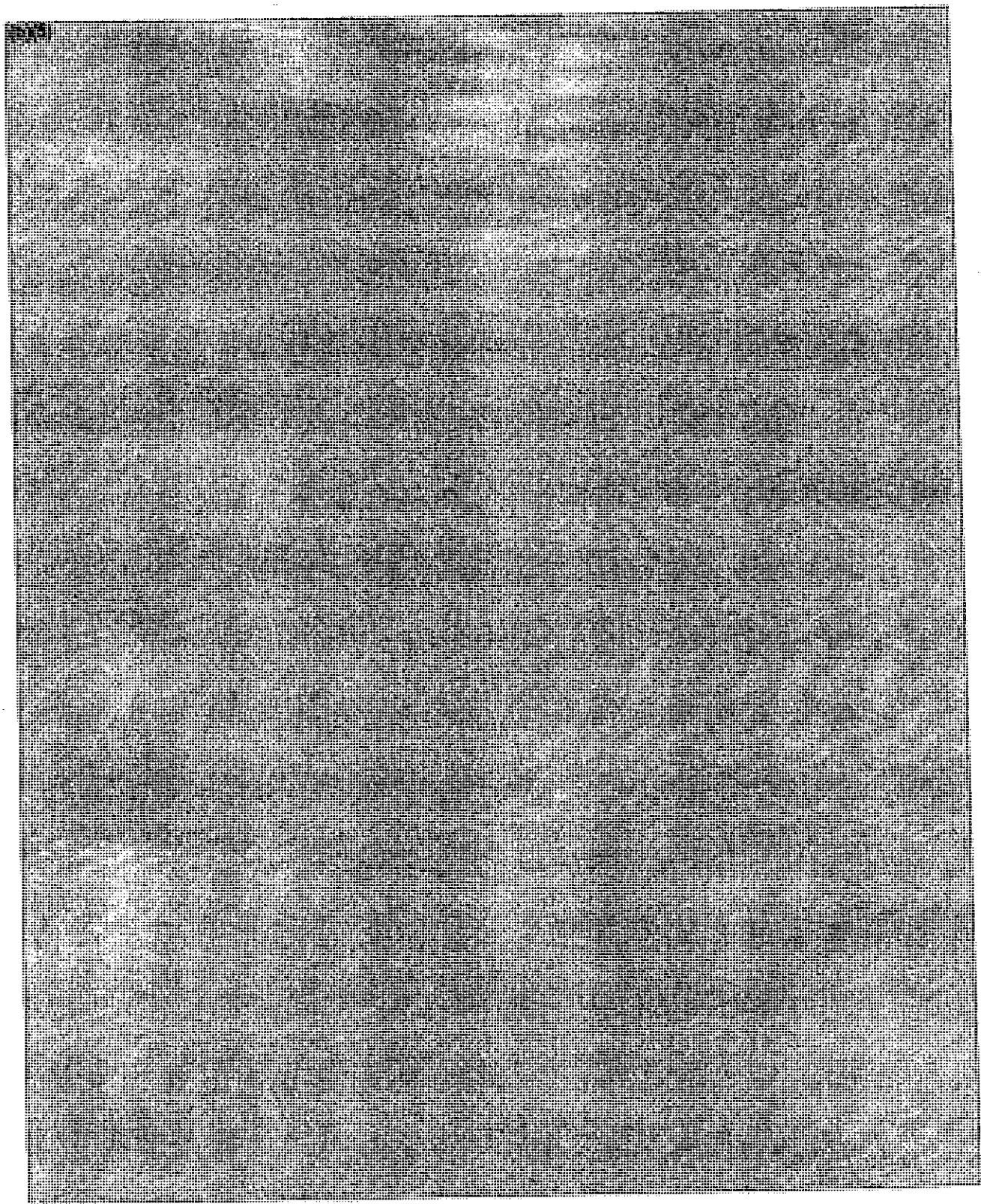
NSD ACLU Goodman 000024



NSD ACLU Goodman 000025

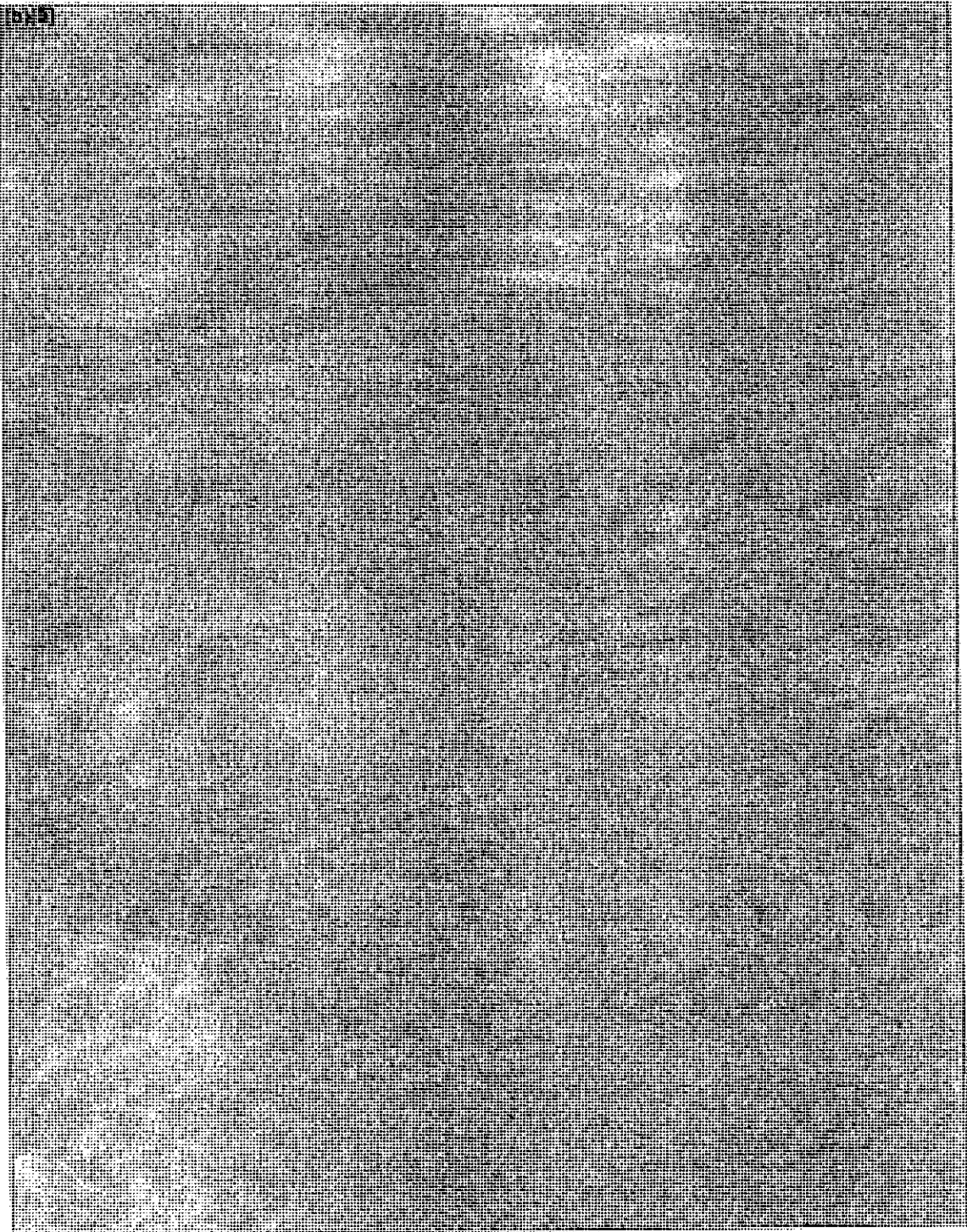


NSD ACLU Goodman 000026

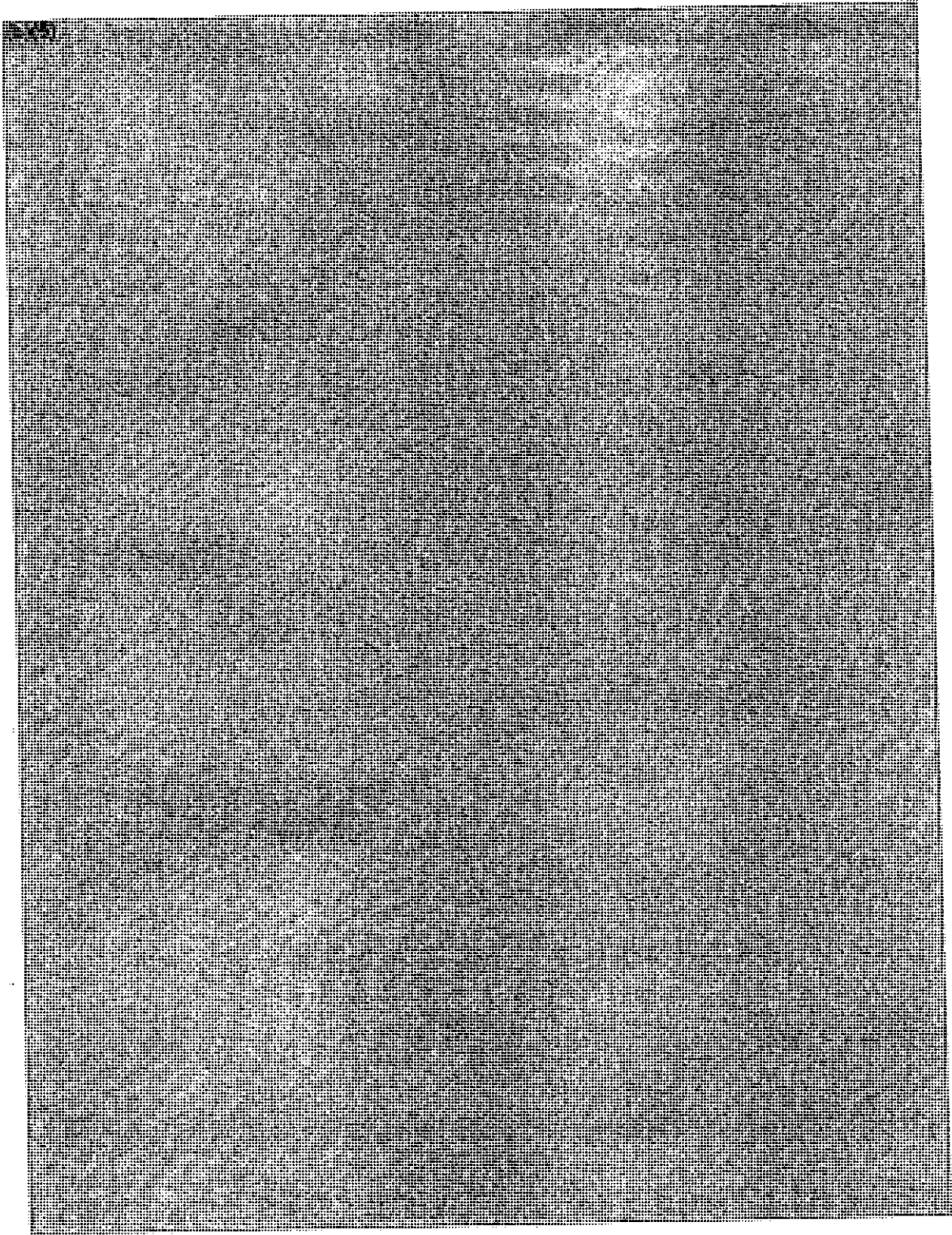


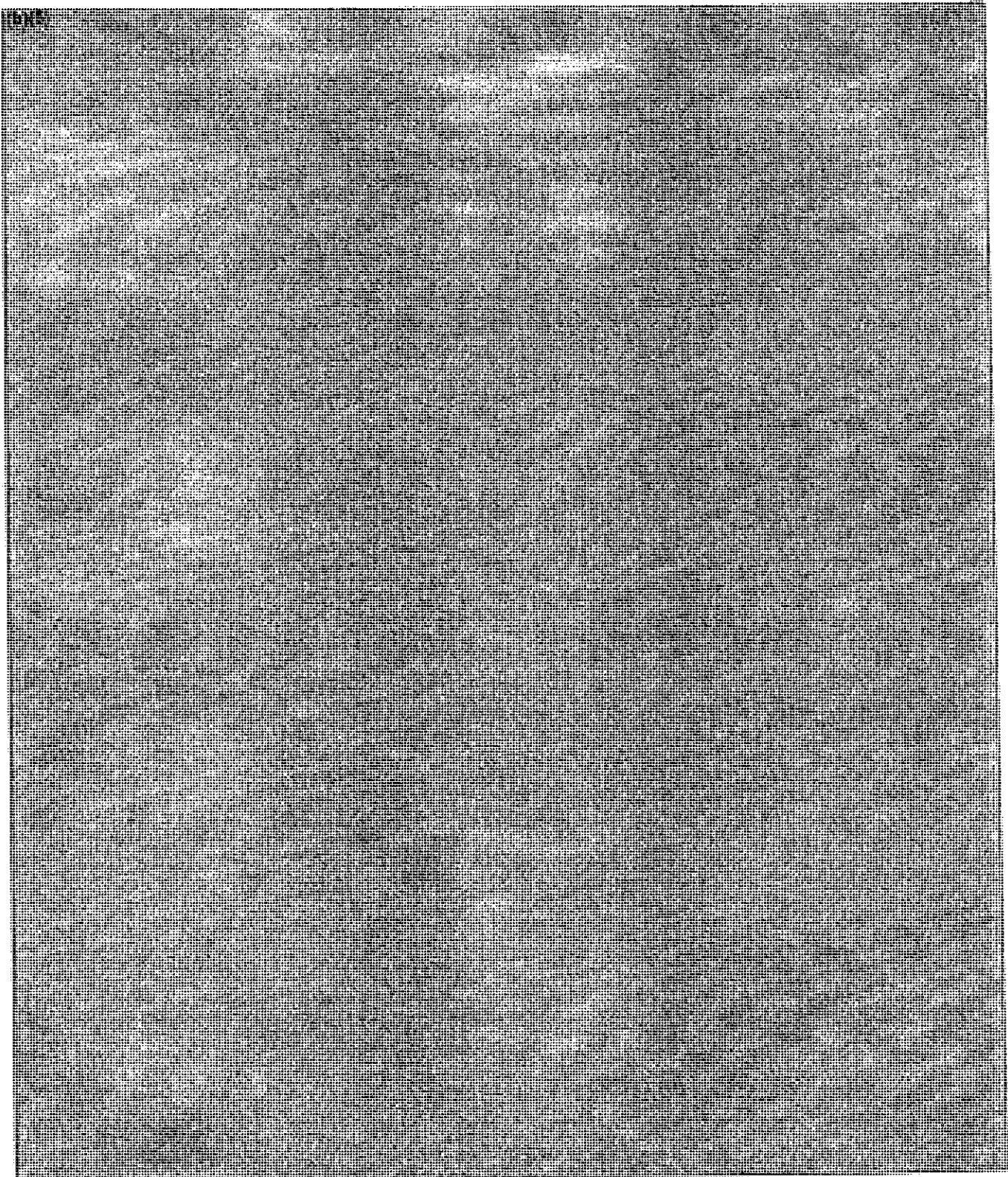
NSD ACLU Goodman 000027

(b)(7)



NSD ACLU Goodman 000028





NSD ACLU Goodman 000030

Wiegmann, Brad (SMO)

From: (b)(6)
Sent: Tuesday, March 17, 2009 3:08 PM
To: Deeks, Ashley S.; Johnson, Jeh Charles, Hon. DoD OGC; (b)(6), (b)(7)(C); (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C); Barron, David; david.a.martin@dhs.gov; Hinnen, Todd (NSD);
(b)(6); Donoghue, (b)(6)
(b)(6)
Cc: Wiegmann, Brad; (b)(6) HON, OSD-POLICY
Subject: Initial List of Issues Requiring Study
Attachments: Task Group List of Issues for Further Study.doc



Task Group List of Issues for ... Members of the Task Force on Detention Policy,

Please find attached the initial list of issues requiring study. We intend to proceed on the bases described herein, and we welcome your continuing comments, input, or concerns.

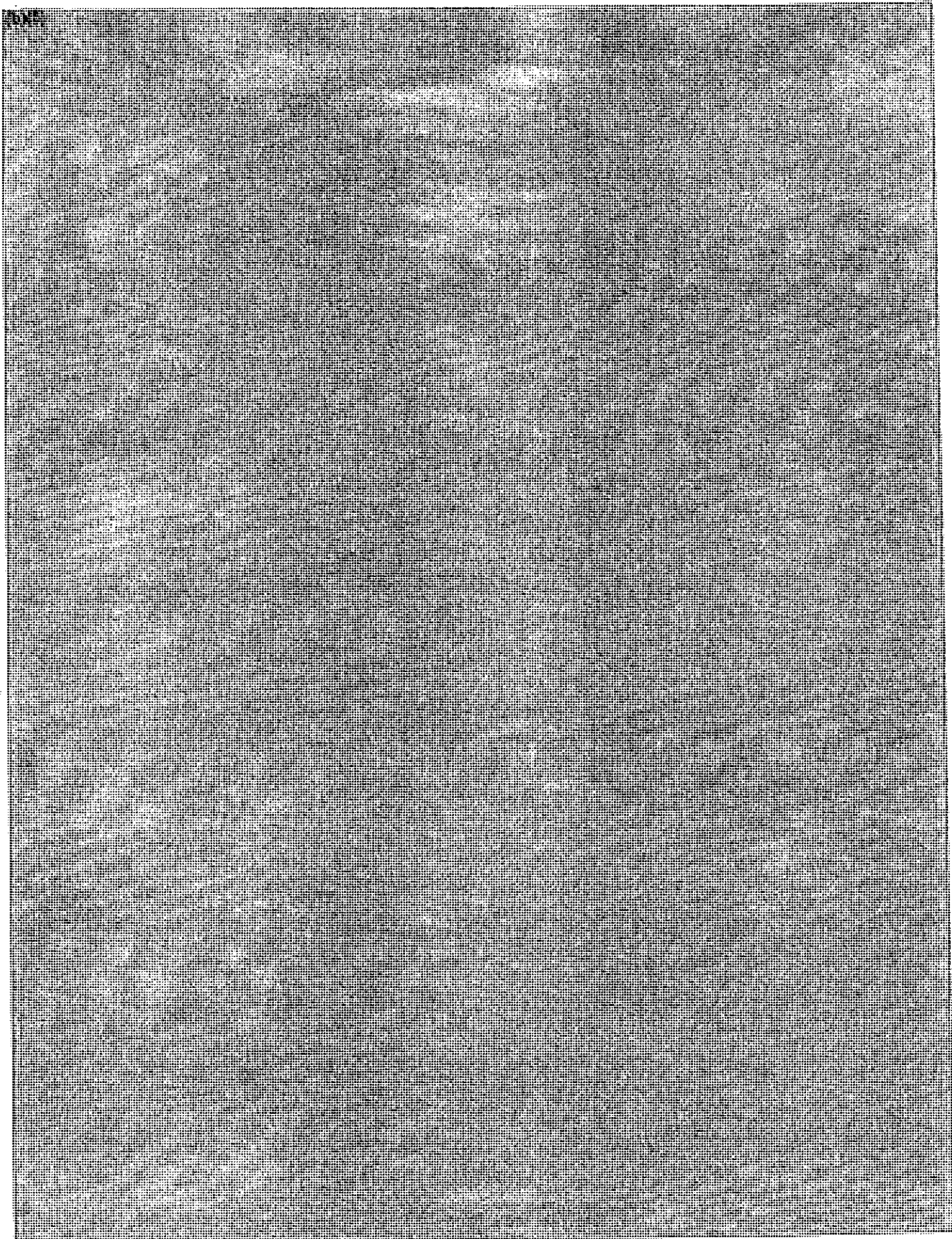
In the coming days, we will be sending follow-up memos to particular members--or those you designate--in order to form the subgroups identified in the attachment and schedule initial subgroup meetings.

Note that this correspondence is addressed solely to those who have been designated by the Principals identified in Executive Order 13493 as members of the Task Force. We have done this to establish clear lines of communication, and we ask that all formal communications and work product of the Task Force be channeled through the members themselves. If you must share Task Force materials or correspondence with colleagues in your agency or department, we ask that you do so only on a need-to-know basis and that you reproduce the CAUTION statement printed below.

-- (b)(6) Brad Wiegmann, and (b)(6)

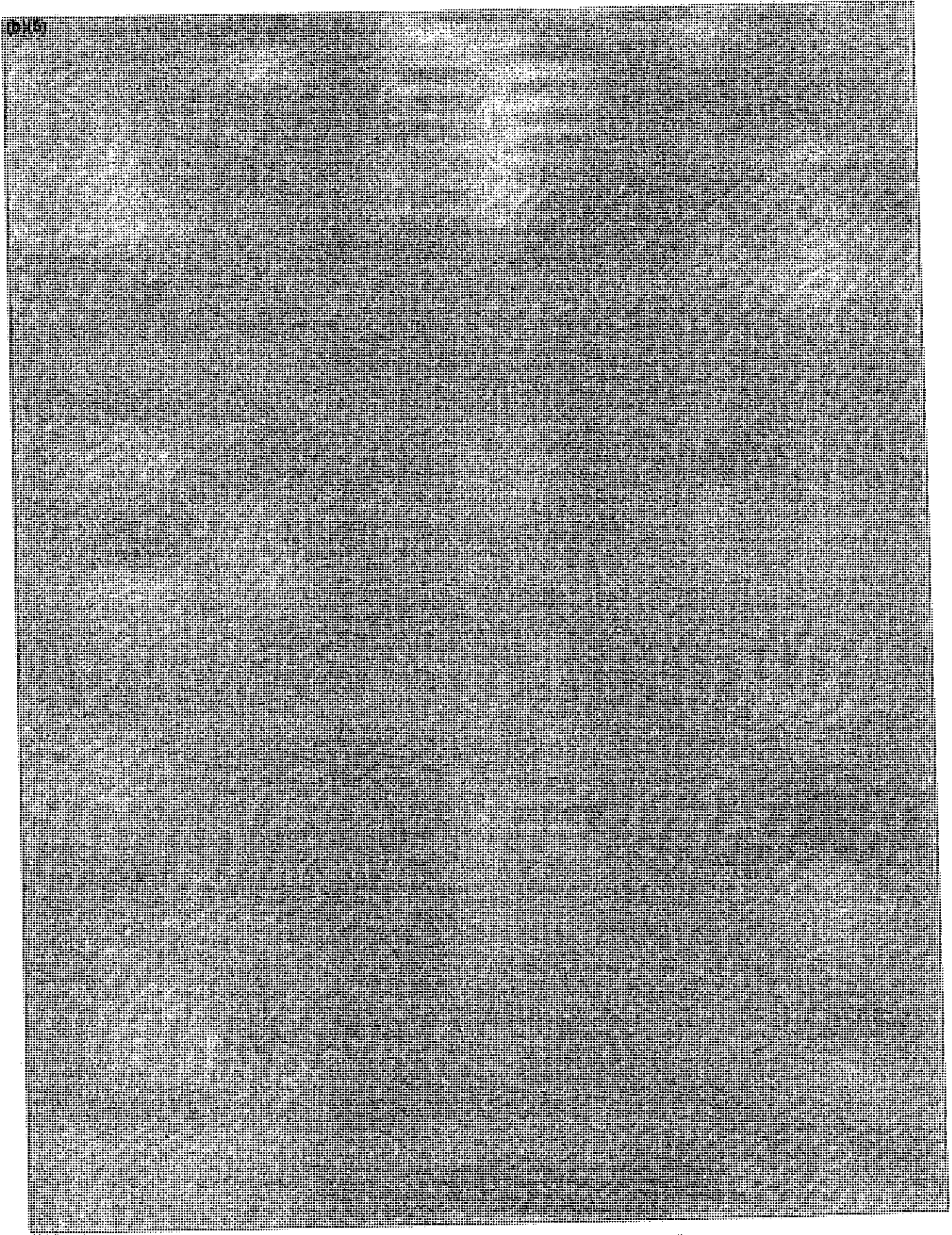
CAUTION: Information contained in this message may be protected by the deliberative process, attorney/client, attorney work product, or other privileges. Do not disseminate outside the Executive Branch without approval from the Co-Chairs and Executive Secretary of the Task Force on Detention Policy.

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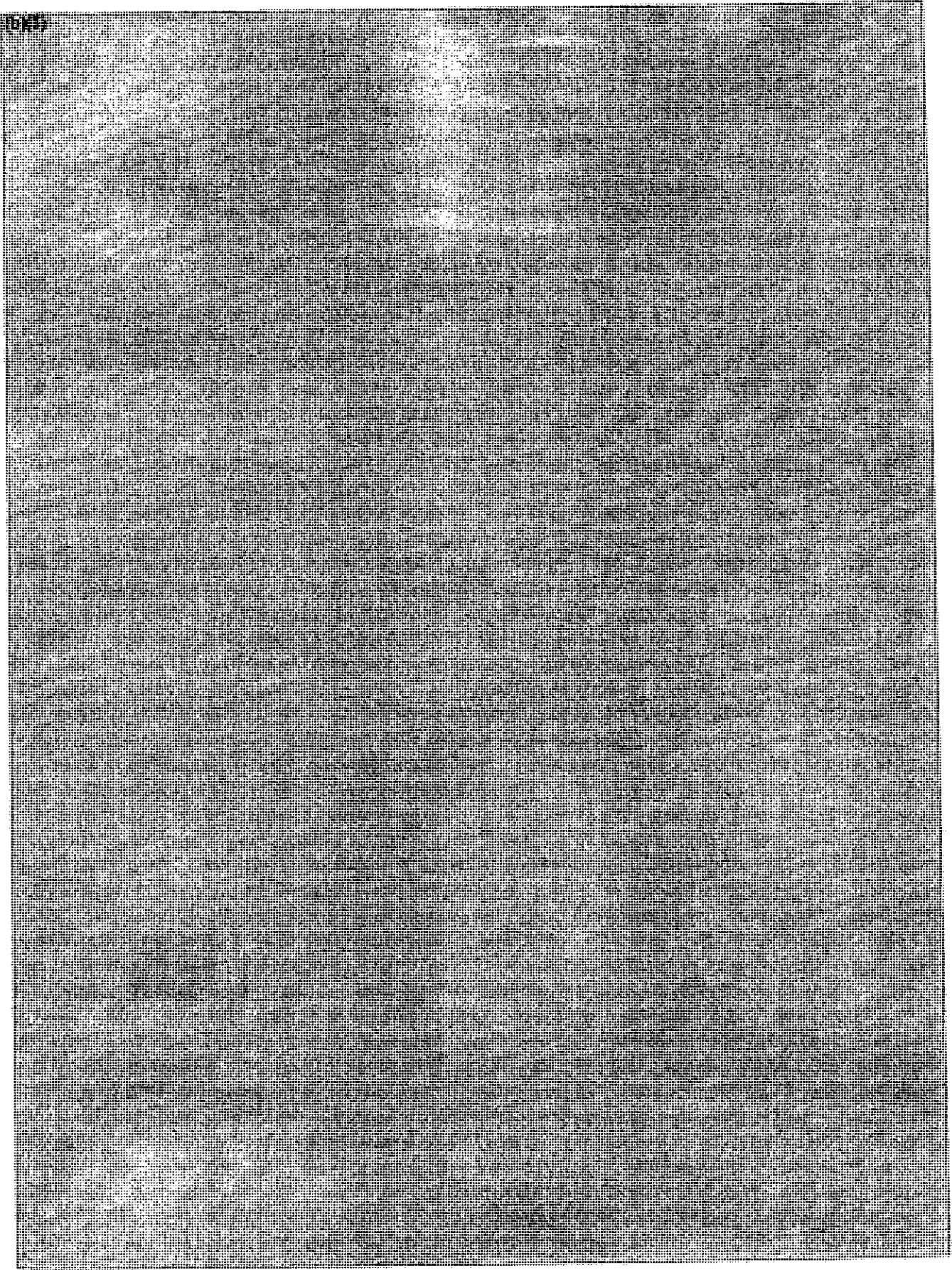
NSD ACLU Goodman 000032

0-16



NSD ACLU Goodman 000033

10/17

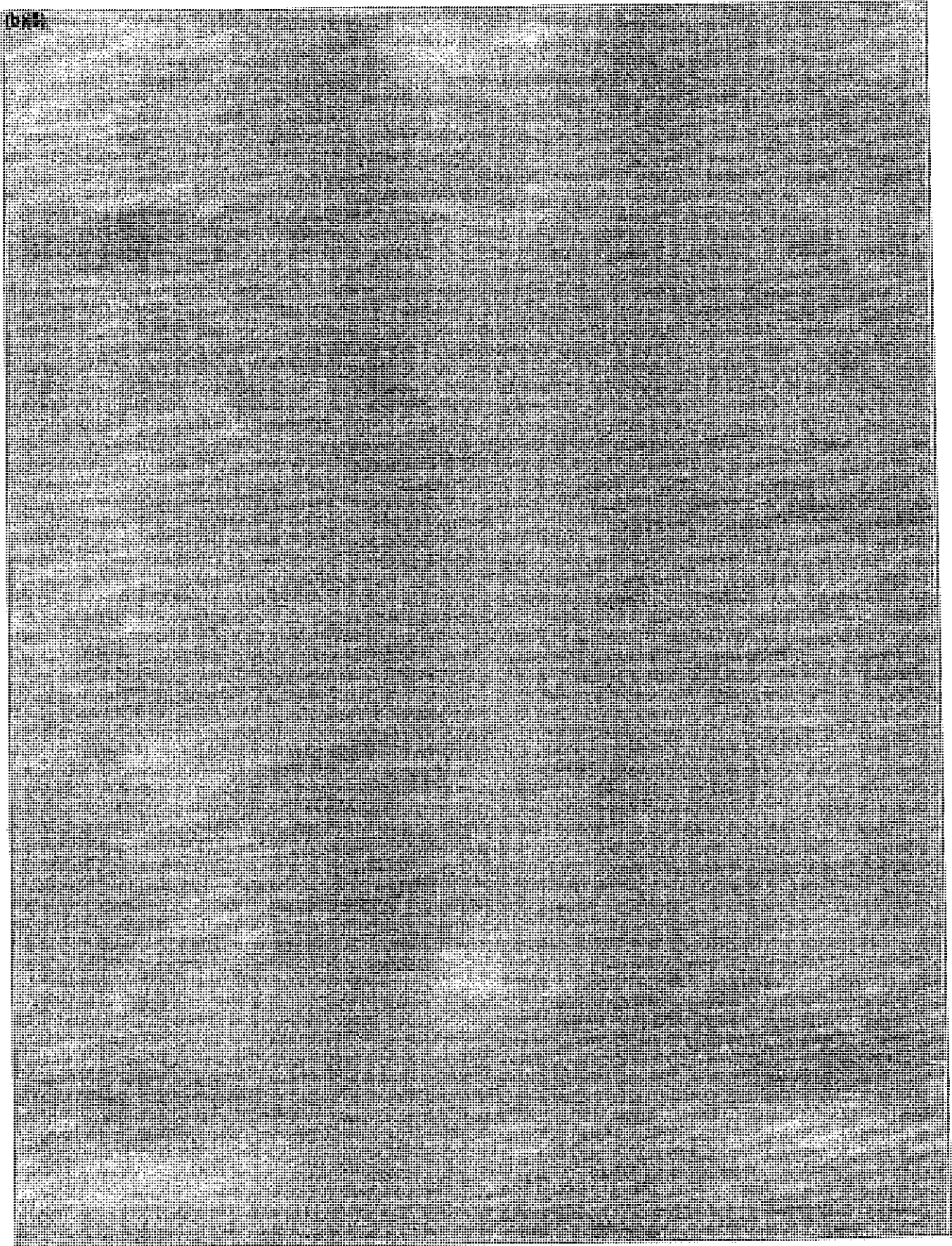


NSD ACLU Goodman 000034

544

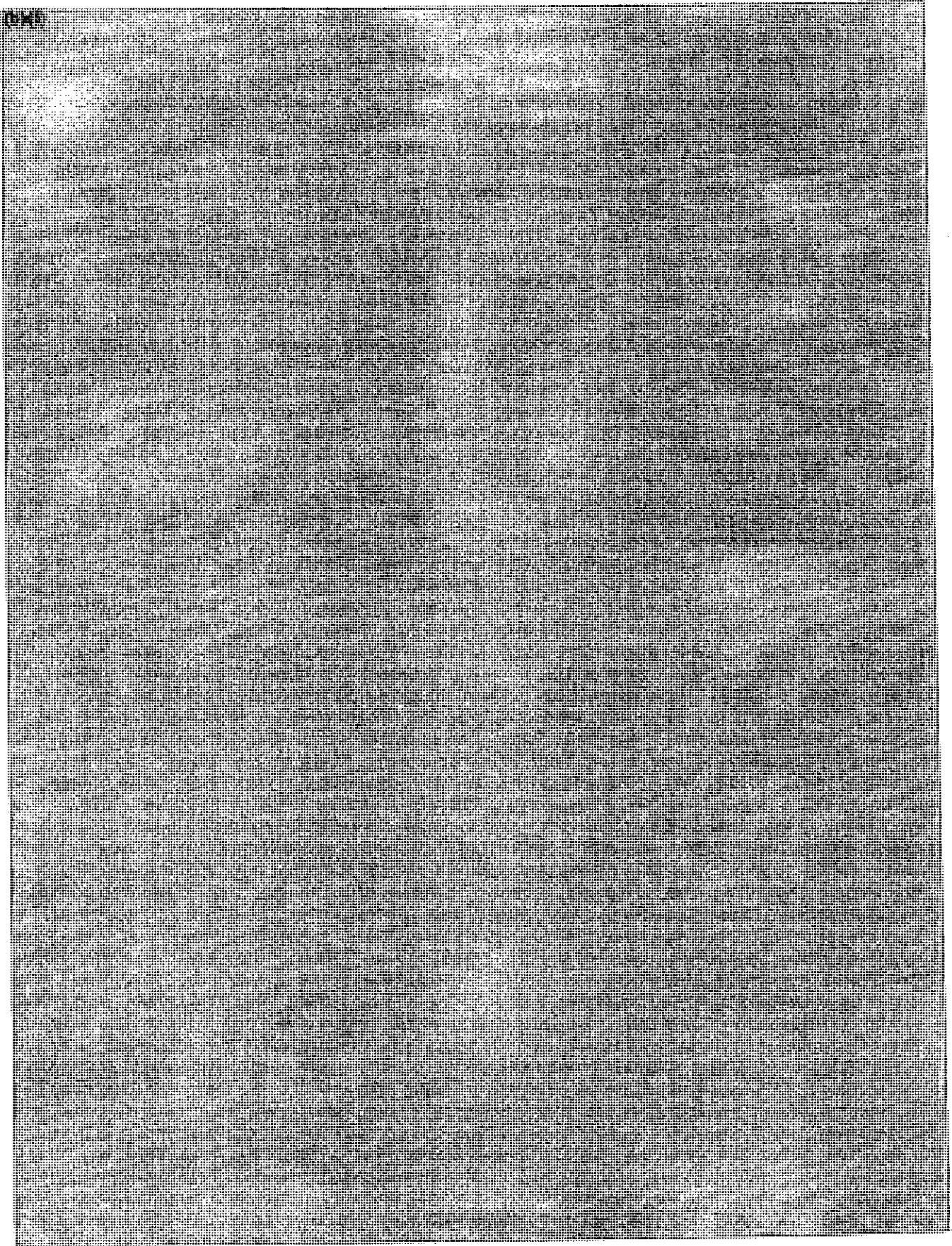
NSD ACLU Goodman 000035

0000

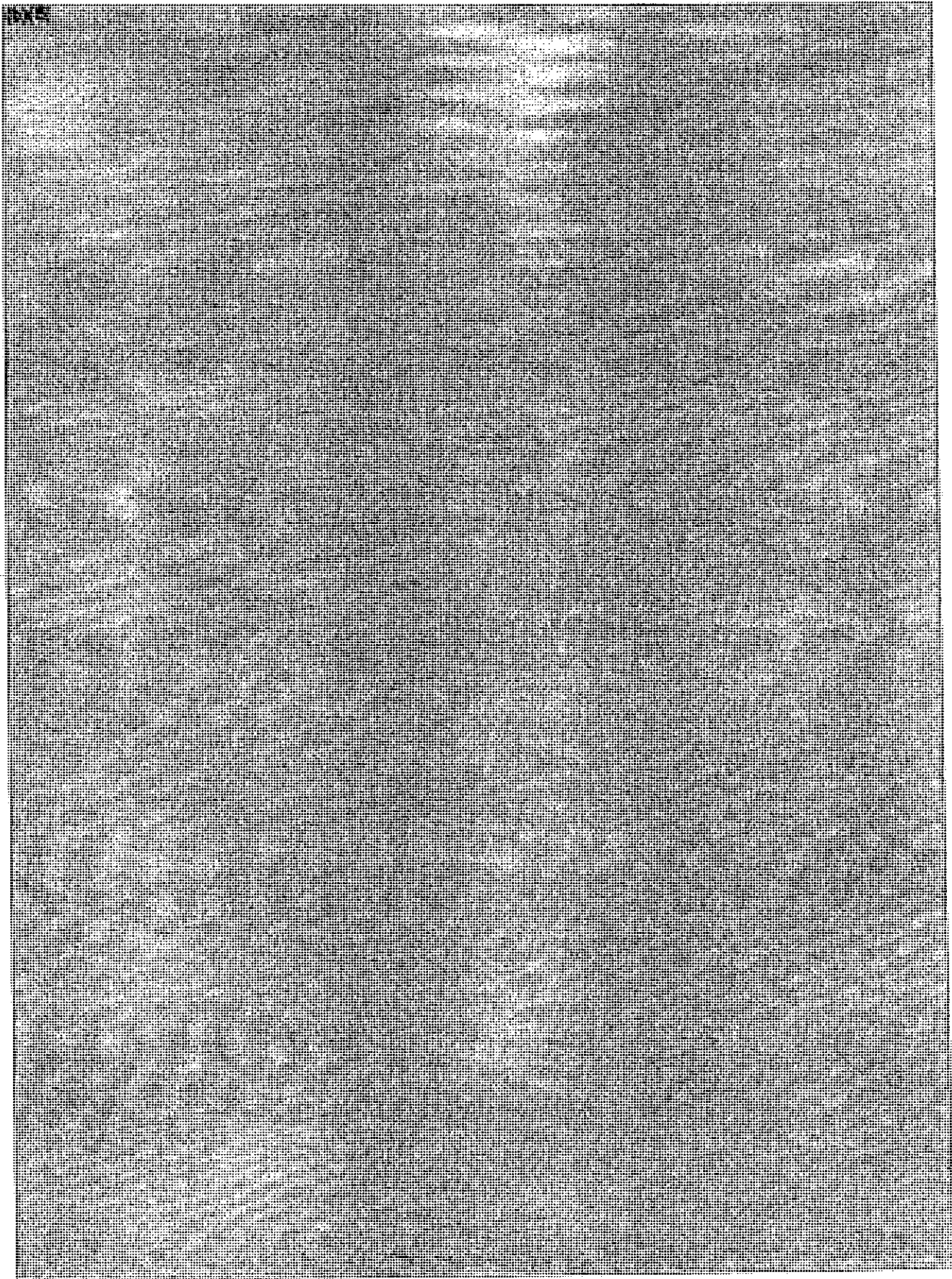


NSD ACLU Goodman 000036

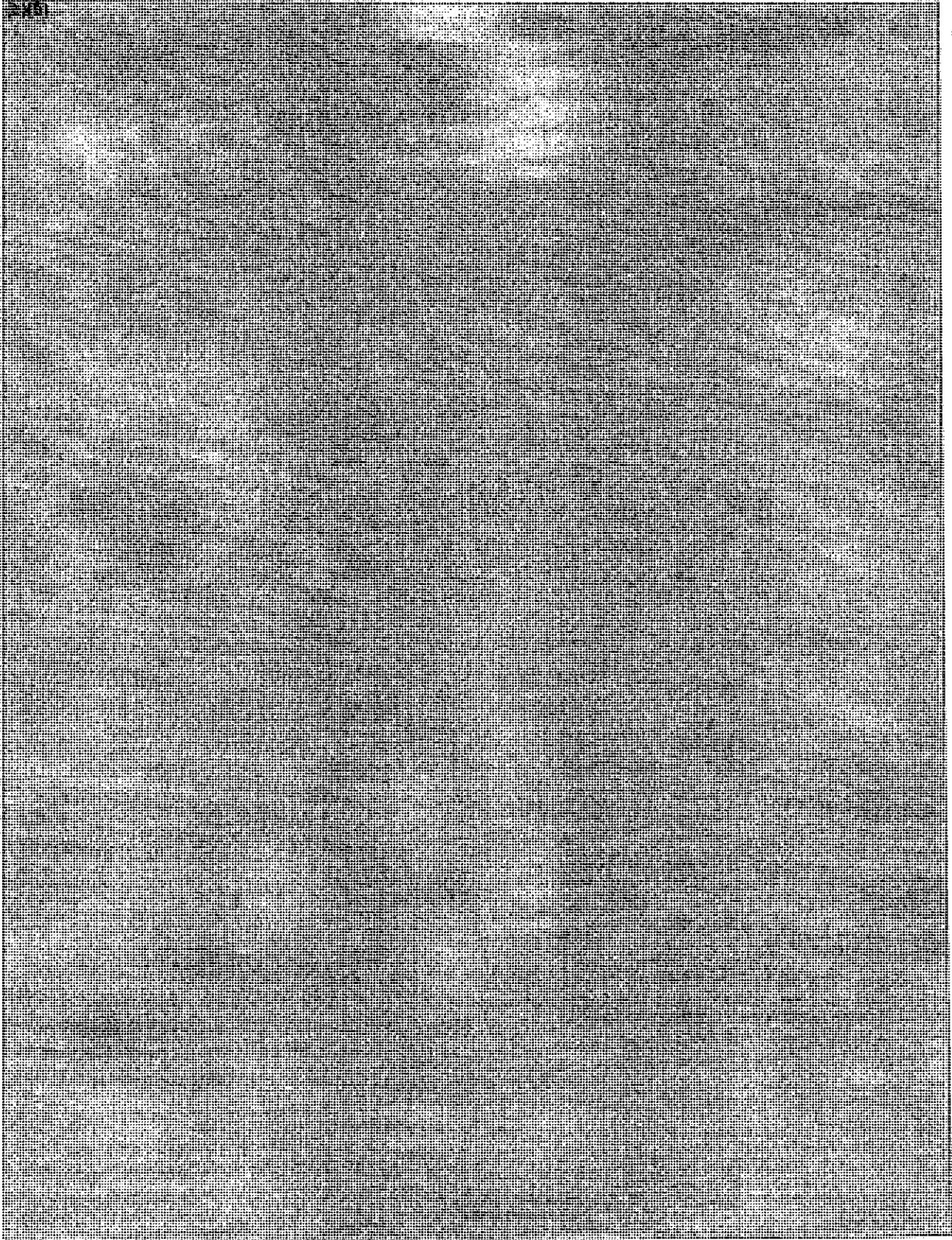
b7c



NSD ACLU Goodman 000037

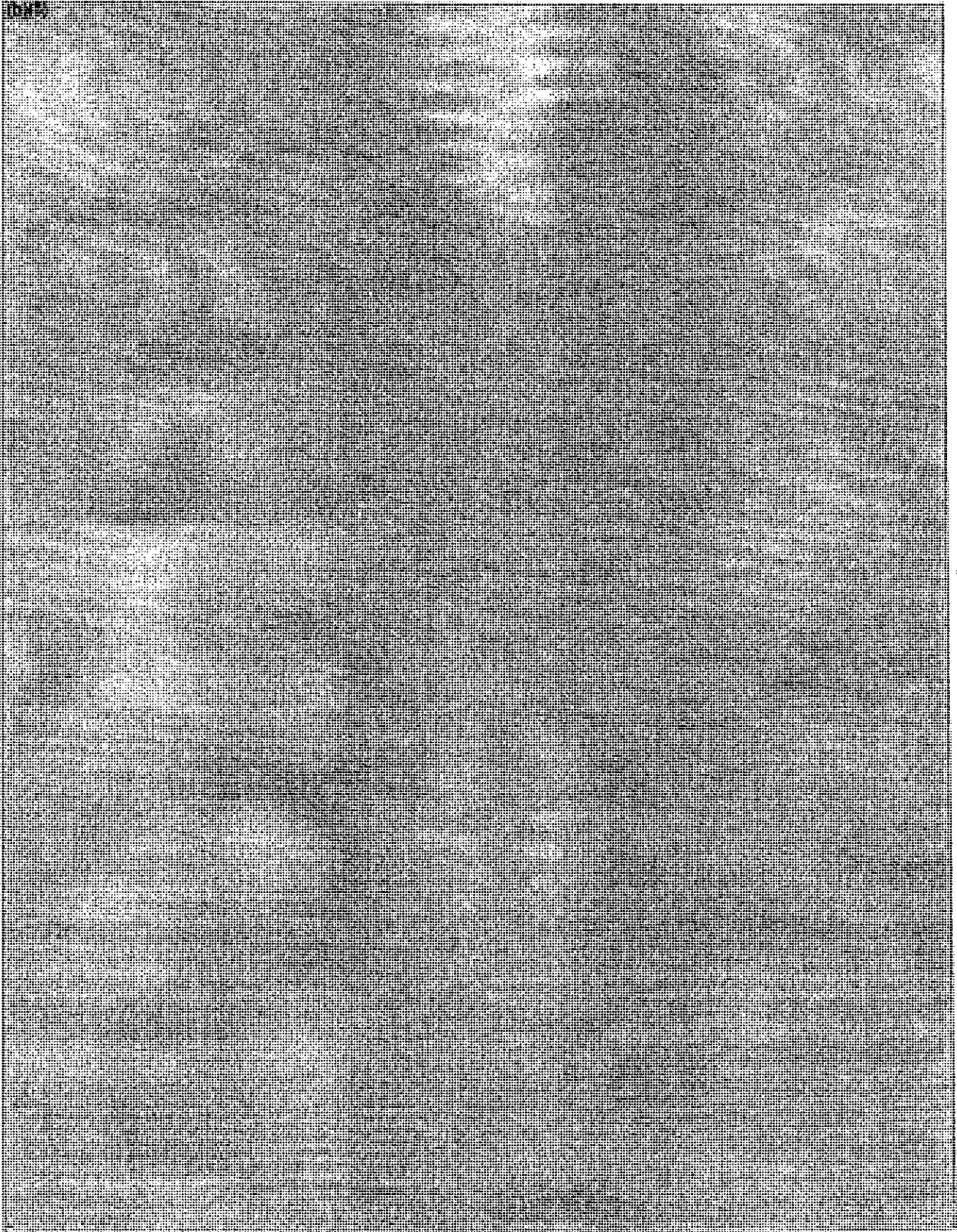


NSD ACLU Goodman 000038



NSD ACLU Goodman 000039

10/1/74



NSD ACLU Goodman 000040

Wiegmann, Brad (SMO)

From: (b)(6)
Sent: Tuesday, March 17, 2009 3:11 PM
To: (b)(6) OSD-POLICY; Liotta, Alan. CIV. OSD-POLICY; (b)(6)
(USAF) OSD POLICY; (b)(6)
(b)(6)
Cc: Wiegmann, Brad
Subject: FW: Initial List of Issues Requiring Study
Attachments: Task Group List of Issues for Further Study.doc



Task Group List of
Issues for ...

All--for your information. Pls note the cautionary statements relating to dissemination of formal Task Force communications and work-product.

(b)(6)

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

From: (b)(6)
Sent: Tuesday, March 17, 2009 3:08 PM
To: 'Deeks, Ashley S'; Johnson, Jeh Charles, Hon, DoD OGC;
(b)(6)
(b)(6) Barron, David; david.a.martin@dhs.gov; Hinnen, Todd (NSD); (b)(6) (b)(6)
Cc: Wiegmann, Brad; (b)(6) HON, OSD-POLICY
Subject: Initial List of Issues Requiring Study

Members of the Task Force on Detention Policy.

Please find attached the initial list of issues requiring study. We intend to proceed on the bases described herein, and we welcome your continuing comments, input, or concerns.

In the coming days, we will be sending follow-up memos to particular members--or those you designate--in order to form the subgroups identified in the attachment and schedule initial subgroup meetings.

Note that this correspondence is addressed solely to those who have been designated by the Principals identified in Executive Order 13493 as members of the Task Force. We have done this to establish clear lines of communication, and we ask that all formal communications and work product of the Task Force be channeled through the members themselves. If you must share Task Force materials or correspondence with colleagues in your agency or department, we ask that you do so only on a need-to-know basis and that you reproduce the CAUTION statement printed below.

(b)(6) Brad Wiegmann, and (b)(6)

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Wiegmann, Brad (SMO)

From: (b)(6)
Sent: Friday, March 20, 2009 2:46 PM
To: Wiegmann, Brad
Subject: RE: Refined List of Issues

Attachments: Task Group List of Issues 2d Iteration.doc

(b)(5)

From: (b)(6)
Sent: Friday, March 20, 2009 2:12 PM
To: Wiegmann, Brad
Subject: Refined List of Issues

(b)(5),(b)(6)

(b)(6)

Wiegmann, Brad (SMO)

From: (b)(6)
Sent: Friday, March 20, 2009 6:13 PM
To: 'Deeks, Ashley S'; 'johnsonj@dodgc.osd.mil'; (b)(6), (b)(7)(C)
(b)(6), (b)(7)(C); (b)(6)
(b)(6); Barron, David; 'david.a.martin@dhs.gov'; Hinnen, Todd
(NSD); (b)(6); 'donoghueje@state.gov'; Wiegmann, Brad;
(b)(6)
(b)(6)

Cc:
Subject: Refined List of Issues

Attachments: Task Group Refined List of Issues.doc

(b)(5)

(b)(6) Brad Wiegmann, and (b)(6)

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Task Group Refined
List of Iss...

NSD ACLU Goodman 000045

(b)(5)

NSD ACLU Goodman 000046

(b)(5)

NSD ACLU Goodman 000047

(b)(5)

NSD ACLU Goodman 000048

(b)(5)

NSD ACLU Goodman 000049

(b)(5)

NSD ACLU Goodman 000050

(b)(5)

NSD ACLU Goodman 000051

(b)(5)

(b)(5)

NSD ACLU Goodman 000053

(b)(5)

(b)(5)

NSD ACLU Goodman 000055

(b)(5)

NSD ACLU Goodman 000056

(b)(5)

NSD ACLU Goodman 000057

Wiegmann, Brad (SMO)

From: (b)(6)
Sent: Saturday, March 21, 2009 11:18 AM
To: (b)(8)
Cc: Wiegmann, Brad
Subject: FW: Refined List of Issues (UNCLASSIFIED)

Attachments: Task Group Refined List of Issues.doc



Task Group Refined
List of Iss...

Classification: UNCLASSIFIED

Caveats: ~~FOUO~~

Caroline and Mary--for your information. Given that we're still assembling staff and that some of these assignments are still being decided, this is a particularly sensitive document.

(b)(6)

From: (b)(6),(b)(7)(C)
Sent: Friday, March 20, 2009 6:13 PM
To: 'Deeks, Ashley S.'; 'johnsoni@dodac.osd.mil'; (b)(6),(b)(7)(C)
(b)(6); (b)(6); Barron,
David; 'david.a.martin@dhs.gov'; Hinnen, Todd (NSD);
(b)(6); 'donoghueje@state.gov';
(b)(6)
Wiegmann, Brad; (b)(6)
Cc: (b)(6)
Subject: Refined List of Issues

(b)(5)

(b)(5)

(b)(6)

Brad Wiegmann, and (b)(6)

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<<Task Group Refined List of Issues.doc>>

Classification: UNCLASSIFIED

Caveats: ~~FOUO~~

Classification: UNCLASSIFIED

Caveats: ~~FOUO~~

Wiegmann, Brad (SMO)

From: (b)(6)
Sent: Monday, March 23, 2009 6:13 PM
To: 'Deeks, Ashley S'; 'johnsonj@dodgc.osd.mil'; (b)(6),(b)(7)(C) (c)
(b)(6),(b)(7)(C)
(b)(6) Barron, David; 'david.a.martin@dhs.gov'; Hinnen, Todd
(NSD); (b)(6) 'donoghueje@state.gov';
(b)(6)
(b)(6)
Cc: (b)(6)
Subject: Readahead Materials--Meeting of Task Force on Detention Policy, Mar 25, 2009, 3 p.m.-4 p.m.

Attachments: Task Force Refined List of Issues.doc

Members of the Task Force on Detention Policy--Attached are the draft slides we will use this Wednesday at the next TF meeting, which will take place at the Main Department of Justice Building, 950 Pennsylvania Ave, in Room 6150, at 3 p.m. (note change in location from last time).

Please call (b)(6) to arrange for badging into the Building (Visitor's Entrance is on Constitution near the corner of 10th and Constitution).

Also attached is the latest version of the Refined List of Issues Requiring Study, which contains several minor changes from the version you received on Mar 20th. If you have not already done so, please come prepared to identify personnel who will be serving on the TF Staff and/or in the weekly working meetings in support of the Subgroups.

Thanks.

(b)(6), Brad Wiegmann, and (b)(6)



Task Force Refined
List of Iss...

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NSD ACLU Goodman 000060

Wiegmann, Brad (SMO)

From: (b)(6)
Sent: Thursday, April 02, 2009 4:04 PM
To: Wiegmann, Brad
Subject: FW: [Nationalsecuritylaw] more thoughts on the Bagram habeas ruling (UNCLASSIFIED)
Signed By: Verifying the signature. Click the icon for details.

Importance: High

Classification: UNCLASSIFIED
Caveats: ~~FOUO~~

Cheesey on the Bagram habeas ruling.

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

From: nationalsecuritylaw-bounces@lists.wfu.edu
[mailto:nationalsecuritylaw-bounces@lists.wfu.edu] On Behalf Of Cheesey, Robert
Sent: Thursday, April 02, 2009 2:19 PM
To: nationalsecuritylaw@lists.wfu.edu
Subject: [Nationalsecuritylaw] more thoughts on the Bagram habeas ruling
Importance: High

* More thoughts on Maqaleh v. Gates

Having read through the opinion in more detail, I want to clarify a few things and to highlight a few additional points.

1. Maqaleh extends habeas only to non-Afghan detainees captured outside Afghanistan who are then brought to Bagram. The decision turns on factors that are specific to Bagram and the detention review procedures used there, and hence does not directly control the result for detentions in other contexts.

2. The decision emphasizes that the result might have differed had there been a more robust detention screening process (though it is worth bearing in mind that the combination of CSRT plus DTA review was deemed inadequate as to GTMO, so presumably this would not simply be a matter of adopting the CSRT rules alone at Bagram). Notably, Judge Bates states that his is not deciding that this subset of Bagram detainees ought to have access to counsel.

3. The opinion emphasizes that the right to habeas review need not attach immediately, but rather only after a reasonable period.

4. As to the one Afghan petition in this set, Judge Bates did not actually grant the government's motion to dismiss, even though he did conclude that Boumediene did not apply to him. Instead, Judge Bates called for further briefing on the argument that the jurisdiction-stripping language of the Military Commissions Act might "usurp Article III authority" in violation of United States v. Klein, an 1871 decision holding that Congress may not "prescribe rules of decision to the Judicial Department of the government in cases pending before it." So watch for more action on this topic, possibly

under the caption *Wazir v. Gates* (No. 06-1697).

5. Geography and the problem of national boundaries in the context of transnational conflicts: because the opinion places considerable weight on geography insofar as it suggests that habeas might not apply for persons captured in Afghanistan and then held at Bagram, the question arises whether and how any such zone of exemption ought to be defined with reference to the Afghan/Pakistan border region. This could be a point to watch for in other cases.

You may find the 51-page opinion here:
https://ecf.dod.uscourts.gov/cgi-bin/show_public_doc?2006cv1697-31

Classification: UNCLASSIFIED
Caveats: ~~FOUO~~

Wiegmann, Brad (SMO)

From: Wiegmann, Brad
Sent: Monday, March 23, 2009 2:08 PM
To: (b)(6), (b)(7)(C)
Subject: FW: Refined List of Issues (UNCLASSIFIED)

Attachments: Task Group Refined List of Issues.doc



Task Group Refined
List of Iss...

From: (b)(6)
Sent: Friday, March 20, 2009 6:13 PM (b)(6), (b)(7)(C)
To: 'Deeks, Ashley S'; 'johnson@dodgc.osd.mil'; (b)(6), (b)(7)(C)
(b)(6); Barron,
David; 'david.a.martins@dhs.gov'; Hinnen, Todd (NSD);
(b)(6); 'donoghueje@state.gov';
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Wiegmann, Brad; (b)(6)
Cc: (b)(6)
(b)(6)

(b)(5)

(b)(6) Brad Wiegmann, and (b)(6)

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<<Task Group Refined List of Issues.doc>>

Classification: UNCLASSIFIED
Caveats: ~~FOUO~~

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Tracking:

Recipient
(b)(6),(b)(7)(C)

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