



U.S. Department of Justice

National Security Division

August 17, 2012

Washington, D.C. 20530

NSD FOI/PA #09-133

Ms. Melissa Goodman
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004

Dear Ms. Goodman:

This is in response to your April 23, 2009, Freedom of Information Act (FOIA) request for records pertaining to the detention and treatment of prisoners held at the Bagram Theater Internment Facility at Bagram Airfield in Afghanistan.

We have conducted a search of the Counterterrorism and Counterespionage Sections and the Office of the Assistant Attorney General and located thirty-four records responsive to your request. We have processed these records under the FOIA and have determined to release items 1-18 in full or in part, and to withhold items 19-34 (as described on the enclosed schedule) in full pursuant to one or more of the following FOIA exemptions set forth in 5 U.S.C. 552(b):

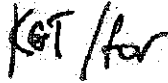
- (1) which permits the withholding of information properly classified pursuant to Executive Order No. 13526;
- (5) which permits the withholding of inter-agency or intra-agency memorandums or letters which reflect the predecisional, deliberative processes of the Department;
- (6) which permits the withholding of personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and,
- (7) which permits the withholding of records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information...

(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We also located records which originated with or are of interest to the Departments of Defense, State, and Homeland Security, and the Civil Division, Office of Legal Counsel, Office of the Solicitor General, and Office of Information Policy of the Department of Justice. Pursuant to Department practice, we have referred these items to the responsible offices for review and direct response to you.

As this matter is already in litigation, we are omitting our standard appeal paragraph.

Sincerely,



Mark A. Bradley, Director
Freedom of Information Act and Declassification

Enclosures

SCHEDULE OF DOCUMENTS WITHHELD IN FULL
(Refer to Body of Letter for Full Description of Each Exemption)

19. Draft Outline; 3 pages.
Withheld in full pursuant to 5 U.S.C. 552(b)(5).
20. Draft Memo March 2009; 9 pages.
Withheld in full pursuant to 5 U.S.C. 552(b)(5).
21. Draft Memo 3-6-2009 to Task Force from Brad Wiegmann; 12 pages.
Withheld in full pursuant to 5 U.S.C. 552(b)(5).
22. Draft Memo 3-16-2009 from Brad Wiegmann for Department of Defense General Counsel;
3 pages.
Withheld in full pursuant to 5 U.S.C. 552(b)(5).
23. Draft Memo 3-16-2009 from Brad Wiegmann for Department of Defense General Counsel;
3 pages.
Withheld in full pursuant to 5 U.S.C. 552(b)(5).
24. Draft Memo 3-16-2009 from Brad Wiegmann for Members of Task Force (2 copies);
11 pages and 13 pages.
Withheld in full pursuant to 5 U.S.C. 552(b)(5).
25. Draft Memo 3-17-2009 Brad Wiegmann to Members of Task Force; 10 pages.
Withheld in full pursuant to 5 U.S.C. 552(b)(5).
26. Draft Memo 3-17-2009 Brad Wiegmann to Task Force; 9 pages.
Withheld in full pursuant to 5 U.S.C. 552(b)(5).
27. Presentation 3-11-2009; 21 pages.
Withheld in full pursuant to 5 U.S.C. 552(b)(5).
Withheld in part pursuant to 5 U.S.C. 552(b)(6) and (7)(C).
28. Presentation 4-22-2009; 21 pages.
Withheld in full pursuant to 5 U.S.C. 552(b)(5).
Withheld in part pursuant to 5 U.S.C. 552(b)(6) and (7)(C).
29. Presentation 4-22-2009; 5 pages.
Withheld in full pursuant to 5 U.S.C. 552(b)(5).
Withheld in part pursuant to 5 U.S.C. 552(b)(6) and (7)(C).
30. Memo 3-20-2009 Brad Wiegmann to Task Force (two copies); 12 pages each.
Withheld in full pursuant to 5 U.S.C. 552(b)(5).

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31. Draft Comments 3-24-2009; 3 pages.
Withheld in full pursuant to 5 U.S.C. 552(b)(5).
Withheld in part pursuant to 5 U.S.C. 552(b)(6) and (7)(C).
 32. Draft Answers (four copies); 31 pages.
Withheld in full pursuant to 5 U.S.C. 552(b)(5).
 33. Emails (3-31 and 4-1-2009); 12 pages.
Withheld in full pursuant to 5 U.S.C. 552(b)(5).
Withheld in part pursuant to 5 U.S.C. 552(b)(6) and (7)(C).
 34. Classified Emails (4-20, 21, 24-2009); 10 pages.
Withheld in full pursuant to 5 U.S.C. 552(b)(1) and (5).
Withheld in part pursuant to 5 U.S.C. 552(b)(6) and (7)(C).

Wiegmann, Brad (SMO)

From: Vieira, Donald

Sent: Thursday, April 02, 2009 12:41 PM

To: Wiegmann, Brad

Subject: NY Times: Detention at Afghan Base Is Subject to U.S. Courts

Detention at Afghan Base Is Subject to U.S. Courts

By THE ASSOCIATED PRESS

Published: April 2, 2009

WASHINGTON (AP) --- A federal judge ruled on Thursday that prisoners in the war on terror can use U.S. civilian courts to challenge their detention at a military air base in Afghanistan.

U.S. District Judge John Bates turned down the United States' motion to deny the right to three foreign detainees at Bagram Airfield in Afghanistan.

The U.S. Supreme Court ruled last year that detainees at Guantanamo Bay, Cuba, have the right to challenge their detention in court. But the government had argued that it did not apply to those in Afghanistan.

Bates said the cases were essentially the same and he quoted the Supreme Court ruling repeatedly in his judgment and applied the test created by it to each detainee. It is the first time a federal judge has applied the ruling to detainees in Afghanistan.

Bates considered the requests of four detainees asking to be released, but he reserved judgment on one detainee, Haji Wazir, because he is an Afghan citizen and releasing him could create "practical obstacles in the form of friction with the host country." He ordered Wazir and the government to file memos addressing those issues.

The other three detainees are from outside Afghanistan -- Fadi al Maqaleh of Yemen, Amin al Bakri of Yemen and Redha al-Najar of Tunisia.

All four of the detainees in this case were captured outside Afghanistan but have been held at the airfield for six years or more. Bates wrote that the determination to hold them as enemy combatants is part of a process even more inadequate at Bagram than it is at Guantanamo.

Donald L. Vieira
National Security Division
U.S. Department of Justice

Wiegmann, Brad (SMO)

From: Wiegmann, Brad
Sent: Thursday, April 02, 2009 1:29 PM
To: Kris, David (NSD)
Subject: FW: [Nationalsecuritylaw] maqaleh v. gates (D.D.C.) (habeas extends to Bagram for non-Afghan detainees captured outside Afghanistan)
Importance: High
Attachments: ATT888930.txt

See Bobby Chesney's summary of Judge Bates' decision that you will read about in the paper, plus link to the opinion, if you have not seen it already. . . .

From: nationalsecuritylaw-bounces@lists.wfu.edu [mailto:nationalsecuritylaw-bounces@lists.wfu.edu] **On Behalf Of** Chesney, Robert
Sent: Thursday, April 02, 2009 1:16 PM
To: nationalsecuritylaw@lists.wfu.edu
Subject: [Nationalsecuritylaw] maqaleh v. gates (D.D.C.) (habeas extends to Bagram for non-Afghan detainees captured outside Afghanistan)
Importance: High

* Maqaleh v. Gates (D.D.C. Apr. 2, 2009)

Applying the multifactor test set forth in *Boumediene*, Judge Bates has ruled that the constitutional right to habeas review extends to some but not all detainees at Bagram.

There were four detainees with petitions at issue in this case. Judge Bates emphasized:

- that they are noncitizens captured in foreign lands and brought to still another country for purposes of detention;
- that they dispute the government's claim that they constitute "enemy combatants";
- that the procedures used to categorize them as combatants is less rigorous at Bagram than at GTMO (there being no CSRT process nor any review under the Detainee Treatment Act/Military Commissions Act in the DC Circuit);
- that the "objective degree of control" the US exercises at Bagram is comparable to that at GTMO;
- that there are greater practical obstacles to habeas for Bagram detainees than for GTMO detainees due to Bagram's location in a zone of combat operations (but that these obstacles are not as great as the government asserts); and
- that the existence of practical barriers results primarily from the government's own choice to detain these individuals at Bagram after having captured them elsewhere.

One of the four petitioners is differently situated from the rest, however, in that he is an Afghan citizen. Citing the risk of "friction with the 'host' country," Judge Bates concluded that for that individual practical obstacles *do*

(2)

prohibit extension of habeas review.

You may find the 53-page opinion here: https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2006cv1697-31

Wiegmann, Brad (SMO)

From: Wiegmann, Brad

Sent: Tuesday, April 07, 2009 5:55 PM

To: Martins, Mark (GTMO Task Force)

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

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Wiegmann, Brad (SMO)

From: Wiegmann, Brad
Sent: Tuesday, April 07, 2009 10:18 PM
To: Swartz, Bruce (CRM)
Subject: Re: Detention Policy Task Force Materials

I will give you a call.

From: Swartz, Bruce
To: Wiegmann, Brad
Sent: Tue Apr 07 20:20:01 2009
Subject: RE: Detention Policy Task Force Materials

Sorry, Brad – was in Mexico w/ AG. Do you have time to discuss this tomorrow, along w/ Bagram and other issues? Thanks, Bruce

From: Wiegmann, Brad [mailto:Brad.Wiegmann@usdoj.gov]
Sent: Tuesday, April 07, 2009 2:24 PM
To: Swartz, Bruce
Subject: RE: Detention Policy Task Force Materials

Any word on this? Should I give it to someone else?

From: Wiegmann, Brad
Sent: Wednesday, April 01, 2009 11:59 AM
To: Swartz, Bruce (CRM)
Subject: RE: Detention Policy Task Force Materials

Bruce -- Any word on whether your office can take the lead on #13?

From: Wiegmann, Brad
Sent: Thursday, March 26, 2009 7:22 PM
To: Swartz, Bruce (CRM); Swartz, Bruce (CRM)
Cc: De, Rajesh
Subject: Detention Policy Task Force Materials

Bruce -- Here are the papers I mentioned. I have not read the last one yet. As I said, I would welcome Criminal Division participation in and support on any or all of the relevant working groups, including writing papers to feed into the broader project. (OLP may add people to some of them as well.) These groups are just getting started this week.

In addition, issue #13 in the second memorandum is one that we were hoping you could take the pen on.

44

8/25/2010

Raj - Copying you as well to make sure you have these.

<< File: Second Meeting TFDP.ppt >>

<< File: Task Force Refined List of Issues.doc >>

<< File: MSM Edits-Preventive Detention Memo.doc >>

<< File: INITIALmtg .wpd >>

Wiegmann, Brad (SMO)

From: Boyd, Dean

Sent: Friday, April 10, 2009 6:34 PM

To: Wiegmann, Brad; Martins, Mark (GTMO Task Force)

Subject: DOJ Bagram filing today

Importance: High

Attachments: Bagram 1292(b) motion-ECF.pdf

See attached appeal of Judge Bates' Bagram ruling -- filed late today

Dean



Bagram 1292(b)
motion-ECF.pdf ...

5

Wiegmann, Brad (SMO)
From: Wiegmann, Brad
Sent: Friday, April 10, 2009 7:26 PM
To: Boyd, Dean
Subject: RE: DOJ Bagram filing today

thanks

From: Boyd, Dean
Sent: Friday, April 10, 2009 6:34 PM
To: Wiegmann, Brad; Martins, Mark (GTMO Task Force)
Subject: DOJ Bagram filing today
Importance: High

See attached appeal of Judge Bates' Bagram ruling -- filed late today

Dean

<< File: Bagram 1292(b) motion-ECF.pdf >>

(6)

Wiegmann, Brad (SMO)

From: Wiegmann, Brad

Sent: Friday, April 17, 2009 11:01 AM

To: Martins, Mark (GTMO Task Force)

Subject: RE: To para 6. Court-Martial para is fine as is. That's all. Thanks mark

So you were OK with Bagram procedures para?

From: Martins, Mark (GTMO Task Force)

Sent: Friday, April 17, 2009 10:18 AM

To: Wiegmann, Brad

Subject: To para 6. Court-Martial para is fine as is. That's all. Thanks mark

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4

Wiegmann, Brad (SMO)
From: Wiegmann, Brad
Sent: Tuesday, April 21, 2009 2:56 PM
To: Martins, Mark (GTMO Task Force)
Subject: Bagram procedures

FYI -- I think the DAG will call DepSecDef re this and request a 5/22 date for report to TF on status of Bagram procedures.

(8)

(b)(6)

Wiegmann, Brad (SMO)
From: Wiegmann, Brad
Sent: Friday, March 06, 2009 9:34 PM
To: Deeks, Ashley S; 'donoghuejc@state.gov'
Subject: W: Special Task Force on Detainee Disposition: First Meeting/Organizational Plan
Attachment: taskforceworkplan.doc

Not sure why this did not go through the first time. . . .

From: Wiegmann, Brad
Sent: Friday, March 06, 2009 9:30 PM
To: 'johnsonj@dodgc.osd.mil'; 'joseph.becker@osd.mil'; 'michael.frankel@is.pentagon.mil'; 'irving.halter@is.pentagon.mil'; 'donoghuejc@state.gov'; 'ashley.deeks@state.gov'; 'james.crawford@is.pentagon.mil'; 'Mark.Martins@us.army.mil'; Barron, David; 'david.a.martin@dhs.gov'; Hinnen, Todd (NSD);
Cc: Jeffress, Amy (OAG); Monaco, Lisa (ODAG); Ruemmler, Kathryn (ODAG); Lederman, Marty; Swartz, Bruce (CRM); Olsen, Matthew
Subject: Special Task Force on Detainee Disposition: First Meeting/Organizational Plan

(b)(7)(C)

As you know the President has directed that a Special Task Force on Detainee Disposition be established to identify lawful options for the apprehension, detention, and trial of individuals captured in connection with armed conflict or counterterrorism operations. We propose to have the first organizational meeting of the Special Task Force on Wednesday, March 11 at 3:00 p.m. in the Command Center in Room 6100 at the Department of Justice. Please respond to [redacted] concerning your attendance and the logistics.

(b)(7)(C)

Attached is an organizational plan setting forth a proposal for the work of the Task Force for your review and comment. We also hope to circulate a meeting agenda and potentially additional materials concerning the work of this group prior to the meeting. Thanks very much and we look forward to working closely with all of you in the months ahead. -- Brad Wiegmann and Mark Martins



taskforceworkplan.doc (78 KB)

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Wiegmann, Brad (SMO)

From: Martins, Mark S COL MIL USA OTJAG [MartinsM1@conus.army.mil]
Sent: Sunday, March 15, 2009 7:52 AM
To: Wiegmann, Brad
Subject: RE: Meetings/Ideas (UNCLASSIFIED) (b)(7)(C)

Classification: UNCLASSIFIED
Caveats: FOUO

Yes, agreed.

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

From: [redacted]
Sent: Saturday, March 14, 2009 1:02 PM
To: [redacted]; brad.wiegmann@usdoj.gov; Martins, Mark S COL MIL USA OTJAG
Subject: RE: Meetings/Ideas (b)(7)(C)

FYI - We will need to focus on the EC issue soon as well. The brief said that our group would be dealing with it.

Here is a roundup of responses to the Obama administration's effort to refine U.S. detention policy at Guantánamo Bay, Cuba, where it has vowed to close the detention center within a year:

"I'm pleased the Obama administration decided essentially to affirm the Bush administration's definition of who can be detained. I agree that the law supports our ability to detain individuals who are members of a terrorist organization in a time of war. I have just returned from a trip to Guantánamo Bay. And after viewing the facility and meeting with the detention guards, I believe we should keep the facility open. This is a practical, fiscally responsible and safe way to detain known-terrorists."

* Rep. Lamar Smith, R-Texas, ranking member of the House Judiciary Committee

"The decision by President Obama to shift responsibility of captured terrorists from the Department of Defense to the Department of Justice sets a dangerous precedent in the war on terror. Now, those forces responsible for military actions to capture terrorists will no longer have a say in how and where they are detained, or when and where they are transferred out of U.S. control. By this change the President is no longer consider the threat or the intelligence value of detainees."

* Retired Navy Cmdr. Kirk S. Lippold, former commanding officer of the USS Cole warship and senior military fellow at the lobby Military Families United

"It appears on first reading that whatever they call those they claim the right to detain, they have adopted almost the same standard the Bush administration used to detain people without charge -- with one change, the addition of the word 'substantially' before the word 'supported.' This is really a case of old wine in new bottles."

* Center for Constitutional Rights

"There's absolutely no change in the definition. To say this is a kinder, more benevolent sense of justice is absolutely false. . . . I think the only thing they've done is try to separate themselves from the energy of the debate."

* Retired Army Lt. Col. Stephen Abraham, a former Guantánamo official, in an interview with the AP

"The Justice Department was right to recognize that it should not be holding prisoners as

'enemy combatants.' But the new definition of persons who may be held without charge does not differ in any fundamental respects from the old one, and it significantly distorts important traditional Law of War distinctions between international and non-international armed conflict. The concept of indefinite detention without criminal charge continues, and the class of persons to be detained remains ill-defined and overly broad."

* Elisa Massimino, executive director of Human Rights First

"It is deeply troubling that the Justice Department continues to use an overly broad interpretation of the laws of war that would permit military detention of individuals who were picked up far from an actual battlefield or who didn't engage in hostilities against the United States. It is critical that the administration promptly narrow the category for individuals who can be held in military detention so that the U.S. truly comports with the laws of war and rejects the unlawful detention power of the past eight years."

* Anthony Romero, executive director of American Civil Liberties Union

"The previous president said he wanted to close Guantanamo. All of that begs the question 'What are you going to do with these people?' I think it's a mistake to put a timeline on your intentions because it doesn't resolve the issue of what are you going to do. Are you going to send them back to Yemen. Back to Saudi Arabia? Fort Leavenworth?"

* Senate Minority Leader Mitch McConnell of Kentucky

"The Obama administration's newly issued position on Guantanamo detainees is a disappointment. Rather than rejecting the Bush administration's ill-conceived notion of a 'war on terror,' the Obama administration's position on detainees has merely tinkered with its form."

From: [redacted]
Sent: Saturday, March 14, 2009 12:54 PM
To: 'brad.wiegmann@usdoj.gov'; 'mark.martins@us.army.mil'
Subject: Meetings/Ideas

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DENY ALL

(B)(5)

Portions per

(B)(1)

(b)(5)

Classification: UNCLASSIFIED
Caveats: FOUO

Wiegmann, Brad (SMO)

From: [REDACTED] (GTMO Task Force) (b)(7)(C)
Sent: Thursday, April 02, 2009 2:32 PM
To: Detention Policy Review TF
Subject: FW: NYTimes.com: Detention at Afghan Base Is Subject to U.S. Courts

For those that didn't see it:

Detention at Afghan Base Is Subject to U.S. Courts

By CHARLIE SAVAGE

Published: April 2, 2009

WASHINGTON — A federal judge on Thursday ruled that some prisoners held by the American military in Afghanistan have a constitutional right to challenge their imprisonment in United States civilian courts, delivering a rebuke to a claim of unfettered executive power advanced by both the Bush and Obama administrations.

In 53-page ruling, Judge John D. Bates of the United States District Court for the District of Columbia said that three detainees at the United States Air Force base at Bagram are "virtually identical" to detainees at the Navy base at Guantánamo Bay, Cuba, and so they have the same legal rights that the Supreme Court last year granted prisoners held there.

All three detainees are non-Afghan citizens who said they were captured outside Afghanistan and have been imprisoned for years without trials. Arguing that they are not enemy combatants, the detainees want a judge to review the evidence against them and order their release under the right known as "habeas corpus."

Judge Bates's decision closely tracked the Supreme Court's reasoning in its landmark 2008 decision that prisoners at Guantánamo have a constitutional right to habeas corpus.

The constitutional right of habeas corpus was "forged to guard against" executive abuses like the "arbitrary exercise of the government's power to detain," wrote Judge Bates, who was appointed by former President George W. Bush.

Judge Bates' ruling was limited, however. He said that whether any particular overseas detainee has habeas corpus rights would depend on a case-by-case analysis of several factors, including citizenship, location of capture, length of detention, and the degree to which the United States military has total control over its prisons.

And he did not rule that a fourth prisoner — also captured outside Afghanistan, but holding Afghan citizenship — had a right to habeas corpus, citing concerns that such a ruling could lead to friction with the Afghan government. Instead, the judge asked for additional briefings on that detainee's case.

Of the 600 detainees at Bagram, the majority of them are believed to be Afghans, although the United

States has not released a detailed accounting of their identities and nationalities. Tina Foster, an attorney representing the Bagram detainees, said there are "dozens" of other known cases in which non-Afghans captured abroad were transported to Bagram over the years, but it is not clear how many are still there.

Judge Bates' decision rejected the executive branch's arguments that federal courts have no jurisdiction to hear lawsuits filed on behalf of foreign detainees in Afghanistan. That position was first articulated by the Bush administration. In February, the Obama administration told Judge Bates that it had the same view.

Dean Boyd, a Justice Department spokesman, said the administration was still reviewing the decision.

The ruling could complicate the Obama administration's efforts to formulate a policy about terrorism detainees. In one of Mr. Obama's first acts as president, he ordered the prison in Guantánamo Bay closed within a year and began a review of the evidence against each of the roughly 240 detainees still being held there. But Mr. Obama pointedly did not extend that policy to other military detention facilities around the world, most notably Bagram.

David Rivkin, a former associate White House counsel in the George H. W. Bush administration, called the ruling an "excuse-making bad decision which proves the worst fears that people like myself had" after the 2008 Supreme Court decision granting habeas rights to Guantánamo detainees.

Mr. Rivkin predicted that Judge Bates' ruling would be overturned on appeal, but warned that if it did not, then "the United States' ability to detain enemy combatants for the duration of hostilities worldwide" will be "gravely undermined."

But Ms. Foster, who praised Judge Bates' decision as "a very good day for the Constitution and the rule of law," said that the Bagram ruling means that the changes to the Bush administration's detention policies must go beyond merely closing Guantánamo. The decision, she said, means that habeas corpus "extends beyond Guantánamo to any place where the United States seeks to hold individuals in a legal black hole."

From: [redacted]@nytimes.com [mailto:email@this@[redacted]nytimes.com] On Behalf Of

Sent: Thursday, April 02, 2009 2:21 PM

To: [redacted] (GTMO Task Force)

Subject: NYTimes.com: Detention at Afghan Base Is Subject to U.S. Courts

all (b)(7)(c)

The New York Times

 **E-Mail This**



This page was sent to you by: [redacted]

WASHINGTON | April 03, 2009

Detention at Afghan Base Is Subject to U.S. Courts

By CHARLIE SAVAGE

A federal judge ruled that some of the prisoners have a constitutional right to challenge their detention.

Most E-Mailed

1. Downturn Puts New Stresses on Libraries
2. Boats Too Cosily to Keep Are Littering Coastlines
3. Light and Cheap Netbooks Are Poised to Reshape PC Industry
4. Well: Life Lesson s From the Family Dog
5. Timothy Egan: The Orphans of Ireland

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Wiegmann, Brad (SMO)

From: [REDACTED] (GTMO Task Force) (b)(7)(C)

Sent: Thursday, April 09, 2009 12:05 PM

To: [REDACTED] Monaco, Lisa (ODAG); Jeffress, Amy (OAG); Olsen, Matthew (OAG); Wilson, Douglas J.; Wiegmann, Brad; Hinnen, Todd (NSD); Steele, Charles; Laura-Sullens, Jolene; Jordan, Wyevetra G

Cc: Burton, Faith

Subject: RE: Questions in preparation for oversight committee briefings re the work of the 3 Task Forces

Attachments: Potential Questions for the Three Task Forces.doc

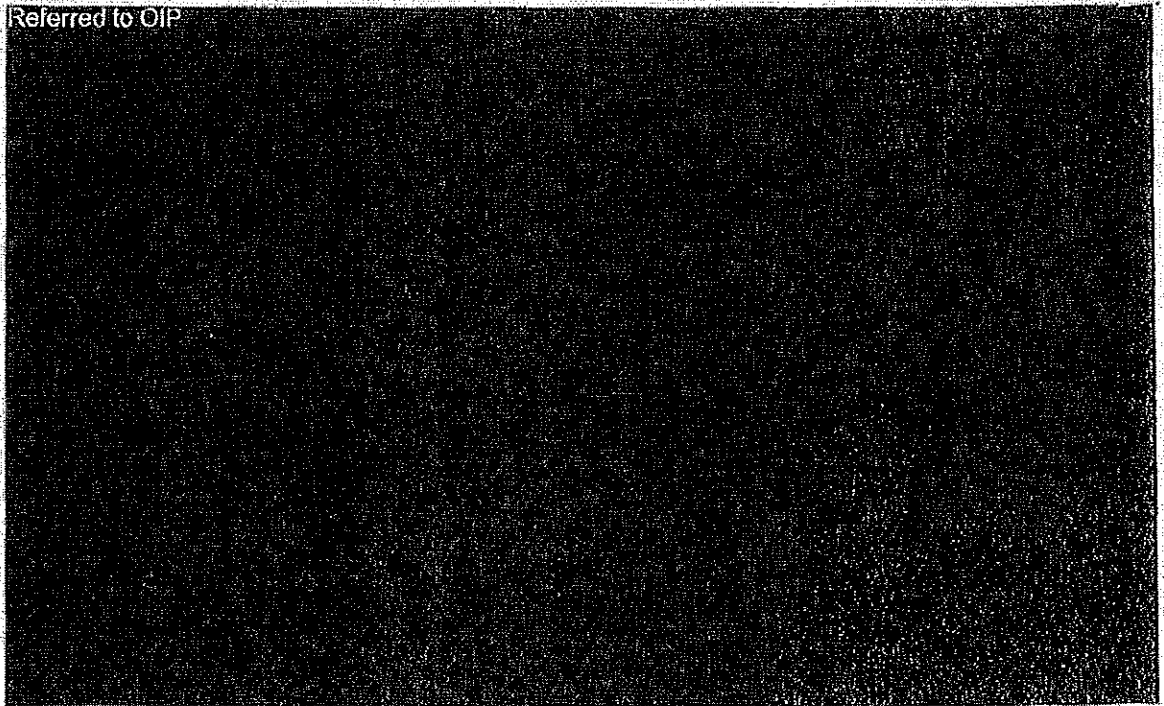
Attached are proposed answers to the General Questions and those identified for the Detention Policy Task Force. I doubt we have identified every question that might be asked, but I think we have a broad enough range of questions to cover what the "message" should be during the Q&A portion of the briefing.

If anyone identifies things that are missing, please share.



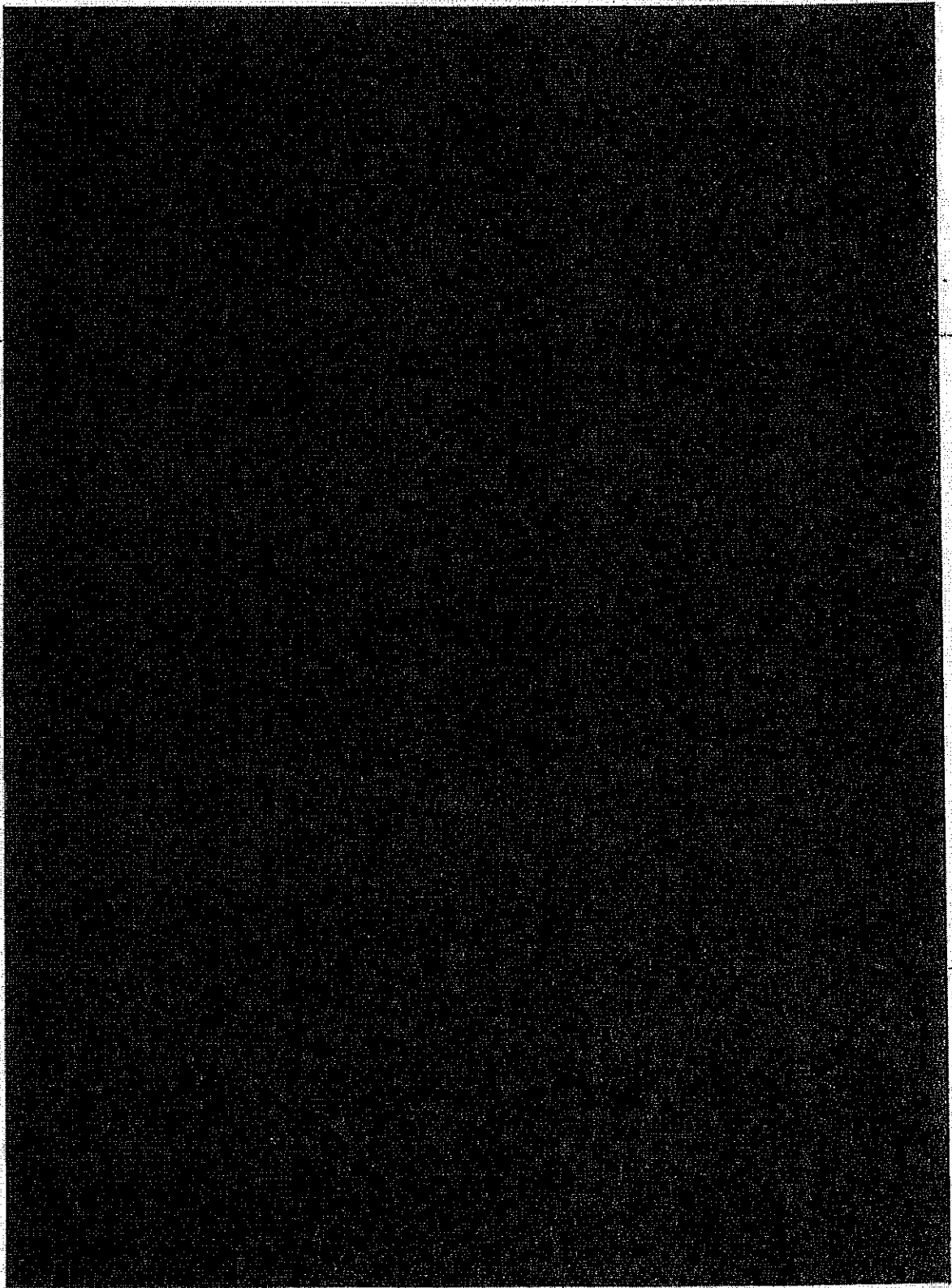
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Referred to OIP

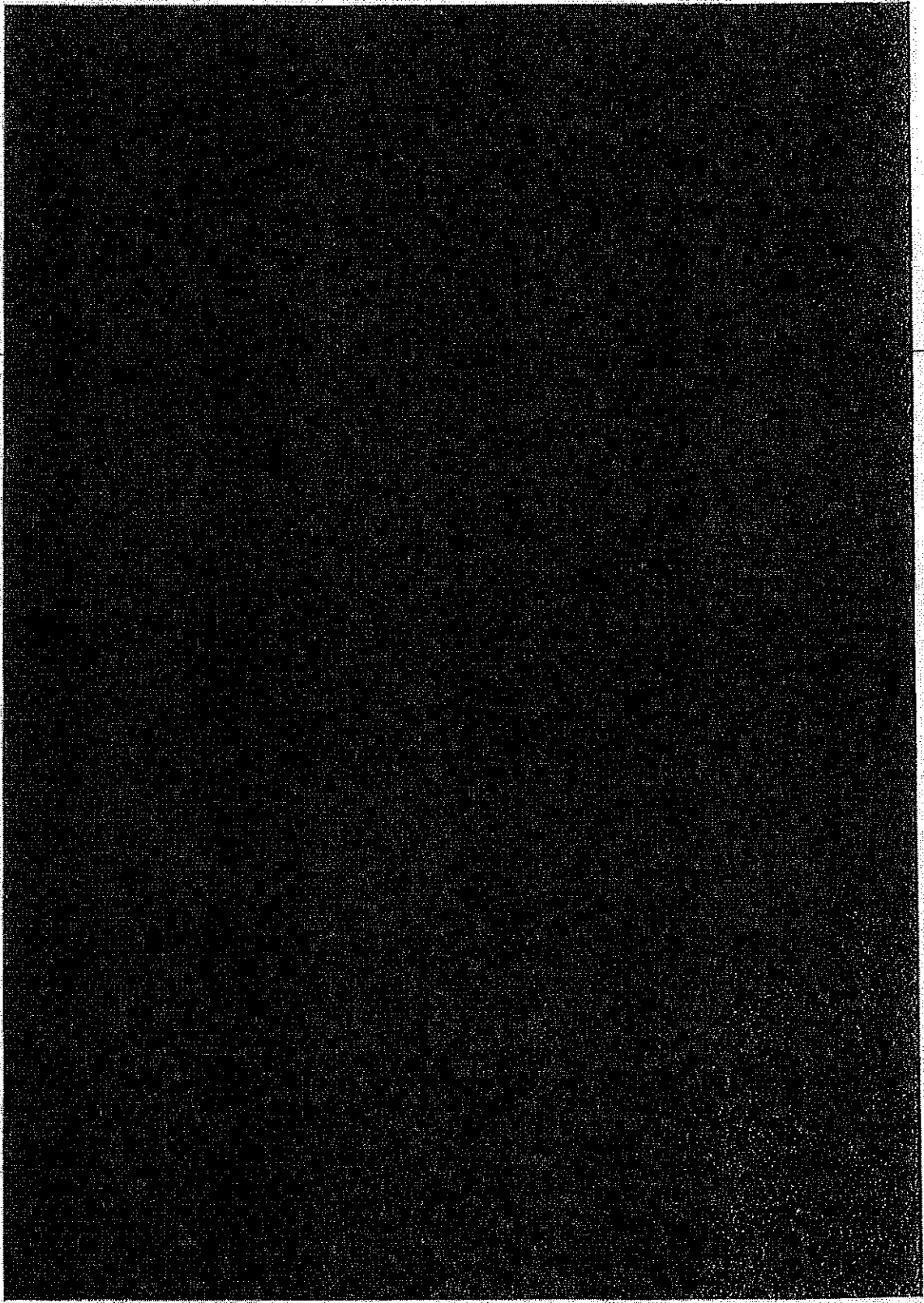


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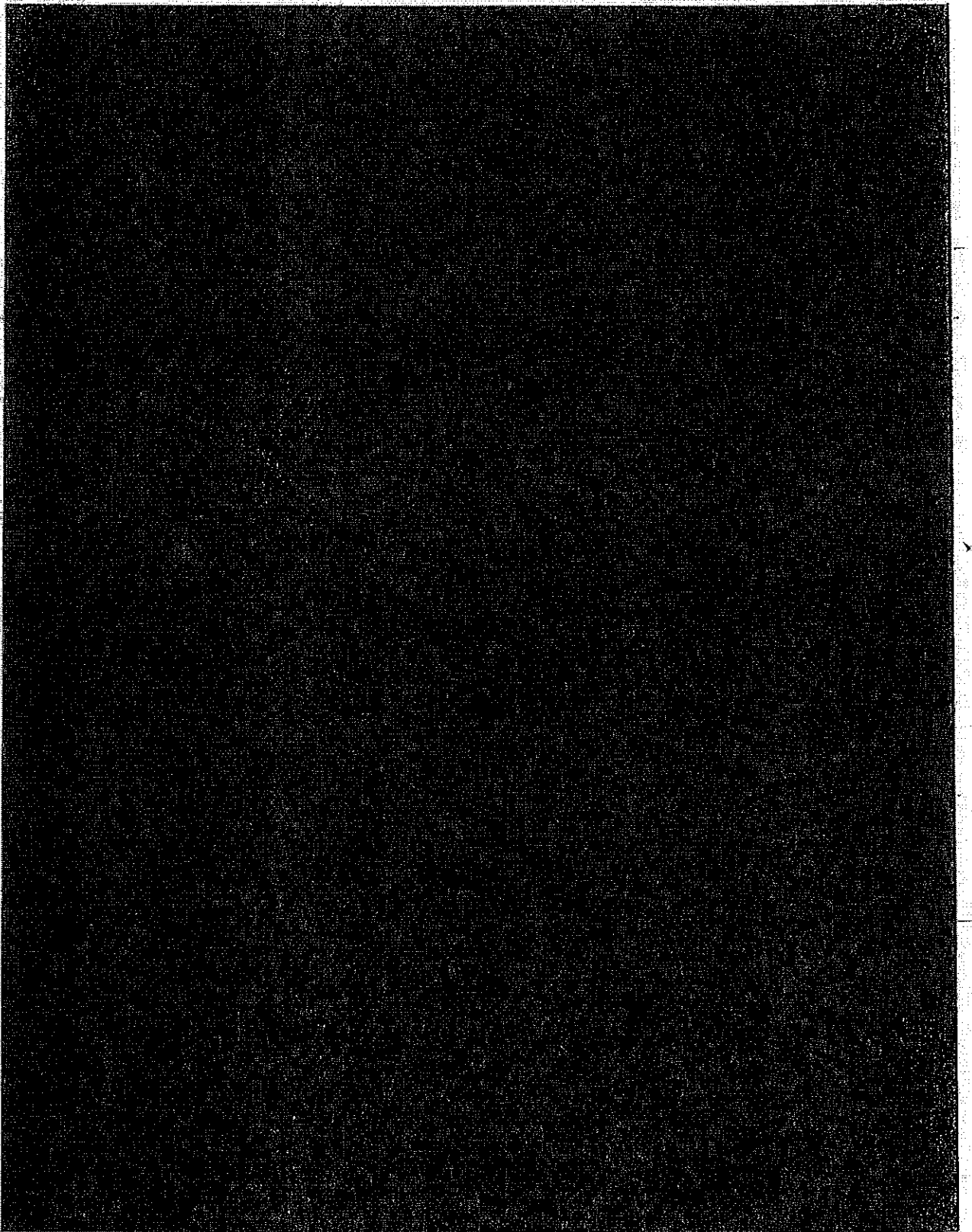
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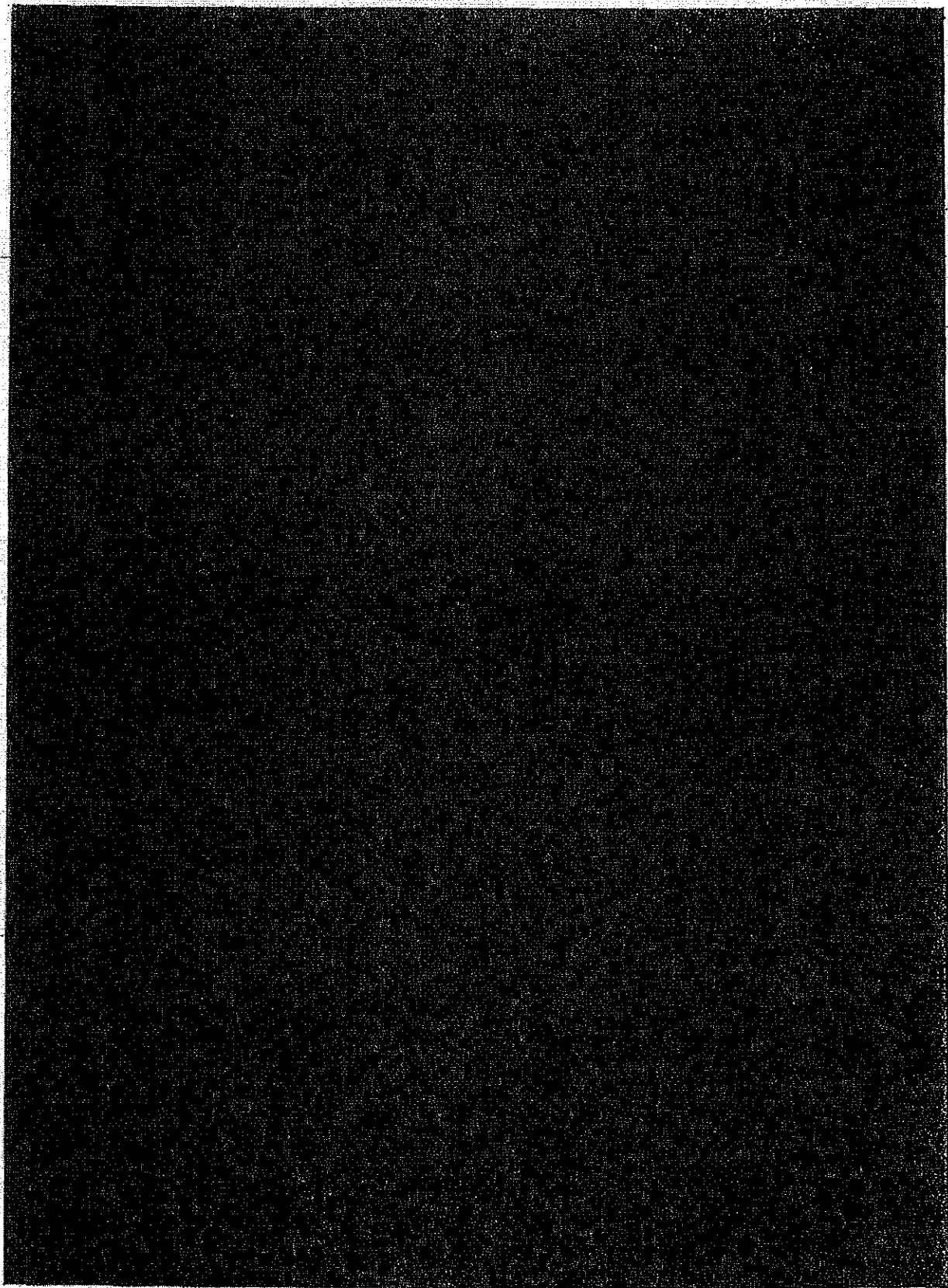
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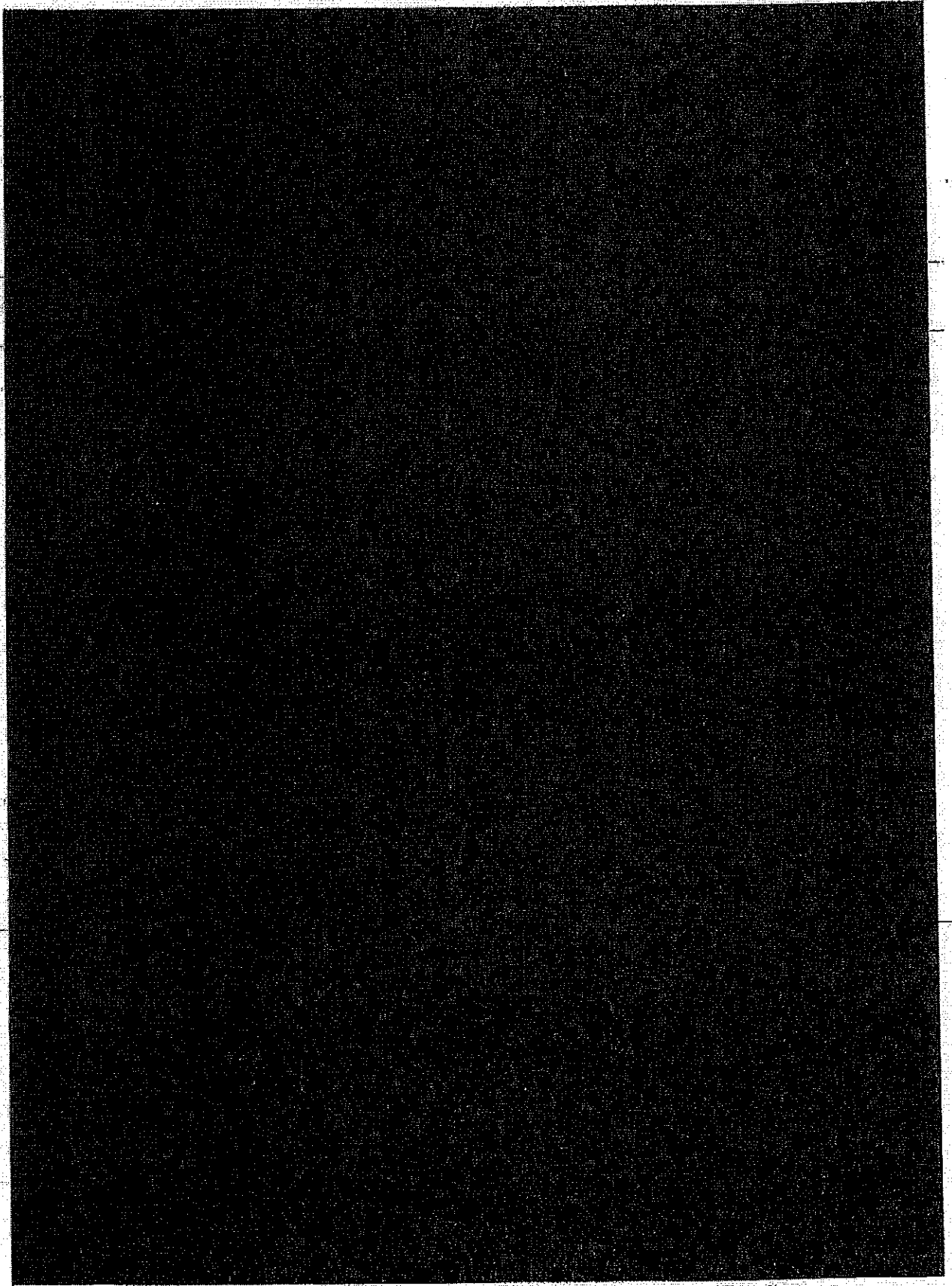
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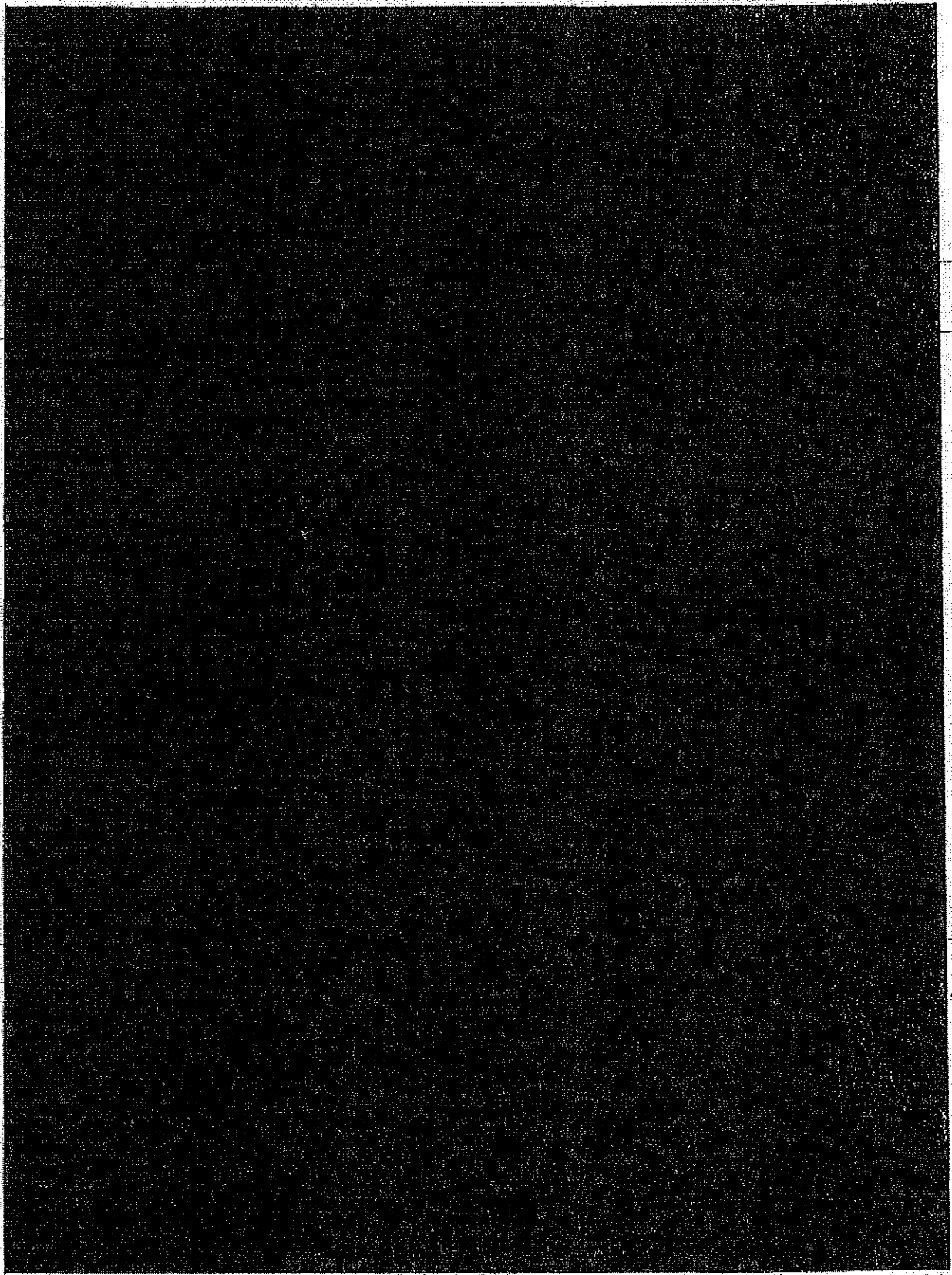
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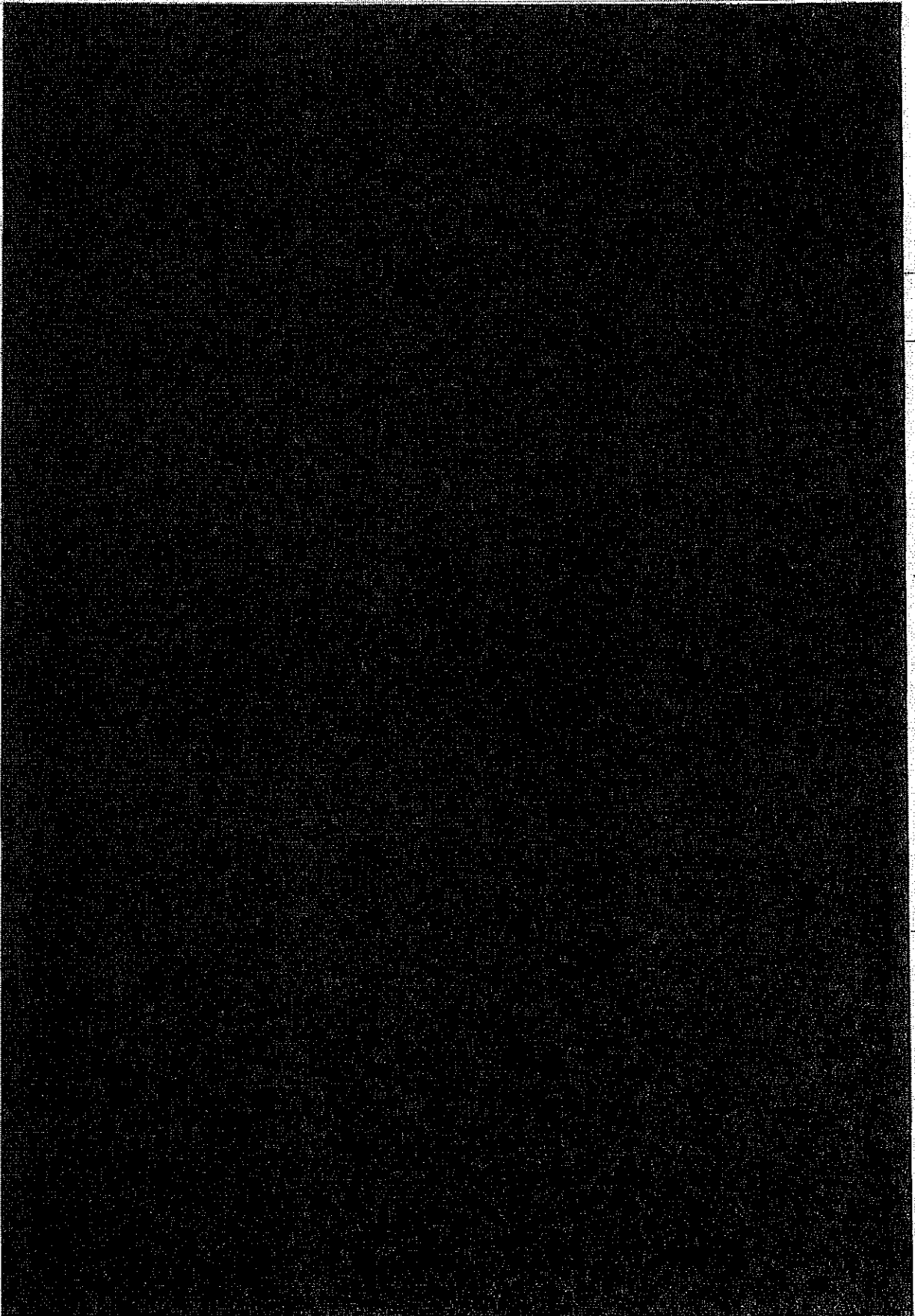
(b)(5)



(b)(5)



(b)(3)



Wiegman, Brad (SMO)

From: Wilson, Douglas J.
Sent: Monday, April 13, 2009 10:28 AM
To: (b)(7)(C); Monaco, Lisa (ODAG); Jeffress, Amy (OAG); Olsen, Matthew (OAG); Wiegman, Brad; Hinnen, Todd (NSD); Steele, Charles; Laura-Sullens, Jolene; Jordan, Wyeetra G
Cc: Burton, Faith
Subject: RE: Questions in preparation for oversight committee briefings re the work of the 3 Task Forces

Attachments: Potential Questions for the Three Task Forces.wpd

Attached are proposed answers from the Interrogations and Transfer Task Force. Please note that these answers have not been approved by the Task Force as a whole.



Potential Questions for the Three Task Forces

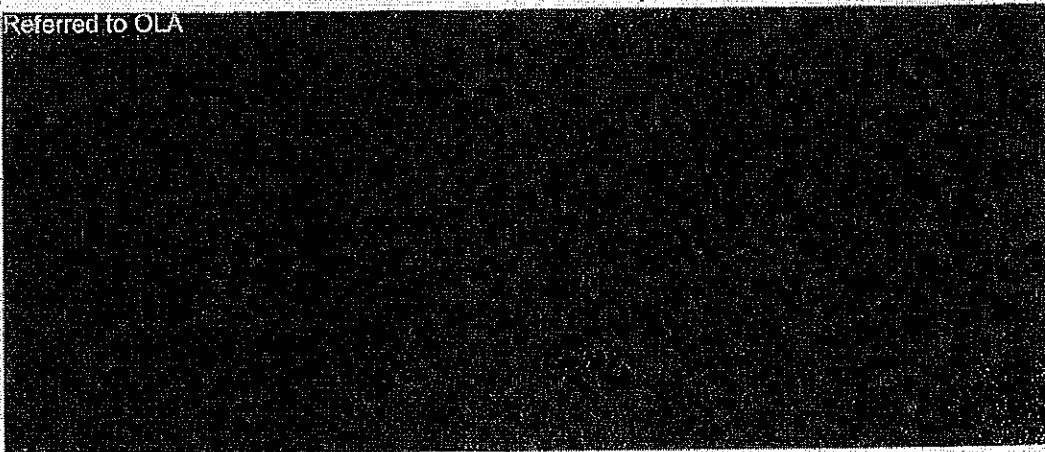
From: (b)(7)(C) (GTMO Task Force)
Sent: Thursday, April 09, 2009 12:05 PM
To: Monaco, Lisa (ODAG); Jeffress, Amy (OAG); Olsen, Matthew (OAG); Wilson, Douglas J.; Wiegman, Brad; Hinnen, Todd (NSD); Steele, Charles; Laura-Sullens, Jolene; Jordan, Wyeetra G
Cc: Burton, Faith
Subject: RE: Questions in preparation for oversight committee briefings re the work of the 3 Task Forces

Attached are proposed answers to the General Questions and those identified for the Detention Policy Task Force. I doubt we have identified every question that might be asked, but I think we have a broad enough range of questions to cover what the "message" should be during the Q&A portion of the briefing.

If anyone identifies things that are missing, please share.

<< File: Potential Questions for the Three Task Forces.doc >>

Referred to OLA



OLA

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deletions

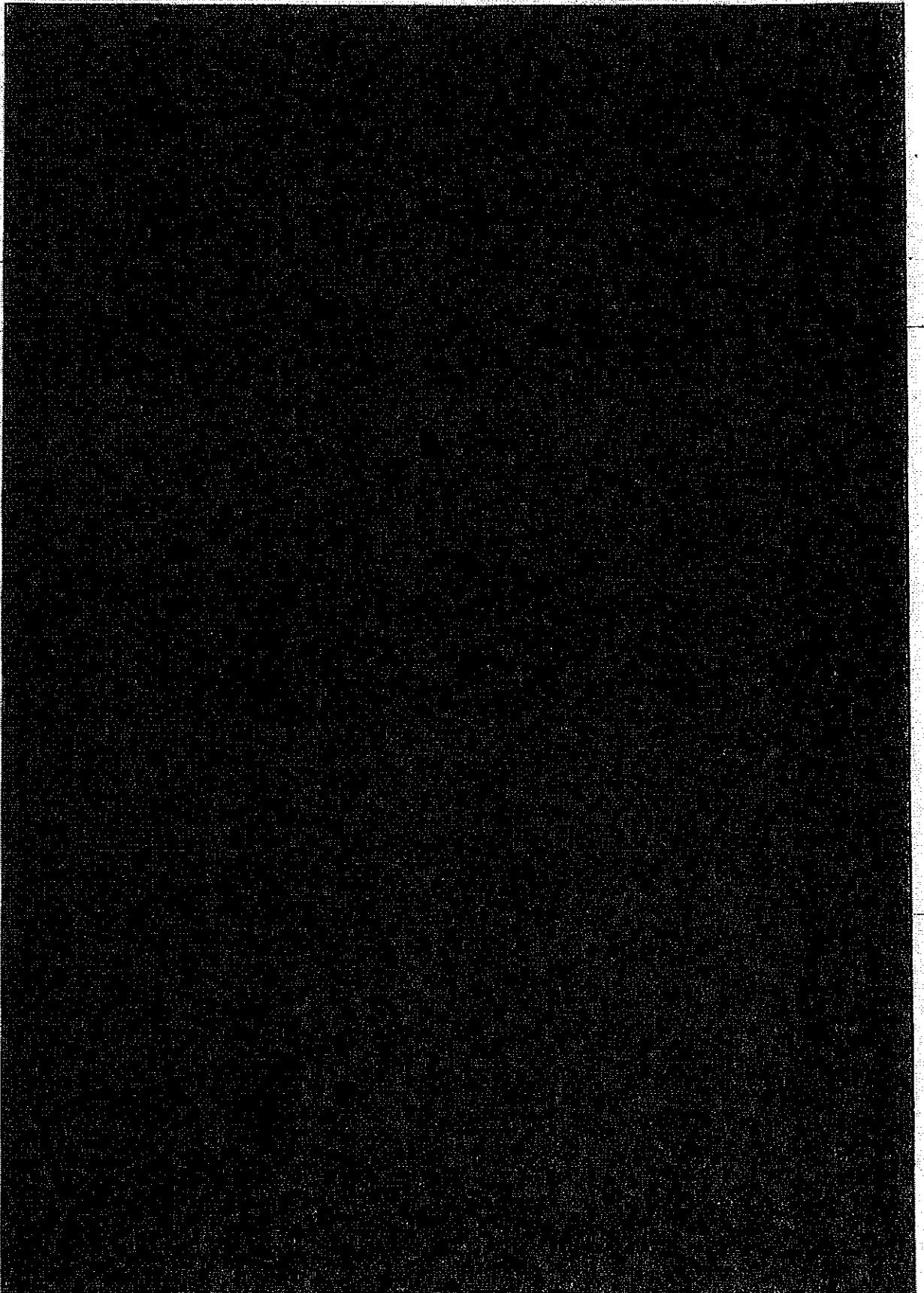
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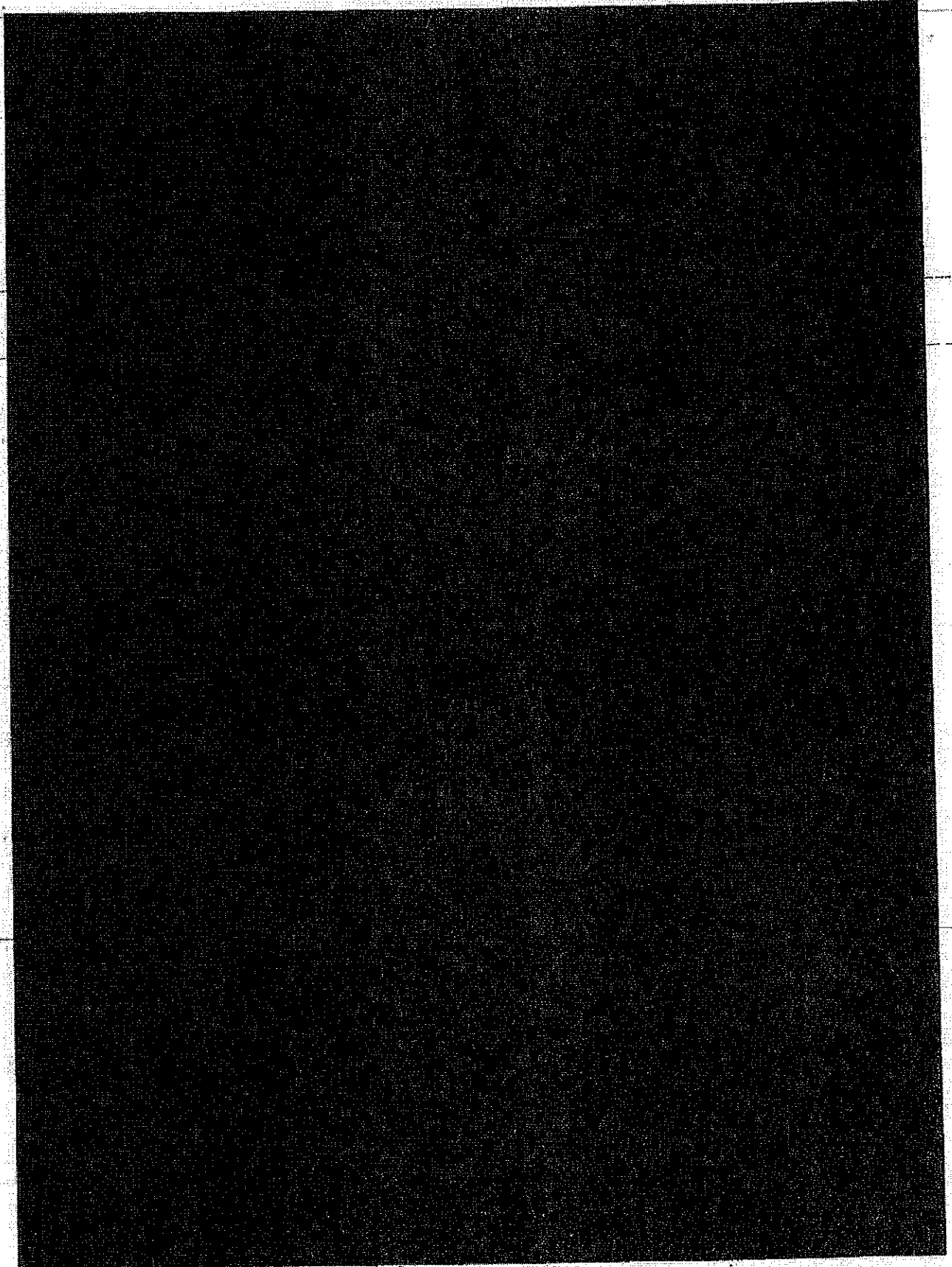
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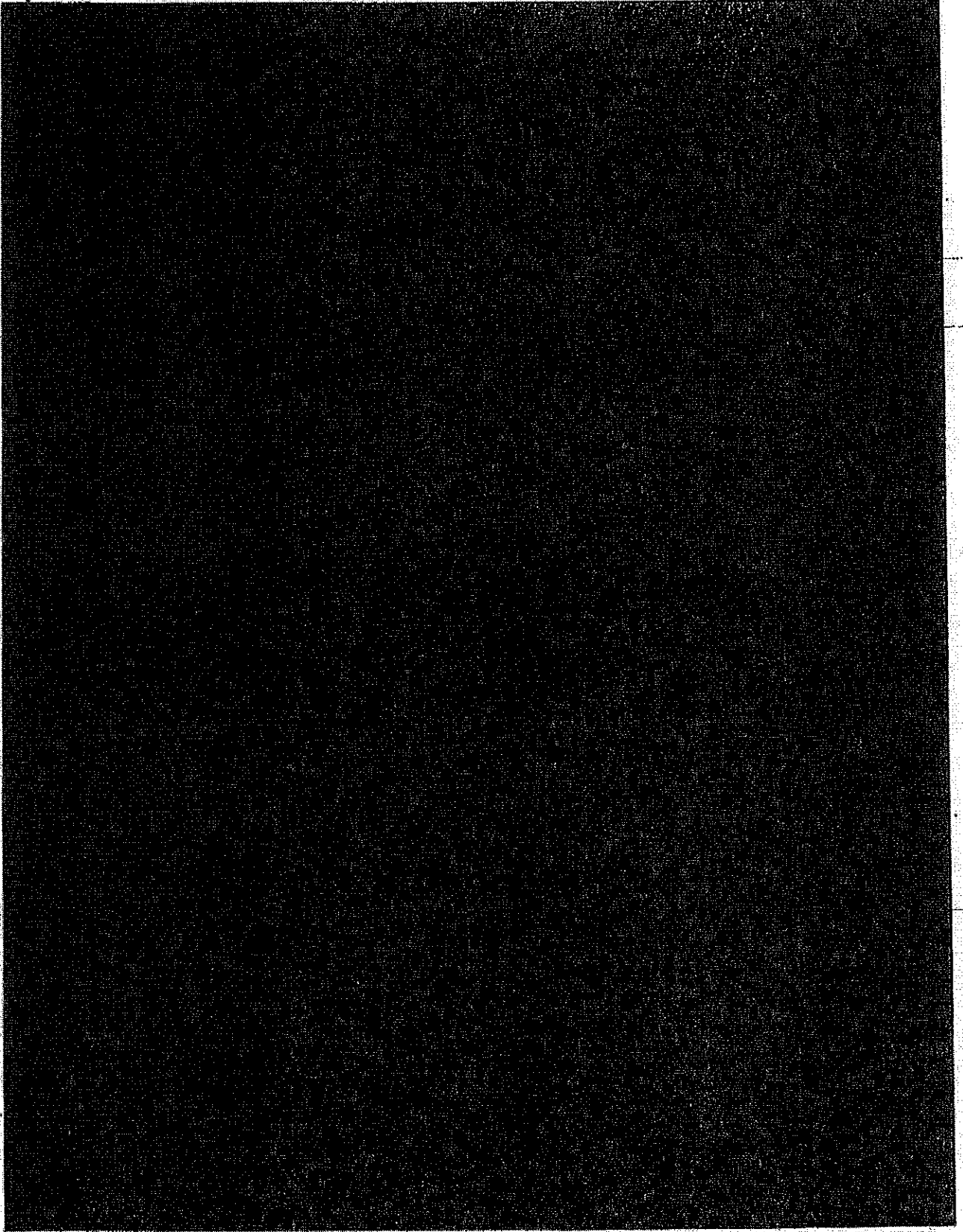
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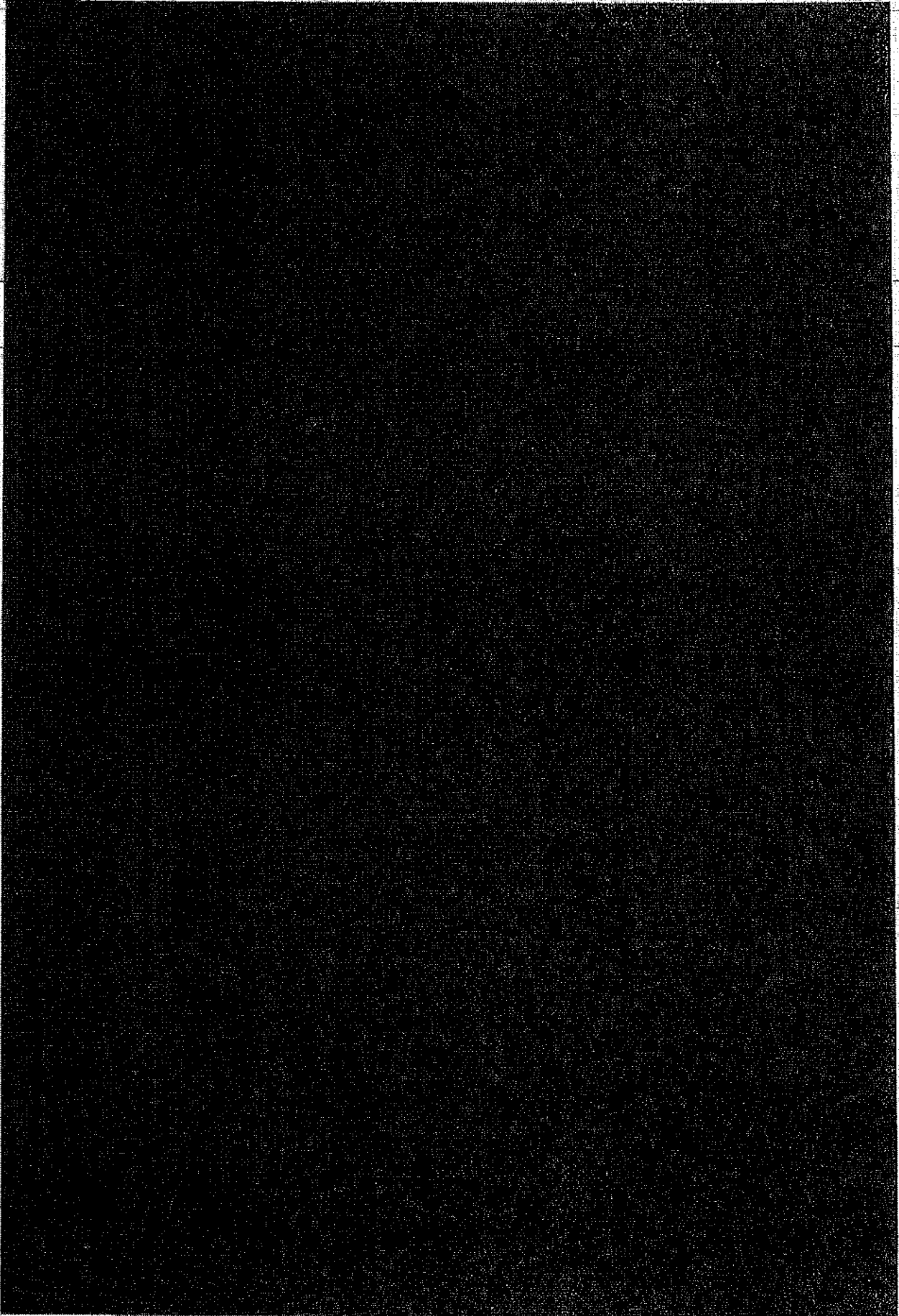
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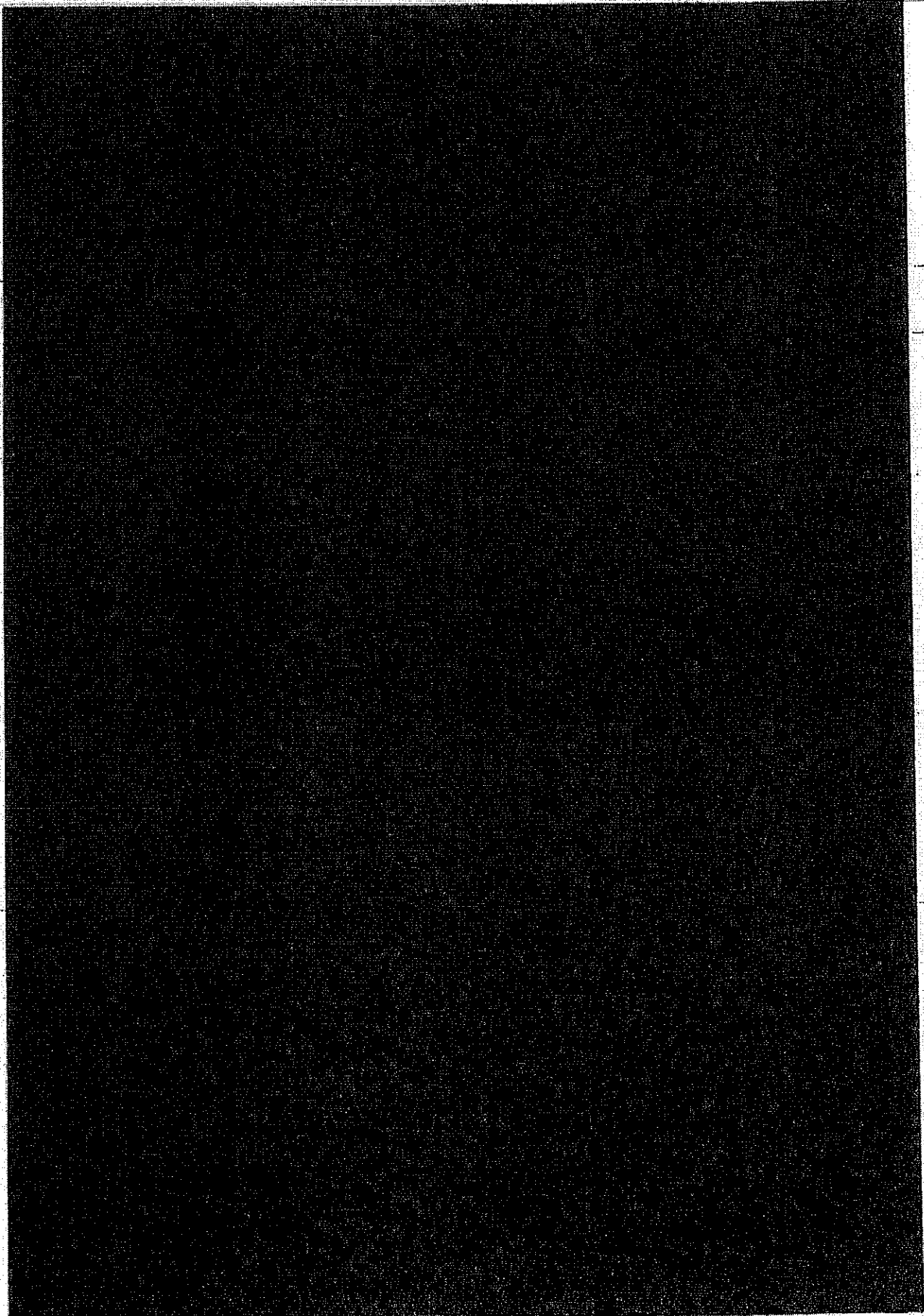
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(6/5)



(b)(3)



Wiegmann, Brad (SMO)
From: Wiegmann, Brad
Sent: Friday, April 17, 2009 1:33 AM
To: Martins, Mark (GTMO Task Force)
Subject: (b) (5)
Attachment: (b) (5)

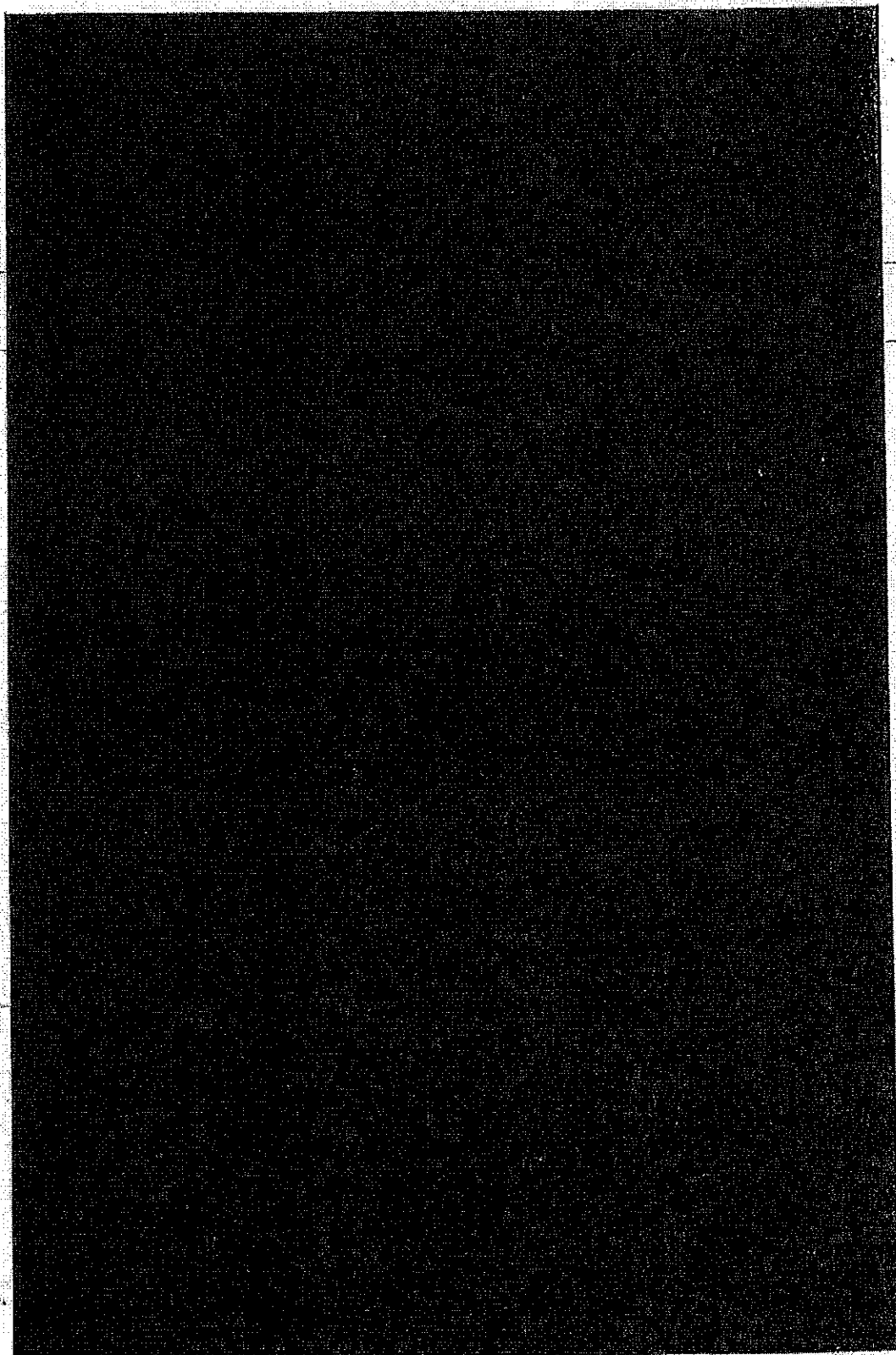


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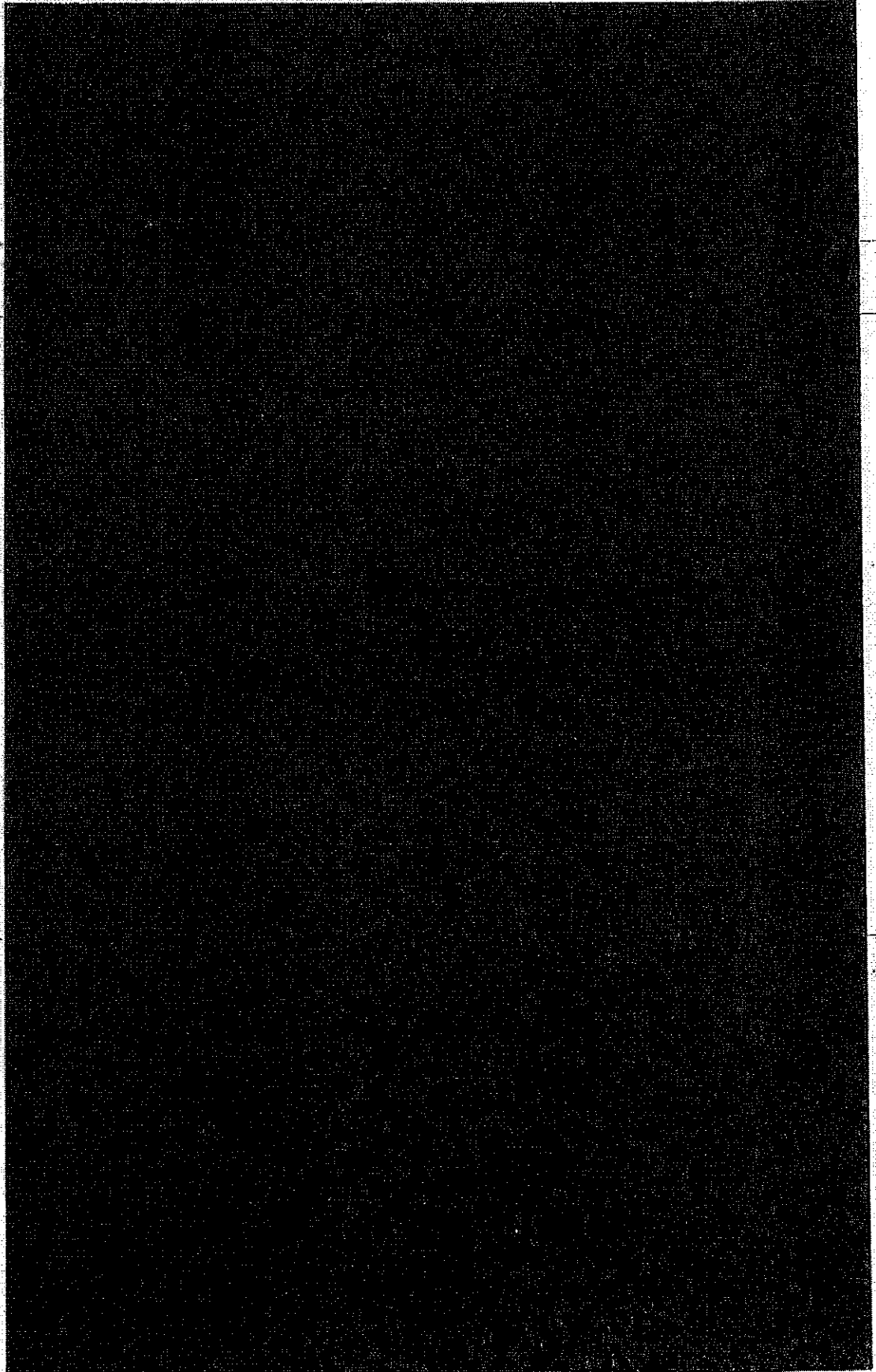
(b)(5), (b)(6), (b)(7)(c)



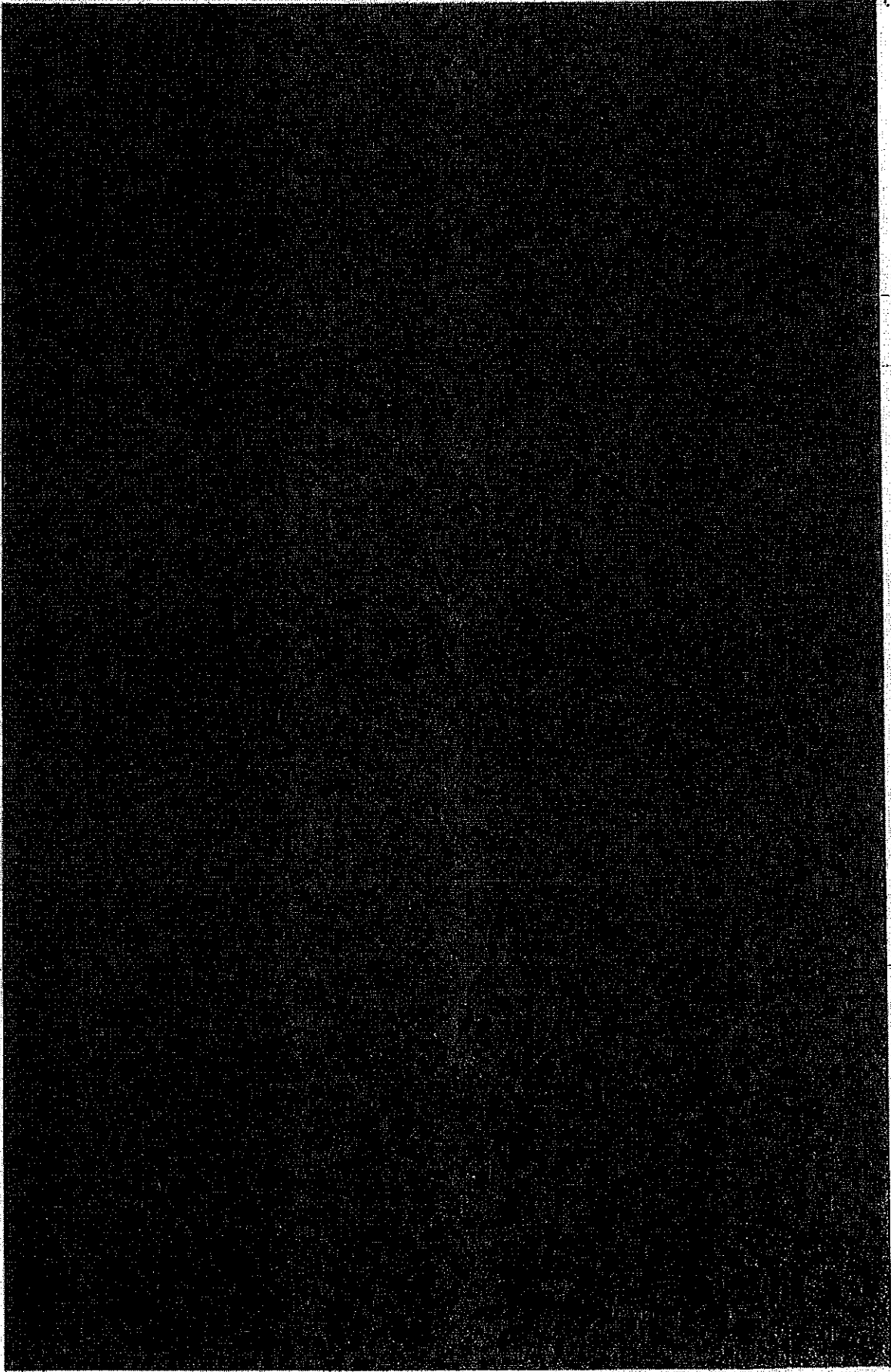
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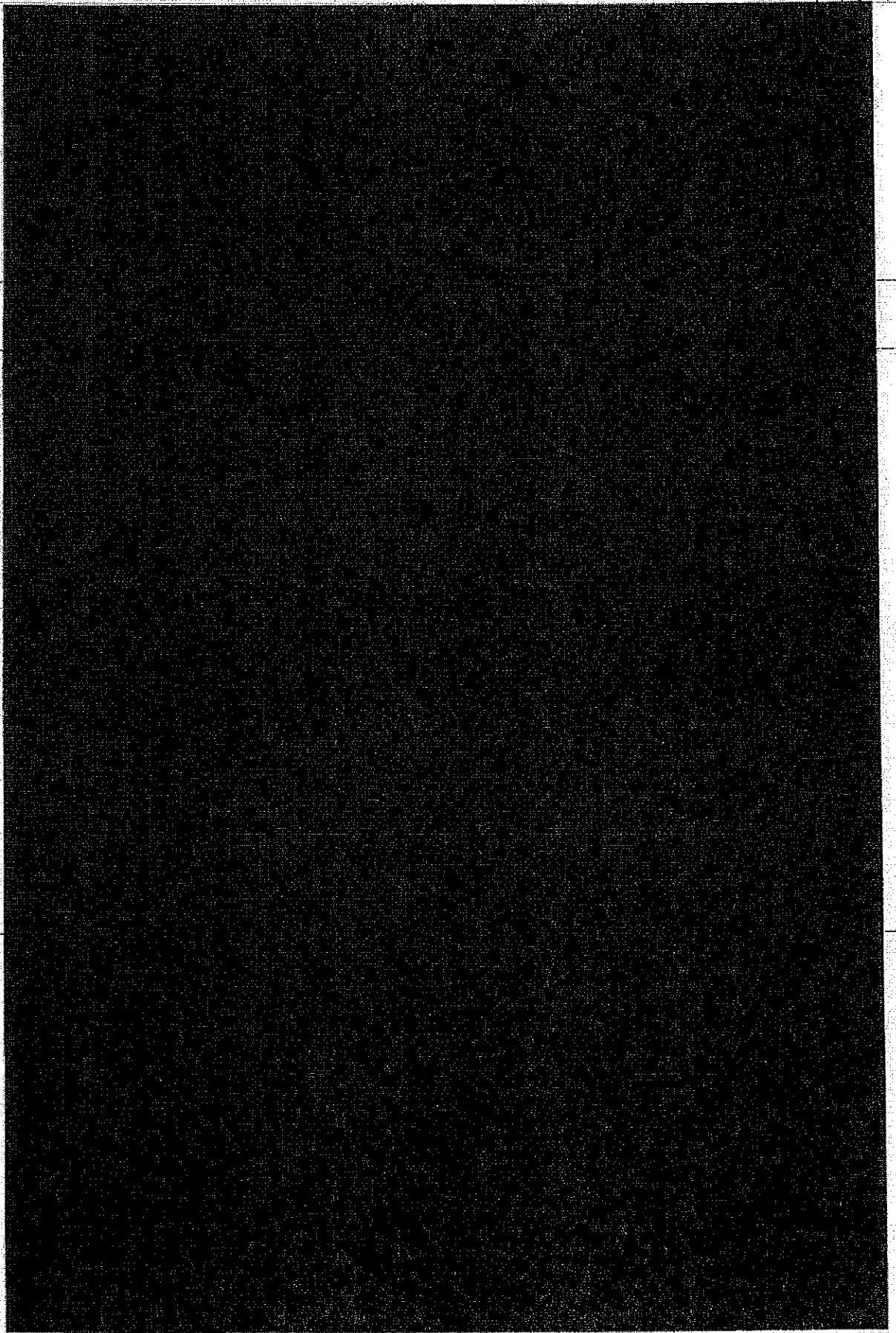
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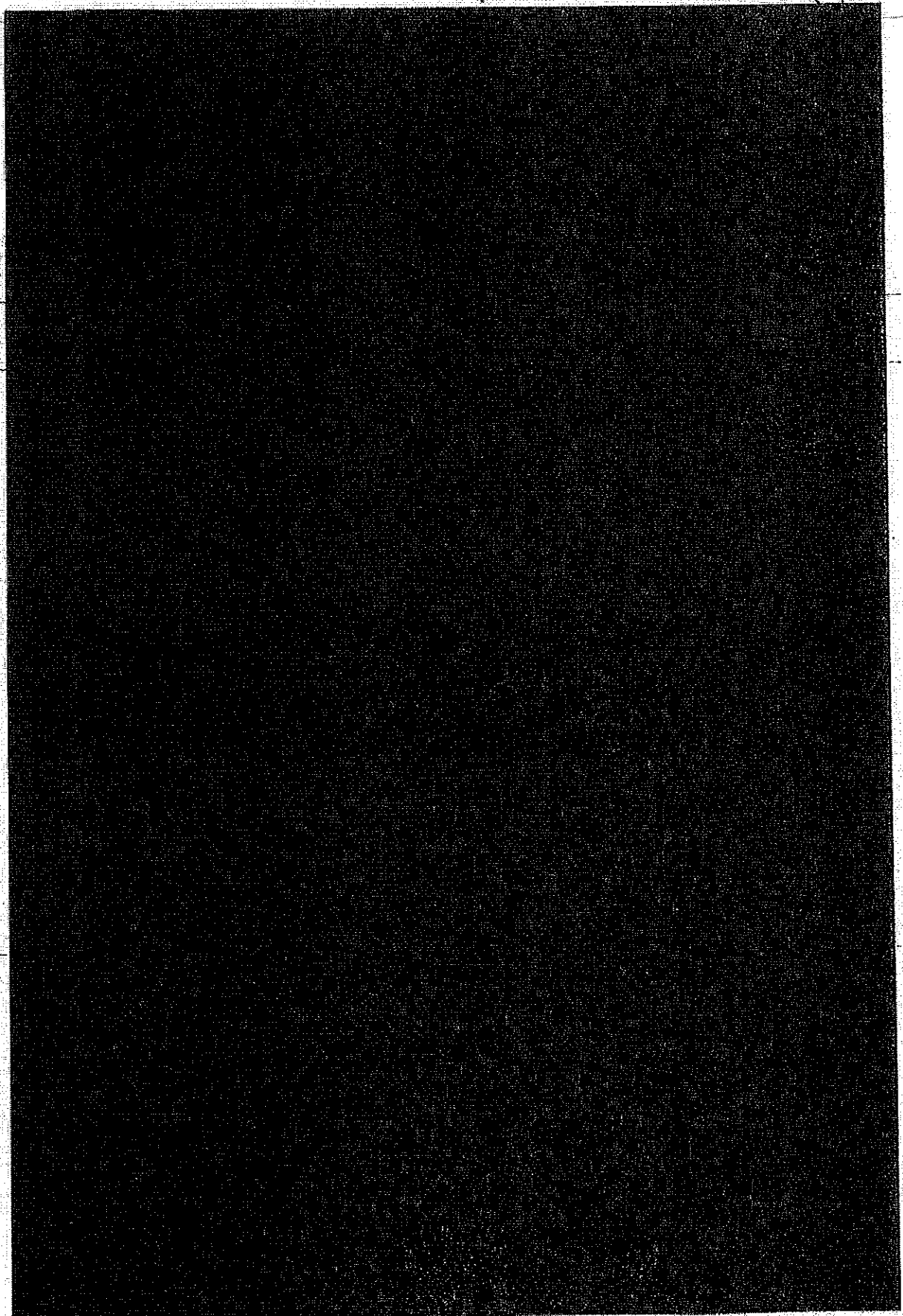
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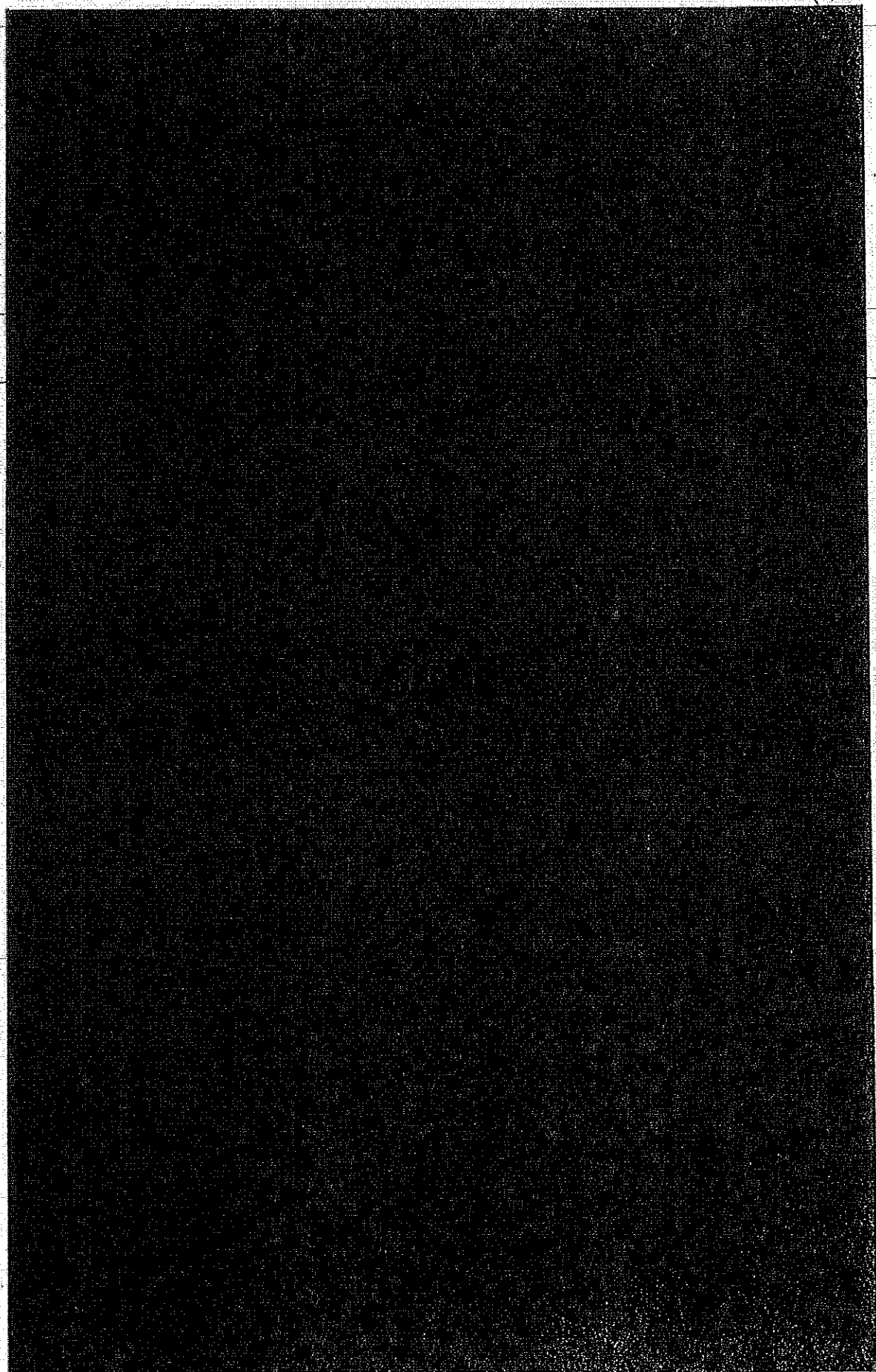
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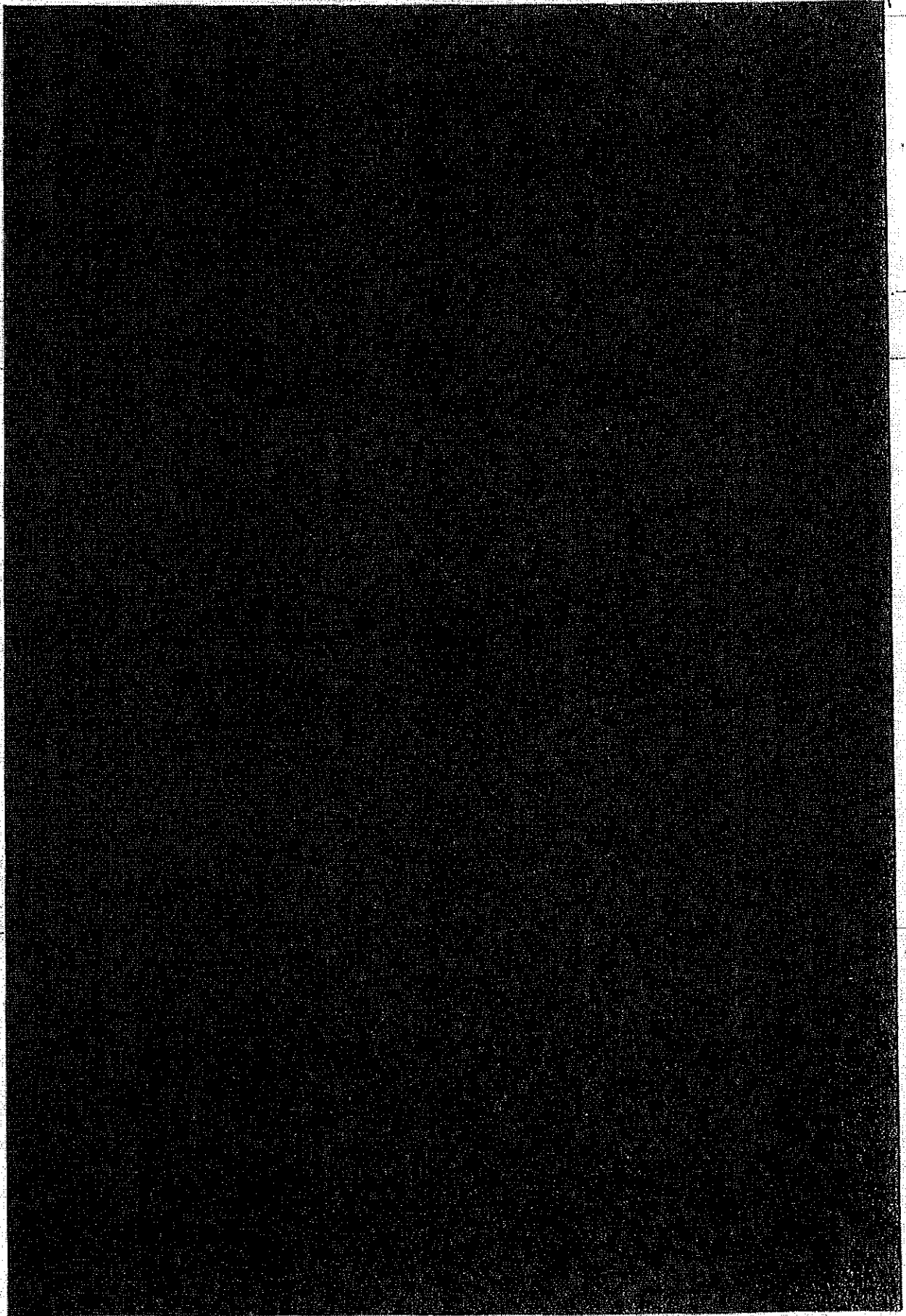
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(b)(5)



(b)(5)



Wiegmann, Brad (SMO)
From: Wiegmann, Brad
Sent: Friday, April 17, 2009 11:28 AM
To: Kris, David (NSD)
Subject: FW: Briefing Paper

Attachments: (b) (5)

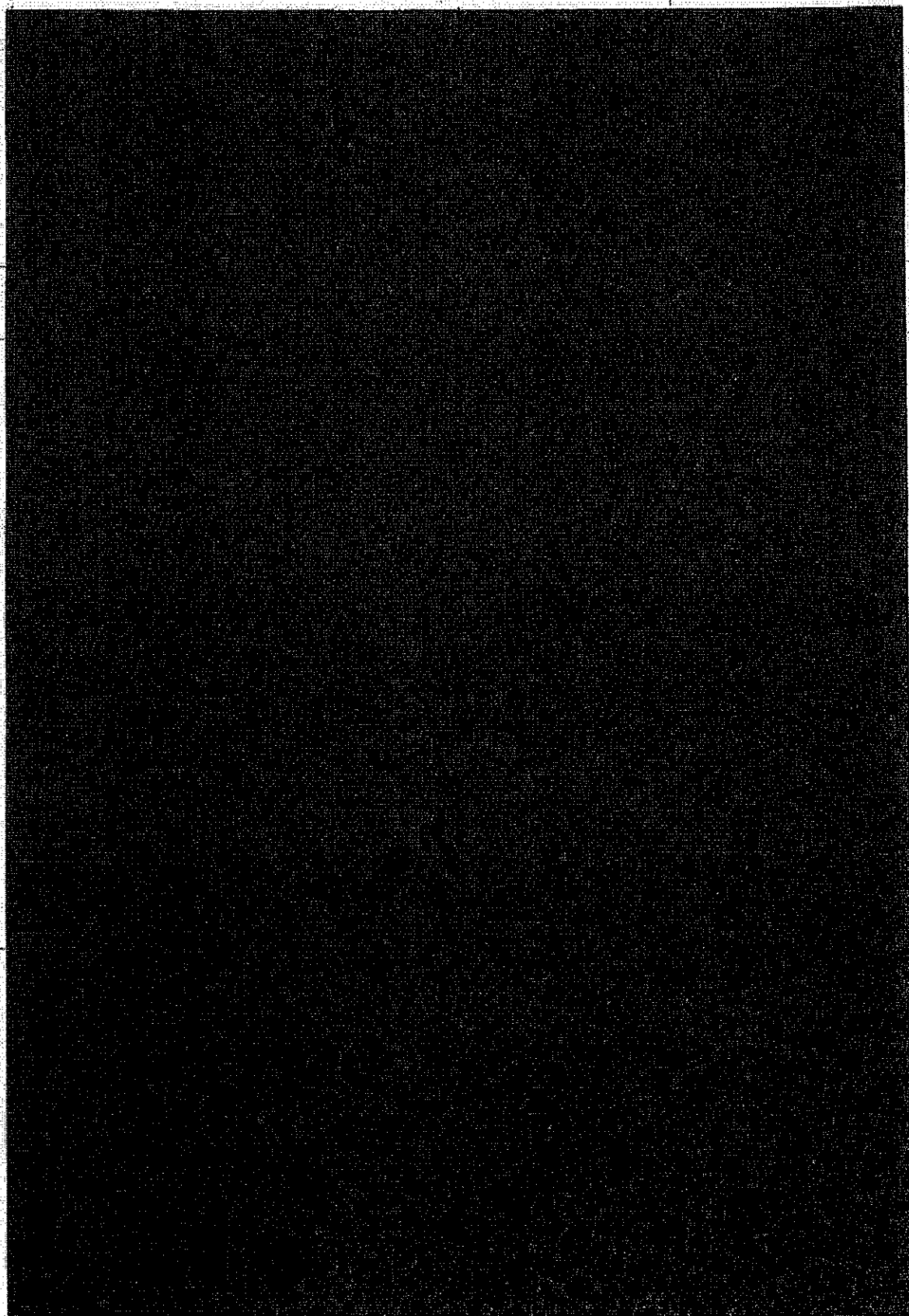
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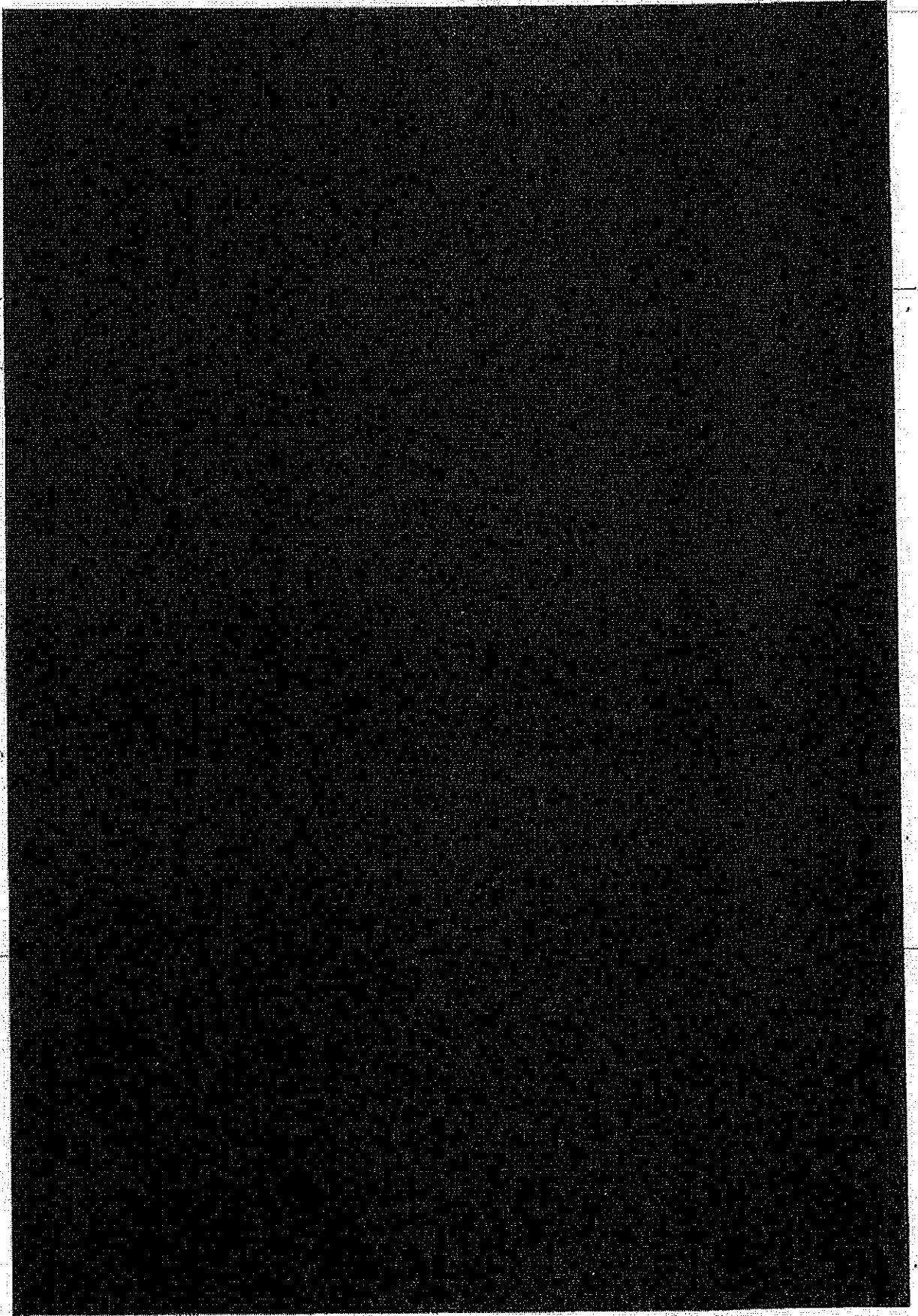
From: Wiegmann, Brad
Sent: Friday, April 17, 2009 11:22 AM
To: Morrison, Trevor W.
Cc: Martins, Mark (GTMO Task Force)
Subject: Briefing Paper

(b) (5)

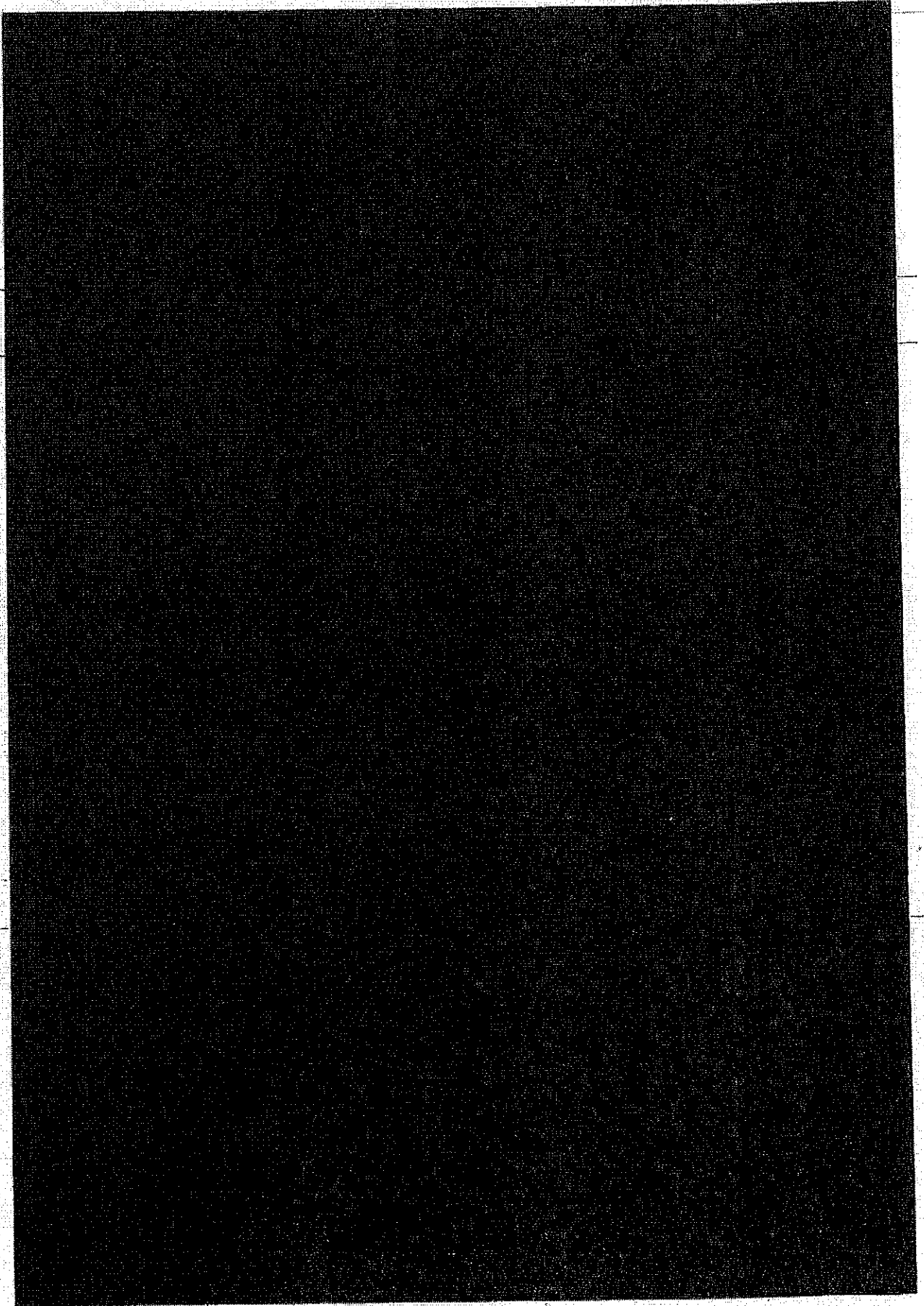
Draft
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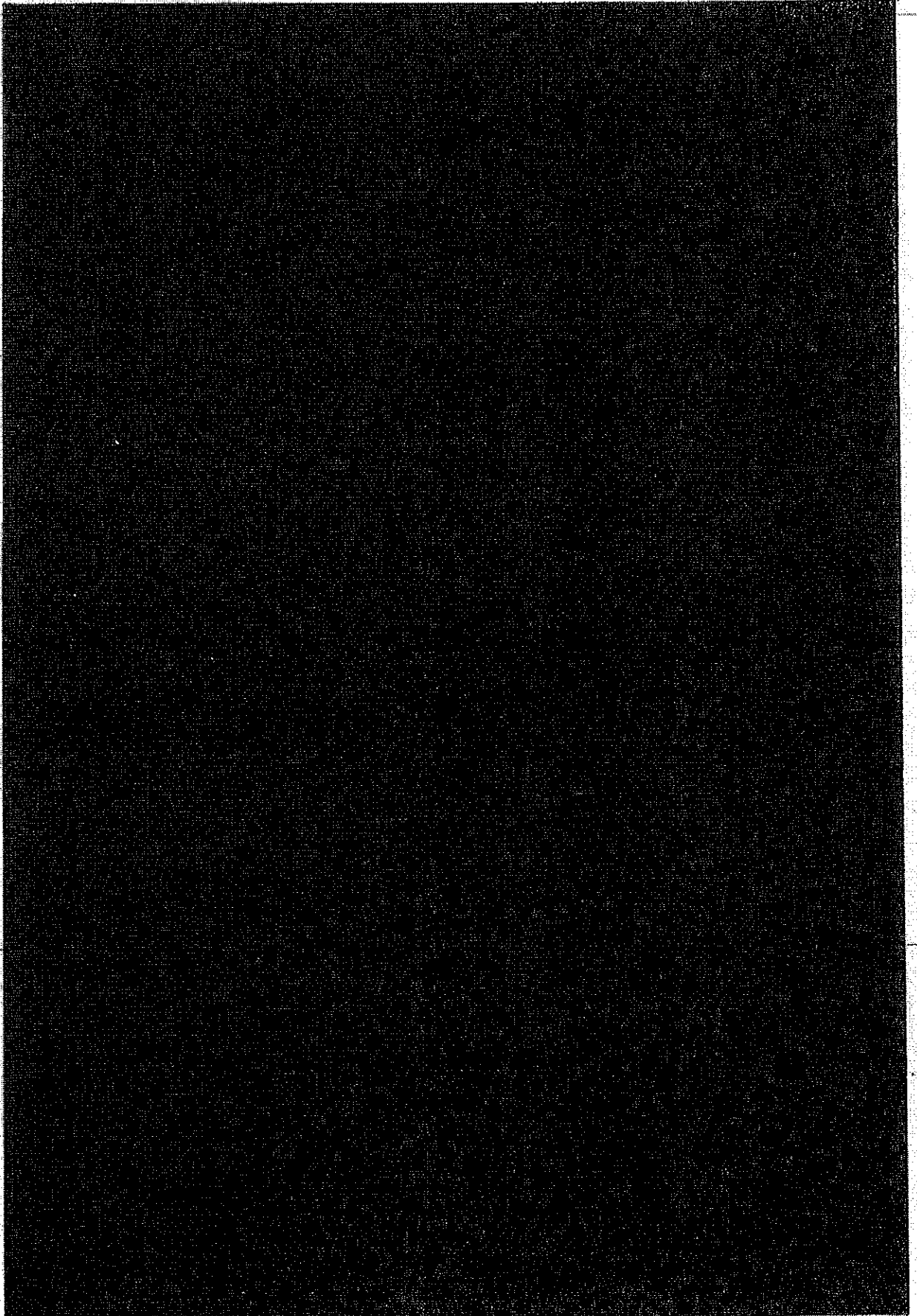
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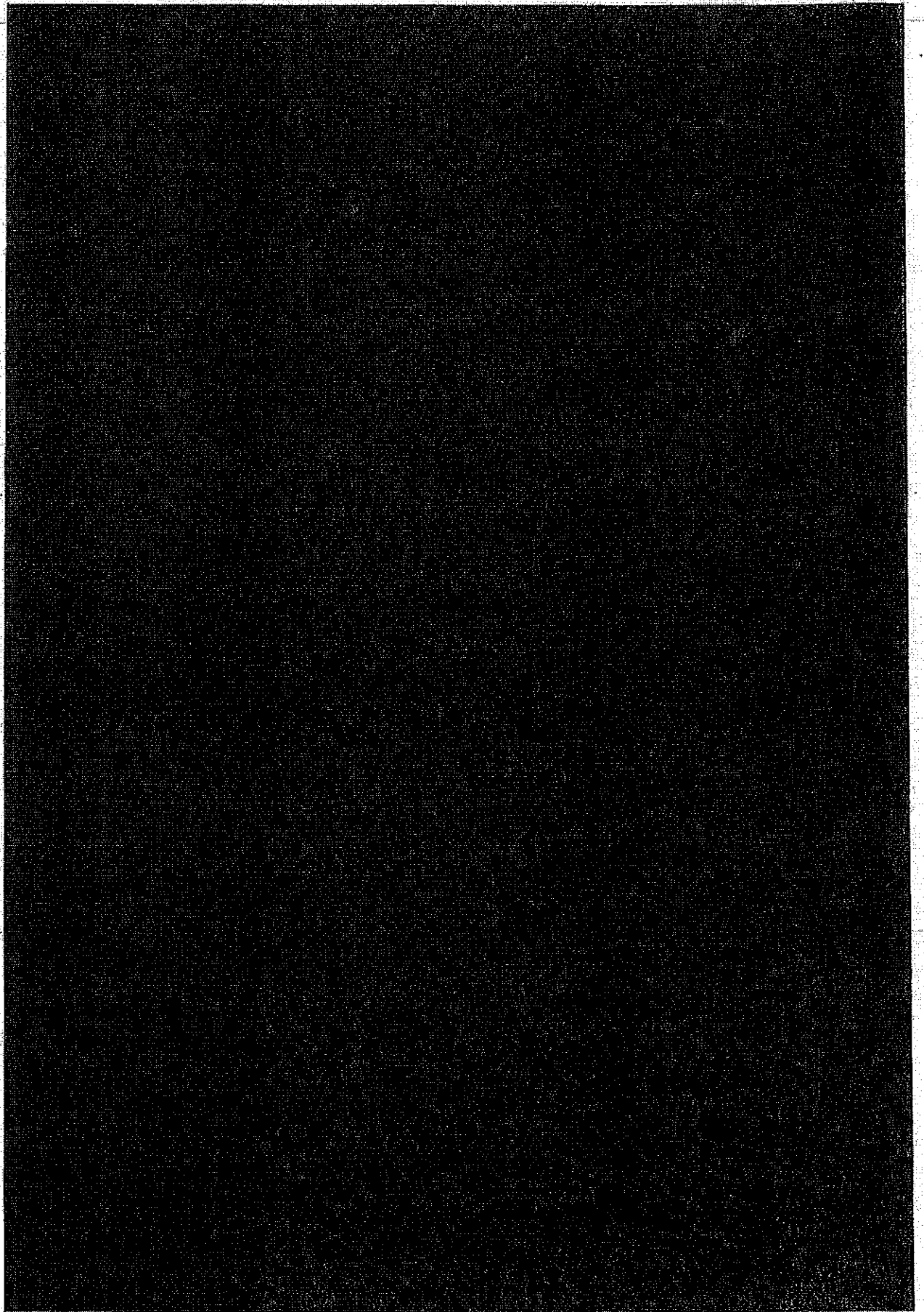
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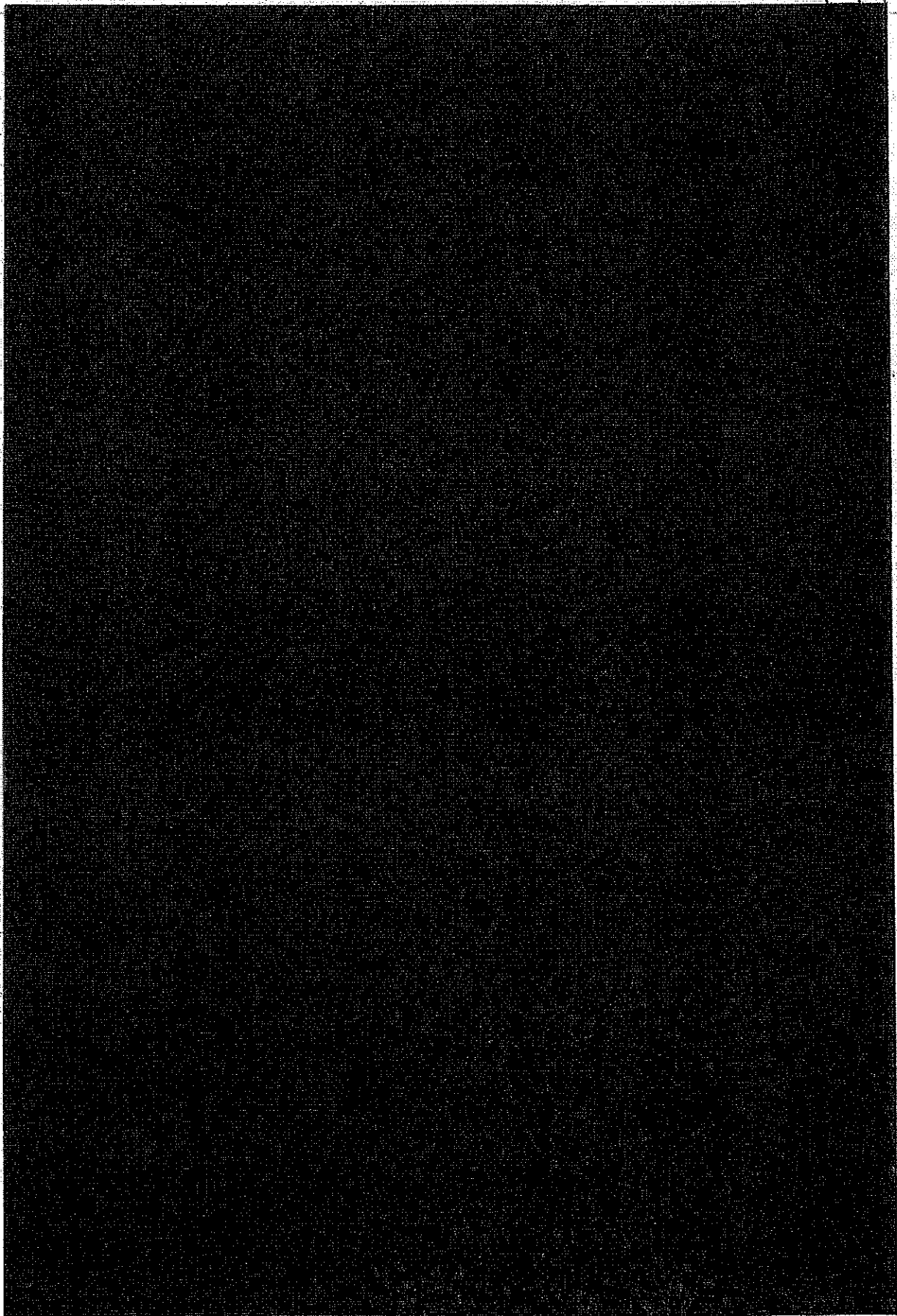
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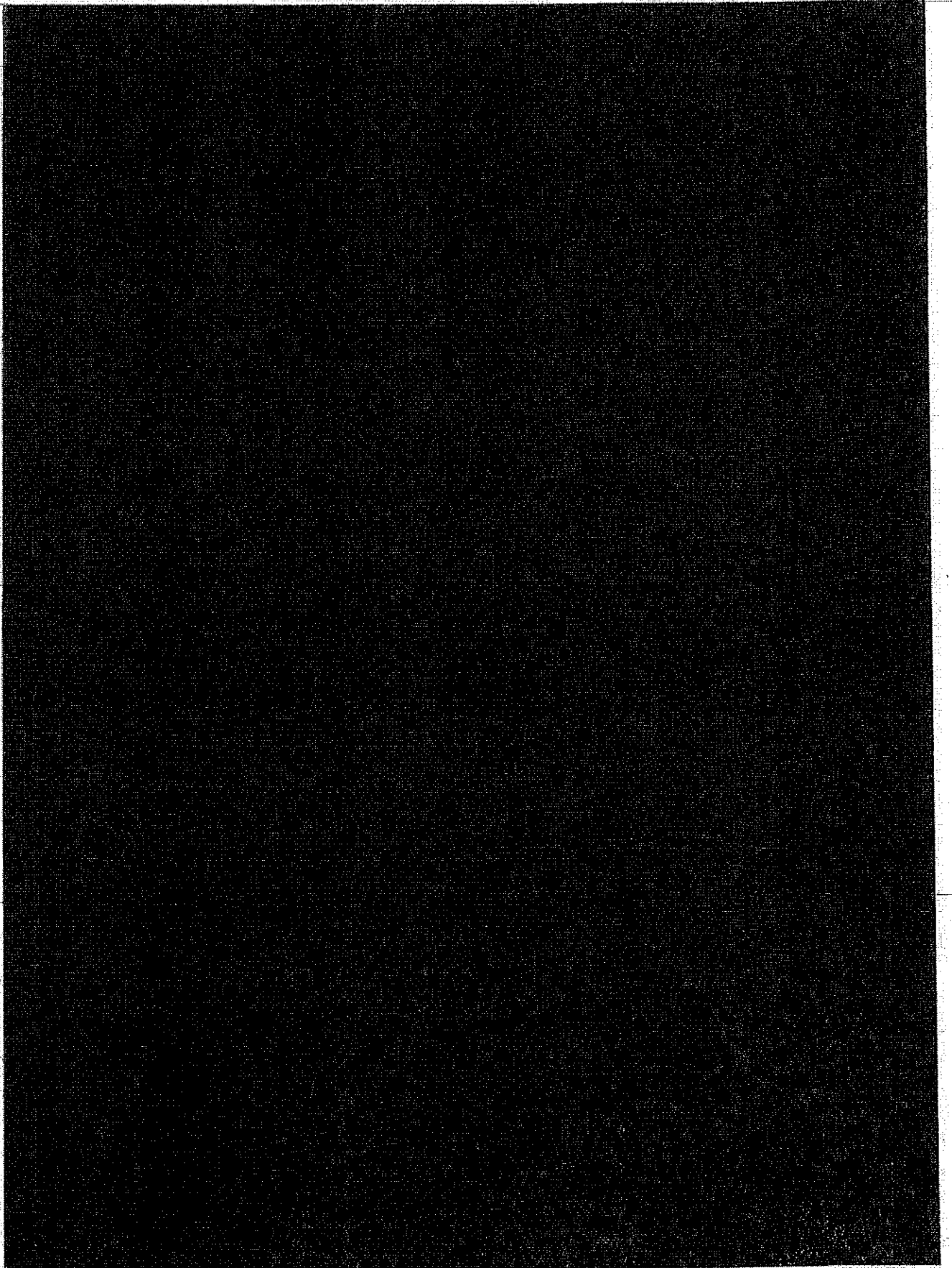
(b)(5)



(b)(5)



(b)(5)



Wiegmann, Brad (SMO)

From: [REDACTED] (b)(7)(C)
Sent: Tuesday, April 21, 2009 8:54 PM
To: Wiegmann, Brad
Subject: Re: Task 13

I would go if you would go tho I have the same time crunch concerns. I do think it would be useful to get an on the ground picture of things.

From: Wiegmann, Brad
To: [REDACTED]
Sent: Tue Apr 21 18:42:46 2009
Subject: Task 13

(b)(7)(C)

I talked to [REDACTED]. I can fill you in -- I think we are on the right track. He mentioned the trip to Bagram -- it sounded potential / useful to me for someone to go, and I would like to, though I don't think I can spare 8 days. Are you interested in going?

(16)

8/25/2010

Wiegmann, Brad (SMO)

From: Boyd, Dean
Sent: Tuesday, April 21, 2009 8:17 PM
To: Martins, Mark (GTMO Task Force); Wiegmann, Brad; Monaco, Lisa (ODAG); [REDACTED]
Subject: RE: DoD letter to AI re: detainees at Bagram

thanks

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

From: Martins, Mark (GTMO Task Force)
Sent: Tuesday, April 21, 2009 8:07 PM
To: Wiegmann, Brad; Boyd, Dean; Monaco, Lisa (ODAG); [REDACTED]
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); [REDACTED] Martins, Mark (GTMO Task Force)
Sent: Tue Apr 21 17:32:23 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.

NSD
OK
to
re: [REDACTED]

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

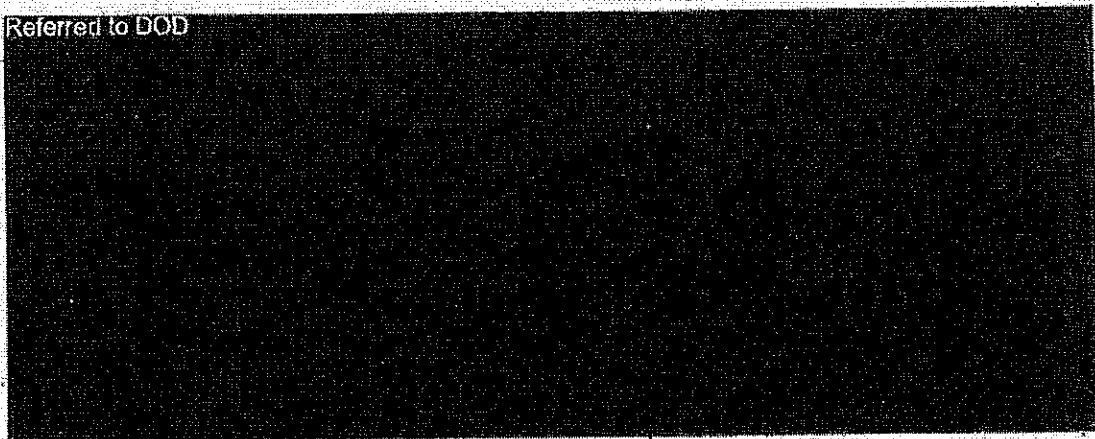
From: Boyd, Dean
Sent: Tuesday, April 21, 2009 4:13 PM
To: Wiegmann, Brad; Monaco, Lisa (ODAG); [REDACTED] Martins, Mark (GTMO Task Force)
Subject: FW: DoD letter to AI re: detainees at Bagram

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 & Mark have any thoughts...

Dean Boyd
Spokesman
National Security Division
U.S. Department of Justice
(202) 514-2007 mail
[REDACTED] (b)(7)(c)
dean.boyd@usdoj.gov

(17)

Referred to DOD



Referred
to
DOD

Wiegmann, Brad (SMD)

From: [REDACTED] (GTMO Task Force) (6)(7)(C)
 Sent: Wednesday, April 22, 2009 11:53 AM
 To: Wiegmann, Brad; Martins, Mark (GTMO Task Force)
 Subject: FW: TIME: Civil-Liberties Advocates Dismayed By Obama's Moves

FYI . . .

Civil-Liberties Advocates Dismayed By Obama's Moves

By Michael Scherer, WASHINGTON
 TIME
 Tuesday, Apr. 21, 2009

After eight years in the political wilderness, civil libertarians didn't have to wait long for President Barack Obama to make them feel at home again. Within just one full day in office, the new President issued a blistering array of orders reversing the policies of George W. Bush — on harsh interrogation techniques, on access to government information and on Guantánamo, which he announced he would close. "A giant step forward," hailed Anthony Romero, the executive director of the American Civil Liberties Union (ACLU).

Since then, however, the civil-liberties community has started to wonder if its celebration was premature. Though most still remain cautiously optimistic about the White House's leanings, they have watched with concern as the Obama Administration has filed papers in several court cases suggesting that it will side with the Bush Administration on key issues dealing with terror detainees, warrantless wiretapping and national security secrets. (Read "Taking the Bush Anti-Terror Legacy to Court.")

In three separate ongoing cases, the Obama Justice Department has invoked the so-called "state secrets" privilege, arguing that litigation cannot go forward because it would reveal classified information, a tactic of his predecessor's that Obama had no problem criticizing during the campaign. At the same time, Obama's advisers have declined to answer questions about whether or not they will support legislation, which was once supported by Secretary of State Hillary Clinton and Vice President Joe Biden, to give judges a greater ability to limit the use of the state-secrets privilege as a courtroom tactic. "It's disappointing that the Administration is throwing up the same legal argument," says Caroline Frederickson, the ACLU's top lobbyist.

In another case causing concern within the civil rights world, the Obama Administration has appealed the ruling of Federal District Judge John Bates that three detainees — two Yemenis and a Tunisian — who are being held at Bagram Air Force Base in Afghanistan have a legal right to challenge their imprisonment. If successful, the argument by Obama's Justice Department attorneys could create a loophole that would allow Obama to transfer prisoners to war zones for indefinite detention, a situation similar to the legal limbo that Bush established for Guantánamo.

Some civil rights lobbyists remain optimistic that the positions Justice Department lawyers have taken are little more than courtroom maneuvers that don't necessarily reflect the policy plans of the Administration. "The lawyers tend to approach every issue in terms of preserving maximum flexibility for the President," explained Elisa Massimino, a lobbyist at Human Rights First, who has been deeply involved in detainee issues. Nonetheless, she says she remains concerned. "Every Administration believes it is immune to the phenomenon of executive power creep," she added.

As it stands, the Obama Administration policies on these matters are still very much a work in progress. Several key policy posts at the Justice Department, including the crucial top position at the Office of Legal Counsel, have yet to be confirmed. The Obama Administration also continues to meet with civil libertarians to discuss these issues. The latest, a private gathering that took place on Friday, involved several civil-liberties groups that had spoken with the Obama transition office about the state-secrets issue late last year.

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(18)

In the meantime, the White House's public comments on these issues have remained noticeably vague. Last week, before announcing the release of once classified interrogation-technique memos and reaffirming his opposition to prosecuting CIA agents for any harsh methods, Obama issued a statement saying he was determined to "protect information that is classified for purposes of national security." During an appearance at the CIA on Monday, Obama declared, "I have fought to protect the integrity of classified information in the past and I will do so in the future."

Two weeks earlier, however, Attorney General Eric Holder told CBS News that his agency was still reviewing the Bush Administration's use of state secrets as an argument to prevent litigation. He said that the Justice Department was considering reversing the cilling of state secrets in one of the three cases that had been reviewed so far, though he did not describe which case. Last Wednesday, during a speech at West Point, Holder strongly condemned the behavior of the Bush Administration. "We must once again chart a course rooted in the rule of law and grounded in both the powers and the limitations it provides," he said.

Just what such statements mean in practice may not be known for months. After the initial flurry of executive orders, Obama delegated several areas of Administration policy to task forces for further study, including groups that are examining military detention policy, the closing of Guantánamo and the possibility of creating a new standard for CIA interrogation methods.

At the same time, the Department will soon face an entirely new array of issues that could create tensions with civil libertarians. Three key provisions of the controversial Patriot Act are set to expire at the end of this year, dealing with the government's ability to monitor the movements of so-called "lone wolves" (suspects who are not tied to a particular organization), handle roving wiretaps and obtain records with minimum court supervision. Congressional Democrats are also likely to push for a review of the Federal Bureau of Investigation's use of so-called "national security letters," which allow the bureau to get information from private organizations without court supervision. And there is mounting concern about the National Security Agency's use of its spying powers on Americans. Just last week, the New York Times revealed that the agency had attempted earlier this decade to eavesdrop without a warrant on a member of Congress travelling overseas. Obama, who has frustrated some civil-liberties advocates with his stated preference to focus on the future rather than the past, is also likely to face continuing pressure from Congress to cooperate with investigations of CIA rendition, detention and interrogation programs.

With so many issues coming down the pike, activists say they continue to hold out hope that the recent Obama positions in court cases will prove to be an aberration that has more to do with courtroom maneuvering than governing philosophy. "That is my optimistic view," explains Frederickson of the ACLU. "And it could be proved wrong."

<http://www.time.com/time/politics/article/0,8599,1892795,00.html>