(U) ANNEX TO THE REPORT ON THE PRESIDENT'S SURVEILLANCE PROGRAM

VOLUME II

10 JULY 2009

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OF THE
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DEPARTMENT OF JUSTICE
CENTRAL INTELLIGENCE AGENCY
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REPORT NO. 2009-0013-A

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Report No. 09-INTEL-08
June 26, 2009
Review

Inspector General

United States Department of Defense

DEPUTY INSPECTOR GENERAL FOR INTELLIGENCE

Review of the President's Surveillance Program (U)

~~Derived From: Multiple Sources~~
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INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

June 26, 2009

MEMORANDUM FOR SECRETARY OF DEFENSE

SUBJECT: (U) Report on Review of the President's Surveillance Program
Report No.: 09-INTEL-08 (U)

(U) We are providing this report for your information. This report fulfills the DoD Inspector General's requirement pursuant to Section 301 of Public Law 110-261, the Foreign Intelligence Surveillance Act (FISA) Amendments Act of 2008 (the Act). This report, along with reports prepared by the Inspectors General of the Department of Justice (DoJ), the Office of the Director of National Intelligence (DNI), Central Intelligence Agency (CIA), the National Security Agency (NSA), will be summarized in a comprehensive report as required by the Act.

~~(TS//STLW//SI//OC//NF)~~ **Results.** The OSD role in the establishment and implementation of the PSP was limited, with the burden of program execution residing with the NSA. We determined that there were six OSD officials with access to the PSP. These individuals had limited involvement, and did not make any additional tasking decisions beyond those directed for NSA implementation. We are aware of no other OSD involvement in the PSP.

(U) Background. The Act requires the IGs of the DoJ, DNI, NSA, the DoD, and any other element of the intelligence community that participated in the President's Surveillance Program (PSP)[1], to complete a comprehensive review of, with respect to the oversight authority and responsibility of each such IG:

- All facts necessary to describe establishment, implementation, product and use of the product in the program
- Access to legal reviews and access to information about the Program
- Communications and participation of individuals/entities related to the Program

[1] (U) The President's Surveillance Program is defined in the Act as the intelligence activity involving communications that was authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007, including the program referred to by the President in a radio address on December 17, 2005 (commonly known as the Terrorist Surveillance Program).

~~Derived from: Multiple Sources~~
~~Declassify on: 20340511*~~

- Interaction with the Foreign Intelligence Surveillance Court and
- Any other matters identified by the IGs

~~(TS//STLW//SI//OC//NF)~~ **Scope and Methodology.** We conducted this review to examine the involvement of the Office of the Secretary of Defense (OSD), Department of Defense (DoD), in the establishment and implementation of the President's Surveillance Program (PSP). We interviewed current and former officials within OSD that had access to the PSP. We withdrew our request to interview Secretary of Defense Gates because he was provided access to the PSP after the program ended. The former Deputy Secretary of Defense Dr. Wolfowitz declined our request for an interview. We reviewed all relevant documentation within OSD and NSA related to OSD's involvement in the PSP. We also reviewed documentation at DoJ related to the PSP.

(U) The IGs of the DoJ, DoD, DNI, NSA, and CIA issued an interim report on September 10, 2008. In the interim report, the DoD IG stated that he would examine the involvement of the Office of the Secretary of Defense (OSD) in the establishment and implementation of the PSP. The NSA, as an agency within DoD performed the requirements of the PSP. As such, the NSA IG is conducting a review of NSA involvement with the PSP separate from this memorandum report.

~~(TS//STLW//SI//OC//NF)~~ **Implementation and Establishment of the PSP.** The OSD access to the PSP was limited to six individuals.[2] Those individuals are Secretary of Defense Robert Gates; former Secretary of Defense Donald Rumsfeld; former Deputy Secretary of Defense Paul Wolfowitz; Under Secretary of Defense for Intelligence (USD(I)) James Clapper[3]; former USD(I) Stephen Cambone; and Principal Deputy General Counsel Daniel Dell 'Orto.

~~(TS//STLW//SI//OC//NF)~~ The PSP was an extremely sensitive counterterrorism program focused on detecting and preventing terrorist attacks within the United States. The PSP was authorized by the President every 30 to 45 days and was initially directed against international terrorism; after March 2004, the PSP focused specifically against al-Qaeda and its affiliates. The Director of Central Intelligence (DCI), and later the DNI, would prepare a Threat Assessment

[2] ~~(TS//STLW//SI//OC//NF)~~ [redacted]

[3] ~~(TS//STLW//SI//OC//NF)~~ Secretary Gates and Under Secretary Clapper were provided access to the PSP after the PSP was transferred to Foreign Intelligence Surveillance Court supervision.

Memorandum, which validated the current threat to the United States. The Secretary of Defense would review and sign the Threat Assessment Memorandum. On three occasions, Dr. Wolfowitz, the former Deputy Secretary of Defense, signed the Threat Assessment Memoranda in the Secretary's absence. On two occasions, Dr. Cambone, the former USD(I), signed the Threat Assessment Memoranda when Secretary Rumsfeld and Dr. Wolfowitz were unavailable.

~~(TS//STLW//SI//OC//NF)~~ Once the Threat Assessment Memorandum was signed, the President would then sign a Presidential Authorization with the Threat Memorandum attached. The President would task the Secretary of Defense to employ DoD resources to execute the requirements set forth in the Presidential Authorization. The Attorney General, or his designee, would certify the Presidential Authorization for form and legality. The Secretary of Defense would then direct the actions authorized by the Presidential Authorization to the NSA for implementation. On one occasion, Dr. Wolfowitz, the former Deputy Secretary of Defense, directed the Director of NSA to implement the Presidential Authorization, in the Secretary's absence. On a separate occasion, Dr. Cambone, the former USD(I), directed the Director of NSA to implement the Presidential Authorization.

~~(TS//SI//NF)~~ **Interaction with the Foreign Intelligence Surveillance Court.** Dr. Wolfowitz also executed two declarations to the U.S. Foreign Intelligence Surveillance Court. The first, executed on [redacted] was in support of the Government's Application seeking renewal, in part, of the authority to install and use pen register and trap and trace devices, in order to obtain information [redacted] pursuant to the Foreign Intelligence Surveillance Act of 1978 (FISA), 50 U.S.C. sections 1801-1811, 1841-1846, as amended. The initial authority under FISA to install and use pen register and trap and trace devices for that purpose was granted by the Foreign Intelligence Surveillance Court on July 14, 2004. [redacted]

~~(TS//SI//NF)~~ Dr. Wolfowitz's second declaration was executed on [redacted] That declaration was made in response to the Foreign Intelligence Surveillance Court's [redacted] Order requiring the Government to submit a declaration from the Deputy Secretary of Defense discussing NSA' violations of the Court's July 14 Order authorizing NSA to install and use pen register and trap and trace devices in order to obtain information about [redacted] In that declaration, Dr. Wolfowitz stated the circumstances surrounding unauthorized collection that occurred, the disposition of information collected without authorization, steps NSA took to remedy the violation, and measures NSA implemented to prevent recurrence of such violations.

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(U) Should you have questions on this report, please feel free to contact Ms. Patricia A. Stephens at (703) 614-8800.

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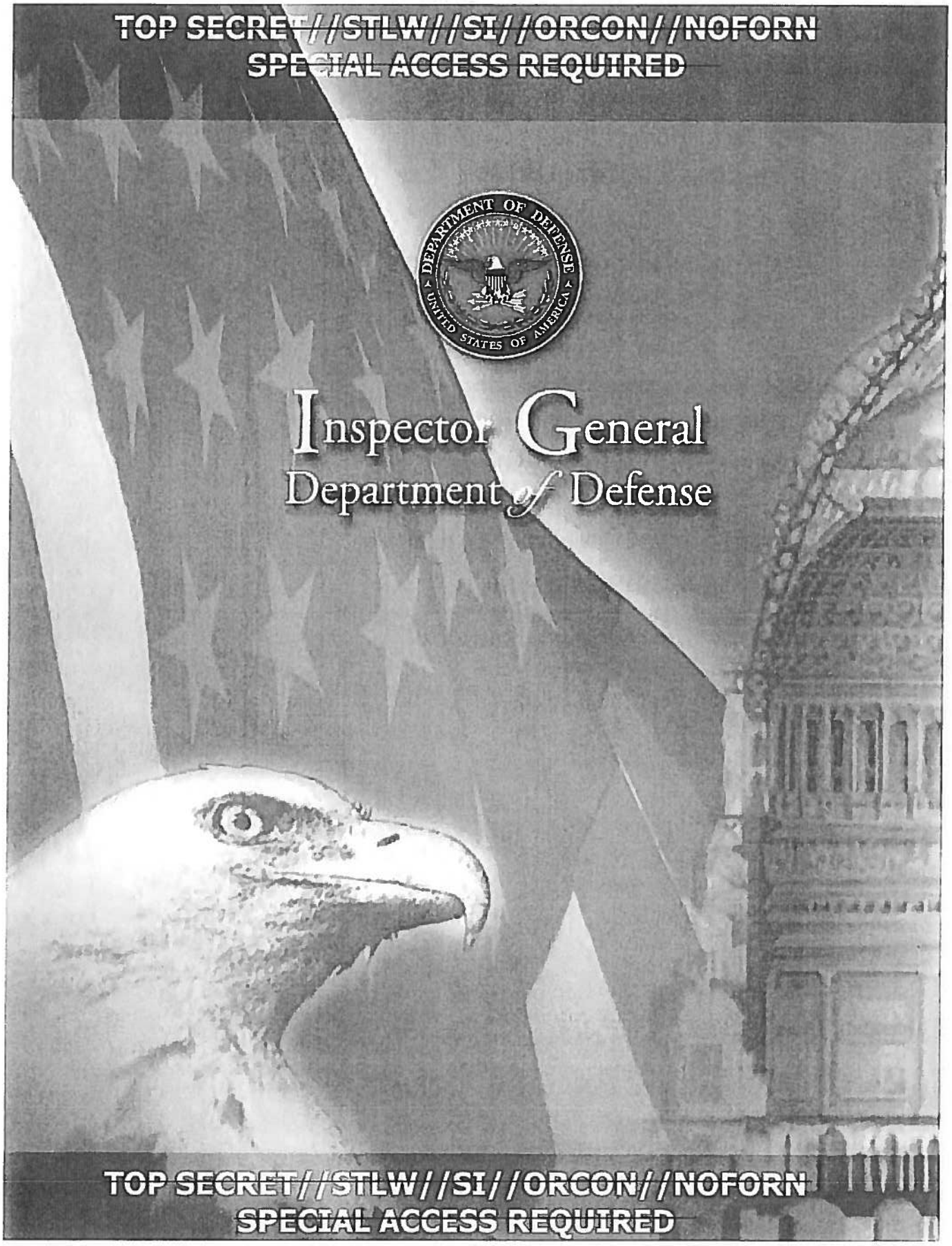

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CENTRAL INTELLIGENCE AGENCY

Office of Inspector General

(U) FINAL REPORT

~~(S//NF)~~ CIA Participation in the President's Surveillance Program

Report No. 2008-0016-AS

[redacted]

30 June 2009

Issue Date

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~~(S//NF)~~ CIA Participation in the President's Surveillance Program

(U) EXECUTIVE SUMMARY

~~(S//NF)~~ Title III of the Foreign Intelligence Surveillance Act (FISA) Amendments Act of 2008 requires the Inspectors General (IGs) of the elements of the Intelligence Community (IC) that participated in the President's Surveillance Program (PSP) to conduct a comprehensive review of the program. The results of our review of CIA participation in the PSP are presented in this report, and will be included in the comprehensive report required to be provided to the appropriate committees of Congress by 10 July 2009.

~~(TS//STLW//SI//OC/NF)~~ The CIA prepared the threat assessment memorandums that were used to support Presidential authorization and periodic reauthorizations of the PSP. The threat assessment memorandums were prepared by personnel from the CIA [redacted] Each of the memorandums focused on the current threat situation and did not provide an assessment of the PSP's utility in addressing previously reported threats. The threat assessment memorandums were signed by the Director of Central Intelligence (DCI) and forwarded to the Secretary of Defense to be co-signed. Responsibility for drafting the threat assessment memorandums was transferred to the newly-established Terrorist Threat Integration Center in May 2003 and retained by TTIC's successor organization, NCTC (the National Counterterrorism Center). The DCI continued to sign the threat assessment memorandums through 15 April 2005. Subsequent memorandums were signed by the Director of National Intelligence.

~~(TS//STLW//SI//OC/NF)~~ CIA analysts and targeters, as PSP consumers, tasked the program and utilized the product from the program in their analyses.

[redacted]

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[redacted]

~~(TS//STLW//SI//OC/NF)~~ Two former Directors, a former Acting Director, and other senior CIA officials we interviewed told us that the PSP addressed a gap in intelligence collection. [redacted] However, collection of such communications required authorization under FISA, and there was widespread belief among senior IC and CIA officials that the process for obtaining FISA authorization was too cumbersome and time consuming to address the current threat. Current and former CIA officials emphasized the increased timeliness, flexibility, and access provided by the PSP as compared to the process for obtaining a warrant under FISA.

~~(TS//STLW//SI//OC/NF)~~ The CIA did not implement procedures to assess the usefulness of the product of the PSP and did not routinely document whether particular PSP reporting had contributed to successful counterterrorism operations. CIA officials told us that PSP reporting was used in conjunction with reporting from other intelligence sources and was rarely the sole basis for a counterterrorism success. [redacted] CIA officers, even those read into the program, would have been unaware of the full extent of PSP reporting. Consequently, there is no means to comprehensively track how PSP information was used. CIA officials were able to provide only limited information on how program reporting contributed to successful operations, and therefore, we were unable to independently draw any conclusion on the overall usefulness of the program to CIA.

~~(S//NF)~~ Several factors hindered the CIA in making full use of the capabilities of the PSP. Many CIA officials told us that too few CIA personnel at the working level were read into the PSP. [redacted] officials told us that CIA analysts and targeting officers who were read in had too many competing priorities and too many other available information sources and analytic tools—many of which were more easily accessed and timely—to fully utilize the PSP. CIA officers also told us that the PSP would have been more fully utilized if analysts and targeting officers had obtained a better understanding of the program's capabilities. Many CIA officers noted that there was insufficient training and legal guidance concerning the program's capabilities and the use of PSP-derived information. The factors that hindered the CIA in making full use of the PSP might have been mitigated if the CIA had designated an individual at an appropriate level of managerial authority, who possessed knowledge of both the PSP and CIA counterterrorism activities, to be responsible and accountable for overseeing CIA participation in the program.

~~(TS//STLW//SI//OC/NF)~~ There is no indication that personnel from the CIA Office of General Counsel or other CIA components were involved in preparing the legal memorandums supporting the PSP that were produced by the Department of Justice, Office of Legal Counsel (OLC). CIA OGC personnel had very limited access to these memorandums.

~~(S//NF)~~ Senior CIA officials participated in meetings with a *New York Times* editor and reporter and senior Administration officials concerning an article the newspaper was preparing concerning the PSP.

[redacted]

Assistant Inspector General for Audit

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(U) BACKGROUND

(U) Origin and Scope of the Review

(U) Title III of the Foreign Intelligence Surveillance Act Amendments Act of 2008, which was signed into law on 10 July 2008, requires the IGs of the elements of the Intelligence Community that participated in the PSP to conduct a comprehensive review of the program.[1] The review required to be conducted under the Act is to examine:

> (A) all of the facts necessary to describe the establishment, implementation, product, and use of the product of the Program;
>
> (B) access to legal reviews of the program and access to information about the Program;
>
> (C) communications with, and participation of, individuals and entities in the private sector related to the Program;
>
> (D) interaction with the Foreign Intelligence Surveillance Court and transition to court orders related to the Program; and
>
> (E) any other matters identified by any such Inspector General that would enable that Inspector General to complete a review of the Program, with respect to such Department or element.

~~(TS//STLW//SI//OC/NF)~~ The interim report required under the Act was submitted to the committees of Congress prescribed in the Act on 10 September 2008. That report described the scope of the work to be conducted by each of the participating IGs, which include the Inspectors General of the Department of Justice, the Office of the Director of National Intelligence, the National Security Agency, the Department of Defense, and the CIA. Our review of CIA participation in the PSP examined CIA's :

- Role in preparing the threat assessments and legal certifications supporting periodic reauthorization of the PSP.
- Role in identifying targets for the PSP.

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[1] ~~(S//NF)~~ The President's Surveillance Program is defined in the Act as the intelligence activity involving communications that was authorized by the President during the period beginning on 11 September 2001, and ending on 17 January 2007, including the program referred to by the President in a radio address on 17 December 2005 (commonly known as the Terrorist Surveillance Program). The classified name for the President's Surveillance Program is "STELLARWIND."

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The results of our review of CIA participation in the PSP are presented in this report, and will be included in the comprehensive final report required to be provided to the appropriate committees of Congress by 10 July 2009.

(U) The President's Surveillance Program

~~(TS//STLW//SI//OC/NF)~~ According to former Director of the NSA and former Director of the CIA (DCIA) Michael V. Hayden, initial discussions concerning the activities that would become the PSP occurred less than two weeks after the 11 September 2001 terrorist attacks in a meeting between DCI George J. Tenet and Vice President Richard B. Cheney. Although Hayden did not attend the meeting, he was told by Tenet that Cheney asked if the Intelligence Community was doing everything possible to prevent another terrorist attack. In response, Tenet described [redacted] Cheney then asked if there was more that NSA could do. This led to discussions between Cheney, Hayden, Cheney's legal counsel David S. Addington, and senior NSA officials. It was determined that the NSA had the capability to collect additional wire communications that could enhance the IC's counterterrorism efforts, but that new authority was needed to employ the capability. The determination led to the authorization of the PSP by President George W. Bush on 4 October 2001.

~~(TS//STLW//SI//OC/NF)~~ The PSP was intended to help prevent additional terrorist attacks against the US Homeland. Although the authorized collection activities changed over the life of the program, in general, the program authorized the NSA to acquire content and/or metadata concerning telephone and e-mail communications for which there were reasonable grounds to believe that at least one of the participants in the communication was located outside the US and that a party to

the communication was affiliated with a group engaged in international terrorism. The collection activities conducted under the PSP were brought under Foreign Intelligence Surveillance Court oversight in stages between July 2004 and January 2007.[2]

~~(TS//STLW//SI//OC/NF)~~ Under the PSP, the NSA collected three sets of data. The first set included the content of individually targeted telephone and e-mail communications. The second set consisted of telephone dialing information—the date, time, and duration of calls; the telephone number of the caller; and the number receiving the call—collected in bulk [redacted] The third data set consisted of e-mail transactional data— [redacted] collected in bulk [redacted]

(U) REVIEW RESULTS

~~(S//NF)~~ CIA Participation in the President's Surveillance Program

[redacted]

[2] (U) The Foreign Intelligence Surveillance Act of 1978 established the Foreign Intelligence Surveillance Court to oversee requests for surveillance warrants by federal agencies against suspected foreign intelligence agents inside the US.

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[redacted]

~~(TS//STLW//SI//OC/NF)~~ [redacted] CIA personnel prepared the threat assessment memorandums that were used to support the initial Presidential authorization and subsequent reauthorizations of the PSP. [redacted]

~~(TS//STLW//SI//OC/NF)~~ CIA Prepared the Threat Assessment Memorandums Supporting Authorization of the President's Surveillance Program

~~(TS//STLW//SI//OC/NF)~~ The CIA initially prepared the threat assessment memorandums that were used to support Presidential authorization and periodic reauthorizations of the PSP. The memorandums documented the current threat to the US homeland and to US interests abroad from al-Qa'ida and affiliated terrorist organizations. The first threat assessment memorandum—*The Continuing Near-Term Threat from Usama Bin Ladin*—was signed by DCI Tenet on 4 October 2001.[3] Subsequent threat assessment memorandums were prepared every 30 to 60 days to correspond with the President's reauthorizations of the PSP.

~~(TS//STLW//SI//OC/NF)~~ The DCI Chief of Staff, John H. Moseman, was the CIA focal point for preparing the threat assessment memorandums. According to Moseman, he directed the [redacted] to prepare objective appraisals of the current terrorist threat, focusing primarily on threats to the homeland, and to document those appraisals in a memorandum. Initially, the [redacted] analysts who prepared the threat assessments were not read into the PSP and did not know how the threat assessments would be used. [redacted] analysts drew upon all sources of intelligence in preparing their threat assessments. Each of the memorandums focused on the current threat situation and did not provide an assessment of the PSP's utility in addressing previously reported threats.

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[3] ~~(S//NF)~~ The title of the threat assessment memorandums was changed to *The Global War Against Terrorism* in June 2002.

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~~(TS//STLW//SI//OC/NF)~~ After [redacted] completed its portion of the memorandums, the DCI's Chief of Staff added a paragraph at the end of the memorandums stating that the individuals and organizations involved in global terrorism (and discussed in the memorandums) possessed the capability and intention to undertake further terrorist attacks within the US. Moseman recalled that the paragraph was provided to him initially by either White House Counsel Alberto R. Gonzales or Addington. The paragraph recommended that the President authorize the Secretary of Defense to employ within the US the capabilities of the Department of Defense, including but not limited to NSA's signals intelligence capabilities, to collect foreign intelligence by electronic surveillance. The paragraph also described the types of communication and data that would be collected and the circumstances under which they could be collected.[4] The draft threat assessment memorandums were then reviewed by Office of General Counsel attorneys assigned to [redacted] and Acting General Counsel (Senior Deputy General Counsel) John A. Rizzo. Rizzo told us that the draft memorandums were generally sufficient, but that there were occasions when, based on his experience with previous memorandums, he thought that draft memorandums contained insufficient threat information or did not present a compelling case for reauthorization of the PSP. In such instances, Rizzo would request that [redacted] provide additional available threat information or make revisions to the draft memorandums.

~~(TS//STLW//SI//OC/NF)~~ The threat assessment memorandums were then signed by DCI Tenet and forwarded to the Secretary of Defense to be co-signed. Tenet signed most of the threat memorandums prepared during his tenure as DCI. On the few occasions when he was unavailable, the Deputy Director of Central Intelligence (DDCI), John E. McLaughlin, signed the memorandums on behalf of Tenet. McLaughlin also signed the memorandums in the capacity of Acting DCI in August and September 2004. In November 2004, Porter J. Goss became DCI and assumed responsibility for signing the memorandums. There were no occasions when the DCI or Acting DCI withheld his signature from the threat assessment memorandum. After they were signed by the Secretary of Defense, the memorandums were reviewed by the Attorney General and delivered to the White House to be attached to the PSP reauthorization memorandums signed by the President.

~~(TS//STLW//SI//OC/NF)~~ Responsibility for drafting the threat assessment memorandums was transferred from [redacted] to the newly established Terrorist Threat Integration Center in May 2003. This responsibility was retained by TTIC's successor organization, NCTC. The DCI continued to sign the threat assessment memorandums

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[4] (U) Exhibit B presents the conclusion and recommendation paragraph included in the threat assessment memorandum dated 10 January 2005. Similar language was included in each of the memorandums.

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through 15 April 2005. Subsequent memorandums were signed by the Director of National Intelligence.[5]

(U//~~FOUO~~) CIA Tasked and Received Reporting From the President's Surveillance Program

(U//~~FOUO~~) Procedures and Standards for Requesting Information

[redacted]

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[redacted]

(U//~~FOUO~~) Reporting Provided in Response to Requests for Information

[redacted]

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[redacted]

(U//~~FOUO~~) Primary CIA Users of the President's Surveillance Program

[redacted]

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[redacted]

(U//~~FOUO~~) Senior CIA Officials Believe That the President's Surveillance Program Filled an Intelligence Gap

~~(TS//STLW//SI//OC/NF)~~ Former Directors Hayden and Goss, former Acting Director McLaughlin, and other senior CIA officials we interviewed told us that the PSP addressed a gap in intelligence collection. Following the terrorist attacks on 11 September 2001, there was concern that additional acts of terrorism would be perpetrated by terrorist cells already inside the US. [redacted] However, collection of such communications required authorization under FISA, and there was widespread belief among senior IC and CIA officials that the process for obtaining FISA authorization was too cumbersome and time consuming to address the current threat.

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[redacted]

~~(TS//STLW//SI//OC/NF)~~ Other senior CIA officials told us that the PSP provided CIA access to information that was previously unavailable. [redacted]

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(U//~~FOUO~~) The CIA Did Not Assess the Effectiveness of the President's Surveillance Program

~~(TS//STLW//SI//OC/NF)~~ The CIA did not implement procedures to assess the usefulness of the product of the PSP and did not routinely document whether particular PSP reporting had contributed to successful counterterrorism operations. CIA officials, including DCIA Hayden, told us that PSP reporting was used in conjunction with reporting from other intelligence sources; consequently, it is difficult to attribute the success of particular counterterrorism operations exclusively to the PSP. In a May 2006 briefing to the Senate Select Committee on Intelligence (SSCI), the Deputy Director, [redacted] said that PSP reporting was rarely the sole basis for an intelligence success, but that it frequently played a supporting role. He went on to state that the program was an additional resource to enhance the CIA's understanding of terrorist networks and to help identify potential threats to the homeland. Other [redacted] officials we interviewed said that the PSP was one of many tools available to them, and that the tools were often used in combination.

[redacted]

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[redacted]

(U) Counterterrorism Successes Supported by the President's Surveillance Program

~~(S//NF)~~ Despite the fact that CIA officials we interviewed did not provide much specific information on PSP-derived counterterrorism successes, some key counterterrorism operations supported by the PSP were cited in briefings presented by CIA officials. In March 2004, the CIA provided a series of three briefings at the White House to senior Administration officials and Congressional leaders. These briefings included operational details concerning the PSP as well as examples of program successes. In May 2006, the Deputy Director, [redacted] briefed SSCI members and staff on the usefulness to [redacted] of the PSP.

[redacted]

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[redacted]

~~(S//NF)~~ Several Factors Hindered CIA Utilization of the President's Surveillance Program

~~(S//NF)~~ Several factors hindered the CIA in making full use of the capabilities of the PSP. Many CIA officials told us that too few CIA personnel at the working level were read into the PSP. At the program's inception, a disproportionate number of the

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CIA personnel who were read into the PSP were senior CIA managers, [redacted]

~~(S//NF)~~ [redacted] officials also told us that working-level CIA analysts and targeting officers who were read into the PSP had too many competing priorities, and too many other information sources and analytic tools available to them, to fully utilize PSP. [redacted] officials also told us that much of the PSP reporting was vague or without context, which led analysts and targeting officers to rely more heavily on other information sources and analytic tools, which were more easily accessed and timely than the PSP.

~~(S//NF)~~ CIA officers also told us that the PSP would have been more fully utilized if analysts and targeting officers had obtained a better understanding of the program's capabilities. There was no formal training on the use of the PSP beyond the initial read in to the program. Many CIA officers we interviewed said that the instruction provided in the read-in briefing was not sufficient and that they were surprised and frustrated by the lack of additional guidance. Some officers told us that there was insufficient legal guidance on the use of PSP-derived information. [redacted]

~~(S//NF)~~ The factors that hindered the CIA in making full use of the PSP might have been mitigated if the CIA had designated an individual at an appropriate level of managerial authority, who possessed knowledge of both the PSP and CIA counterterrorism activities, to be responsible and accountable for overseeing CIA participation in the program. [redacted]

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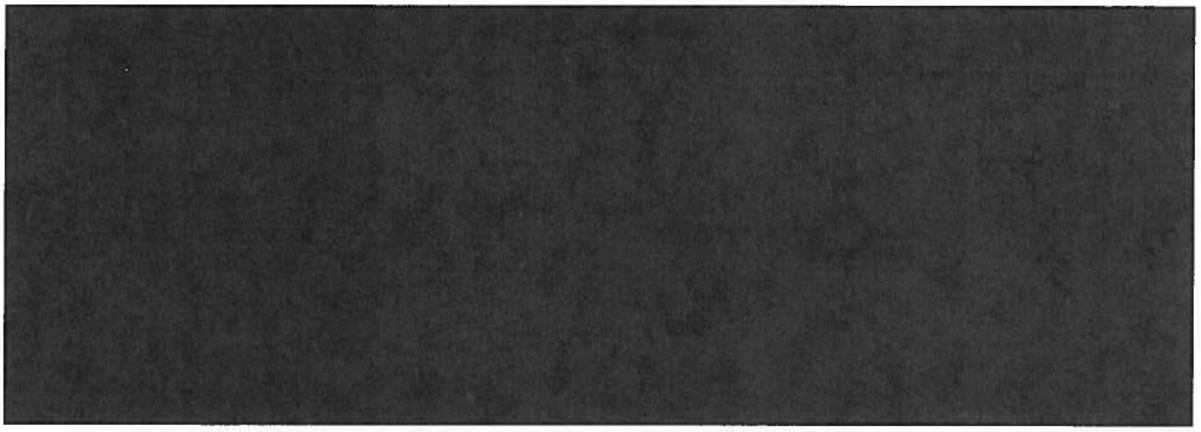
~~TOP SECRET//STLW//HCS/COMINT//ORCON/NOFORN~~



(U) CIA Had Limited Access to Legal Reviews of the President's Surveillance Program

~~(TS//STLW//SI//OC/NF)~~ There is no indication that personnel from the CIA Office of General Counsel or other CIA components were involved in preparing the legal memorandums supporting the PSP that were produced by the Department of Justice, Office of Legal Counsel (OLC). At the time of the initial authorization of the PSP (4 October 2001), Robert M. McNamara, Jr. was the CIA General Counsel. There is no record that McNamara was ever read into PSP, and he retired from the CIA on 15 November 2001. Acting General Counsel John Rizzo was read into the program on 21 December 2001, but, at that time, he was not provided access to the OLC legal opinions. Rizzo told us that by working through Addington, with whom Rizzo was acquainted, he eventually was allowed to read the OLC legal memorandums at Addington's office in July 2004.

~~(TS//STLW//SI//OC/NF)~~ Scott W. Muller became the CIA General Counsel on 24 October 2002. Although NSA records do not indicate that Muller was read into PSP, during our interview with Muller, he acknowledged having been read into the program and having read the OLC legal memorandums supporting the program. After Jack L. Goldsmith became the Assistant Attorney General for the Office of Legal Counsel in October 2003, the OLC undertook a reassessment of the legal rationale for the PSP. Muller recounted discussions with Deputy Attorney General James B. Comey around March 2004 concerning the legal basis for certain aspects of the program. Muller told us that he shared Comey's concern [redacted] Several of the senior CIA managers we interviewed said that, although they were concerned that the PSP operate within legal authorities, they believed that it was important to continue CIA

participation in the program because CIA analysts and targeters had told them that the program was a useful counterterrorism tool.

~~(S//NF)~~ CIA Officials Sought to Delay Exposure of the President's Surveillance Program by the *New York Times*

~~(S//NF)~~ In October 2004, James Risen, a reporter for *The New York Times*, contacted the CIA Office of Public Affairs seeking an interview with DCI Goss concerning an article the newspaper was planning on the PSP. Senior officials from the CIA, NSA, Office of the Vice President, and the Office of the Secretary of Defense met to discuss a response. On 20 October 2004, DDCI McLaughlin and DCI Chief of Staff Moseman met with the Washington, DC editor of *The New York Times*, Philip Taubman, and Risen. According to a memorandum for the record prepared by Moseman, McLaughlin did not provide any details regarding the PSP or comment on the legal basis for the program, but he stressed that publication of the article would expose, and potentially compromise, effective counterterrorism tools.

~~(S//NF)~~ [redacted] Ultimately, based on assurances from Hayden that he would advise them of inquiries from other news organizations concerning the PSP, Taubman and Risen agreed to hold the article and publish it only when it became apparent that other news organizations were preparing their own stories on the PSP. On 16 December 2005, *The New York Times* published its first article on the PSP: "Bush Lets U.S. Spy on Callers Without Courts." On 17 December 2005, President Bush publicly confirmed in a radio address the existence of the disclosed portion of the PSP.

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Exhibit A

(U) Methodology

(U//~~FOUO~~) During our review, we conducted 50 interviews of current and former CIA personnel who had been involved with the President's Surveillance Program (PSP). Among the senior CIA officials we interviewed were former Director of the National Security Agency (NSA) and former Director of the CIA (DCIA) Michael V. Hayden, former Director of Central Intelligence (DCI) and former DCIA Porter J. Goss, and former Acting DCI John E. McLaughlin. We contacted former DCI George J. Tenet for an interview. Tenet suggested that we first interview his former Chief of Staff, John H. Moseman, and then contact him if we still had a need to interview him. Following our interview with Moseman, we contacted Tenet's office several times to request an interview, but he did not return our telephone calls.

[redacted]

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[redacted]

(U//~~FOUO~~) Management comments were received from Michael V. Hayden; Scott W. Muller; John H. Moseman; the Director, [redacted] and the Chief [redacted] Their comments were considered in preparation of the final report.

~~TOP SECRET//STLW//HCS/COMINT//ORCON/NOFORN~~

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Exhibit B

(U) Threat Assessment Memorandum Concluding Paragraph

[Excerpt from the *Global War Against Terrorism* memorandum dated 10 January 2005.]

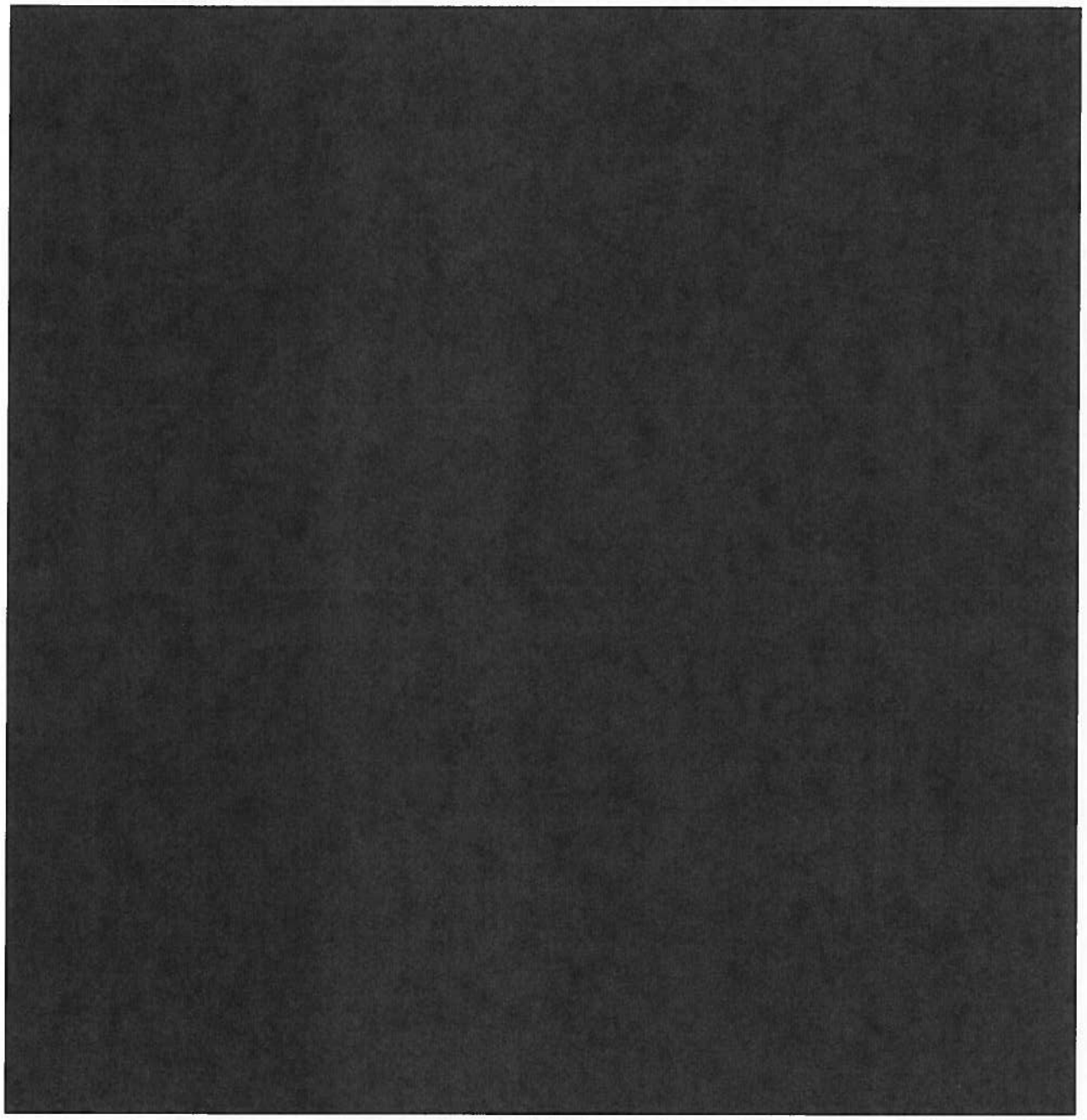

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Exhibit C

(U) Example of a Link Diagram From August 2002

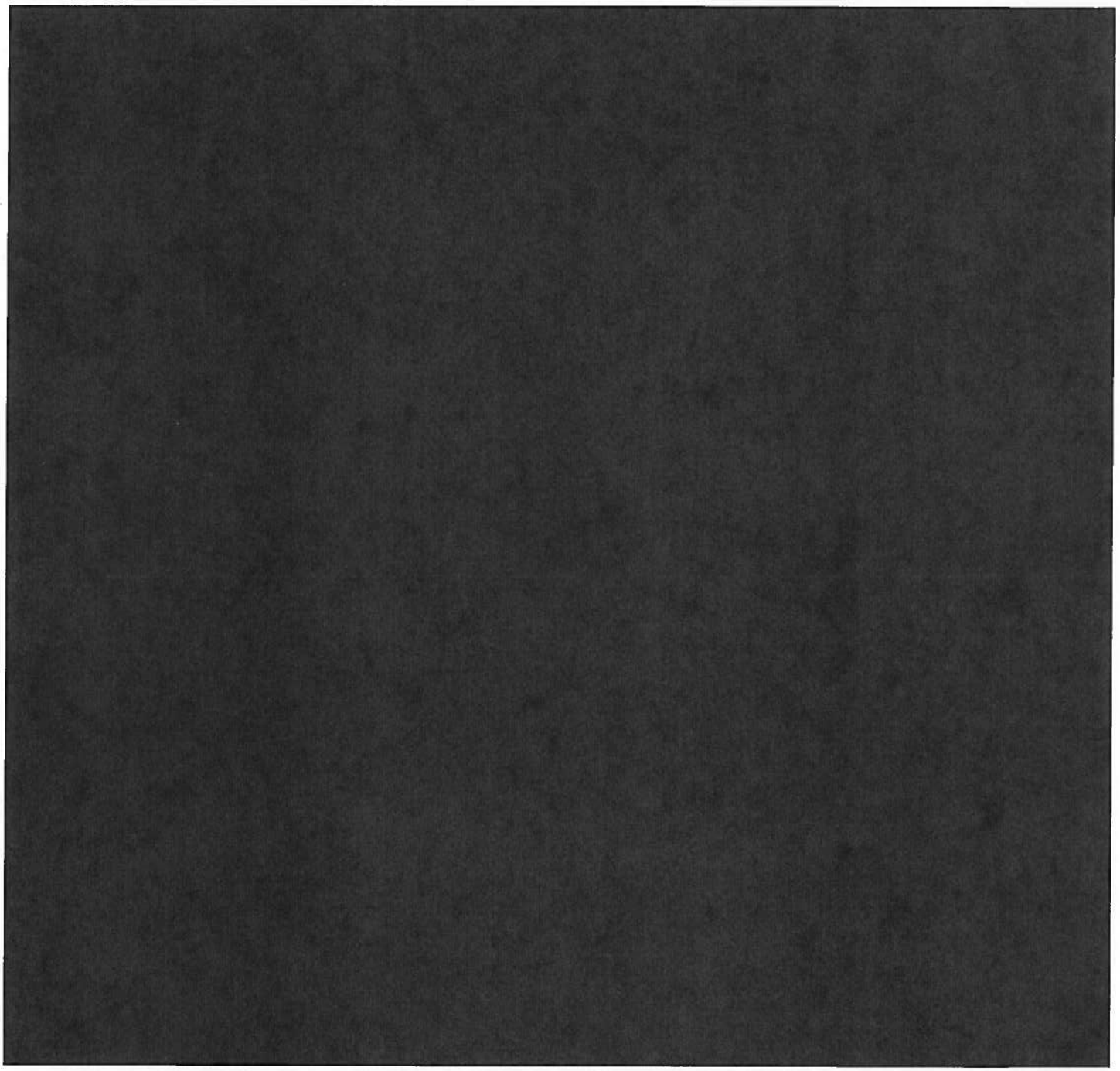

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Exhibit D

(U) Review Team

(U//~~FOUO~~) This report was prepared by the Operations Division, Audit Staff, Office of Inspector General.

[redacted] Division Chief
[redacted] Project Manager
[redacted] Auditor
[redacted] Auditor
[redacted] Auditor

~~This Exhibit is UNCLASSIFIED//FOUO~~

~~TOP SECRET//STLW//HCS/COMINT//ORCON/NOFORN~~

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NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICE

~~Further dissemination of this report outside the addressee organizations is PROHIBITED without the approval of the Inspector General.~~

INSPECTOR GENERAL REPORT

(U) Review of the President's Surveillance Program

ST-09-0002
29 June 2009

~~Derived From: STLW Classification Guide Dated: 12 January 2009 Declassify On: MR~~

(U) OFFICE OF THE INSPECTOR GENERAL

(U) Chartered by the Director, NSA/Chief, CSS, the Office of the Inspector General (OIG) conducts inspections, audits, and investigations. Its mission is to ensure the integrity, efficiency, and effectiveness of NSA/CSS operations; to provide intelligence oversight; to protect against fraud, waste, and mismanagement of resources; and to ensure that NSA/CSS activities are conducted in compliance with the Constitution, laws, executive orders, regulations, and directives. The OIG also serves as ombudsman, assisting all NSA/CSS employees and affiliates, civilian and military.

(U) INSPECTIONS

(U) The inspection function conducts management and program evaluations in the form of organizational and functional reviews, undertaken either as part of the OIG's annual plan or by management request. The inspection team's findings are designed to yield accurate and up-to-date information on the effectiveness and efficiency of entities and programs, along with an assessment of compliance with laws and regulations; the recommendations for corrections or improvements are subject to followup. The inspection office also partners with the Inspectors General of the Service Cryptologic Elements to conduct joint inspections of the consolidated cryptologic facilities.

(U) AUDITS

(U) The internal audit function is designed to provide an independent assessment of programs and organizations. Performance audits evaluate the economy and efficiency of an entity or program, as well as whether program objectives are being met and operations are in compliance with regulations. Financial audits determine the accuracy of an entity's financial statements. All audits are conducted in accordance with standards established by the Comptroller General of the United States.

(U) INVESTIGATIONS AND SPECIAL INQUIRIES

(U) THE OIG administers a system for receiving and acting upon requests for assistance or complaints (including anonymous tips) about fraud, waste and mismanagement. Investigations and Special Inquiries may be undertaken as a result or irregularities that surface during an inspection or audit; or at the initiative of the Inspector General.

OFFICE OF THE INSPECTOR GENERAL
NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE

29 June 2009
IG-11051-09

TO: DISTRIBUTION

SUBJECT: (U) Review of President's Surveillance Program (ST-09-0002) — INFORMATION MEMORANDUM

1. (U//~~FOUO~~) This report summarizes our review of the President's Surveillance Program, as mandated by the Foreign Intelligence Surveillance Act Amendments Act of 2008.

2. (U//~~FOUO~~) For additional information, please contact my office on 301-688-6666. We appreciate the courtesy and cooperation extended to our staff throughout the review.

George Ellard

GEORGE ELLARD
Inspector General

DISTRIBUTION:

SID
OGC

(U) EXECUTIVE SUMMARY

(U) OVERVIEW

~~(TS//SI//NF)~~ For over a decade before the terrorist attacks on 11 September 2001, NSA used its SIGINT authorities to provide information in response to Intelligence Community requirements on terrorism targets. In late September 2001, when the Vice President asked the Director of Central Intelligence what more NSA could do with additional authority, NSA's Director identified impediments to enhancing SIGINT collection under existing authorities. He said that in most instances NSA could not collect communications on a wire in the United States without a court order. As a result, NSA's ability to quickly collect and report on a large volume of communications from foreign countries to the United States was impeded by the time-consuming court order approval process. Attempting to obtain court orders for [redacted] foreign telephone numbers and Internet addresses was impractical for collecting terrorist communications with speed and agility.

~~(TS//STLW//SI//OC/NF)~~ Counsel to the Vice President drafted the 4 October 2001 Authorization that established the President's Surveillance Program (PSP), under which NSA could routinely collect on a wire, for counterterrorism purposes, foreign communications originating or terminating in the United States. Under the PSP, NSA did not target communications with both ends in the United States, although some of these communications were incidentally collected.

~~(TS//STLW//SI//OC/NF)~~ The PSP gave NSA a capability to exploit a key vulnerability in terrorist communications. [redacted] According to senior NSA leaders, the value of the program was that this SIGINT coverage provided confidence that someone was looking at the seam between foreign and domestic intelligence domains to detect and prevent attacks in the United States.

~~(TS//STLW//SI//OC/NF)~~ NSA's Director said that SIGINT reporting on an extremist linked [redacted] "probably saved more lives" than any other PSP information and is, therefore, the most important SIGINT success of the PSP. NSA analysis [redacted]

~~(TS//STLW//SI//OC/NF)~~ Knowledge of the Program was strictly limited at the express direction of the White House, and NSA's Director needed White House approval to inform members of Congress about Program activity. Between 25 October 2001 and 17 January 2007, General Michael V. Hayden and Lieutenant General Keith B. Alexander conducted [redacted] PSP briefings for members of Congress and staff.

~~(TS//STLW//SI//OC/NF)~~ NSA activity conducted under the PSP was authorized by Foreign Intelligence Surveillance Court (FISC) orders by 17 January 2007, when NSA stopped operating under PSP authority. The NSA Office of the Inspector General (OIG) detected no intentional misuse of Program authority.

(U) HIGHLIGHTS

- **(U) PSP establishment, implementation, and product**

~~(TS//STLW//SI//OC/NF)~~ NSA began PSP operations on 6 October 2001. Although the Director of NSA was "comfortable" exercising the new authority and believed that it was lawful, he realized that it would be controversial. Under the PSP, NSA issued over [redacted] reports. This included [redacted] reports based on collected metadata, which was defined in the Authorization as [redacted] It also included [redacted] reports [redacted]

~~(TS//STLW//SI//OC/NF)~~ NSA's PSP products, all of which were sent to CIA and FBI, were intended for intelligence purposes to develop investigative leads and were not to be used for judicial purposes. [redacted]

[redacted] and NSA had no mechanism to track and assess the effectiveness of PSP reporting.

- **(U) Access to legal reviews and program information**

~~(C//NF)~~ NSA's General Counsel and Inspector General were not permitted to read the 2001 DoJ, Office of Legal Counsel opinion on the PSP, but they were given access to draft 2004 Office of Legal Counsel opinions. Knowledge of the PSP was strictly controlled by the White House. Between 4 October 2001 and 17 January 2007, [redacted] people were cleared for access to PSP information.

- [redacted]

- **(U) NSA-FISC interaction and transition to court orders**

~~(TS//STLW//SI//OC/NF)~~ NSA's PSP-related interaction with the FISC was primarily briefings to presiding judges, beginning in January 2002. Interaction increased when NSA and the DoJ began to transition PSP activities to FISC orders. After parts of the program had been publicly revealed in December 2005, all members of the FISC were briefed. NSA's PSP authorized collection of bulk Internet metadata, telephony business records, and the content of communications transitioned to FISC orders on 14 July 2004, 24 May 2006, and 10 January 2007, respectively.

- **(U) Program oversight at NSA**

~~(C//NF)~~ NSA's Office of General Counsel and Signals Intelligence Directorate provided oversight of NSA PSP activities from October 2001 to January 2007. NSA OIG oversight began after the IG was cleared for PSP information in August 2002.

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[redacted]

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[redacted]

~~(S//NF)~~ For years before the 11 September 2001 terrorist attacks in the United States, NSA had been using its authorities to focus the United States Signals Intelligence (SIGINT) System on foreign intelligence targets, including terrorism, in response to Intelligence Community requirements. After the attacks, NSA adjusted SIGINT collection, in accordance with its authorities, to counter the terrorist threat within the United States. In late September, the Vice President asked the Director of Central Intelligence (DCI) if NSA could do more to prevent another attack. NSA's Director responded by describing impediments to SIGINT collection of terrorist-related communications to the Vice President. Counsel to the Vice President used the information about impediments to draft the Presidential Authorization that established the PSP.

(U) SIGINT Efforts against Terrorists before 11 September 2001

~~(C//NF)~~ For over a decade before terrorists attacked the United States in September 2001, NSA was applying SIGINT assets against terrorist targets in response to Intelligence Community requirements. The Signals Intelligence Directorate (SID) Counterterrorism (CT) Product Line led these efforts in accordance with SIGINT authorities, which defined what NSA could and could not do against SIGINT targets.

(U) Authorized SIGINT activity in September 2001

(U) NSA was authorized by Executive Order (E.O.) 12333, *United States Intelligence Activities*, 4 December 1981, as amended, to collect, process, and disseminate SIGINT information for foreign intelligence and counterintelligence purposes in accordance with DCI guidance and to support the conduct of military operations under the guidance of the Secretary of Defense. NSA and other Intelligence Community agencies were required by E.O. 12333 to conduct intelligence activities in accordance with U.S. law and other E.O. 12333 provisions.

(U) Both DoD regulation and NSA/Central Security Service (CSS) policy implemented NSA's authorities under E.O. 12333 and specified procedures governing activities that affect U. S. persons (DoD Regulation 5240.1-R, December

1982, *Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons* and NSA/CSS Policy 1-23, 11 March 2004, *Procedures Governing NSA/CSS Activities that Affect U. S. Persons).*

~~(S//SI//NF)~~ The policy of the U.S. SIGINT System is to collect, retain, and disseminate only foreign communications, which, in September 2001, were defined in NSA's legal compliance procedures (described below) as communications having at least one communicant outside the United States or entirely among foreign powers or between a foreign power and officers or employees of a foreign power. All other communications were considered domestic communications. NSA could not collect communications from a wire in the United States without a court order unless they originated and terminated outside the United States.

~~(S//SI//NF)~~ In 2001, NSA's authority to collect foreign communications included the Director of NSA's authority to approve targeting communications with one communicant in the United States, if technical devices (such as [redacted]) could be employed to limit acquisition of communications to those in which the target is a non-U.S. person located outside the United States, [redacted] or [redacted]

~~(S//SI//NF)~~ NSA's Director could exercise this authority, except when the collection was otherwise regulated, for example, under FISA for communications collected from a wire in the United States.

(U) NSA safeguards to protect U.S. persons' Constitutional rights

(U) The Fourth Amendment to the U.S. Constitution protects all U.S. persons anywhere in the world and all persons within the United States from unreasonable searches and seizures by any person or agency acting on behalf of the U.S. Government.[1] United States Signals Intelligence Directive (USSID) SP0018, *Legal Compliance and Minimization*

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[1] ~~(C//NF)~~ USSID SP0018 defines a U.S. person as a citizen of the United States, an alien lawfully admitted for permanent residence in the United States, unincorporated groups or associations a substantial number of the members of which constitute either of the first two groups, or corporations incorporated in the United States, including U.S. flag non-governmental aircraft or vessels, but not including those entities openly acknowledged by a foreign government to be directed and controlled by them.

Procedures, 27 July 1993, prescribes policies and minimization procedures and assigns responsibilities to ensure that United States SIGINT System missions and activities are conducted in a manner that safeguards U.S. persons' Constitutional rights. (See Appendix G.)

~~(S//SI//NF)~~ During the course of normal operations, NSA personnel sometimes inadvertently encounter information to, from, or about U.S. persons. When that happens, they must apply standard minimization procedures approved by the Attorney General in accordance with E.O. 12333 and defined in *USSID SP0018*. These procedures implement the constitutional principle of reasonableness by giving different categories of individuals and entities different levels of protection. They ensure that U.S. person information is minimized during collection, processing, dissemination, and retention of SIGINT by, for example, strictly controlling collection with a high risk of encountering U.S. person information and focusing all reporting solely on the activities of foreign entities and persons and their agents.

(U) NSA Director Used Existing Authorities to Enhance SIGINT Collection after Terrorist Attacks

[redacted]

[redacted]

[redacted]

[redacted]

~~(S//NF)~~ In Oval Office Meeting, DCI Explained NSA Director's Decision to Expand Operations under Existing SIGINT Authorities

(U//~~FOUO~~) General Hayden recalled that in late September 2001, he told Mr. Tenet about NSA actions under E.O. 12333 to counter the terrorist threat. Mr. Tenet shared that information with the White House in an Oval Office meeting.

(U//~~FOUO~~) We did not interview Mr. Tenet or White House personnel during this review. We asked the White House to provide documentation of meetings at which General Hayden or NSA employees discussed the PSP or the Terrorist Surveillance Program with the President, Vice President, or White House personnel, but we did not receive a response before this report was published. Therefore, information about the sequence of events leading up to the establishment of the PSP comes from interviews of NSA personnel.

(U) Vice President Asked What Other Authorities NSA Needed

[redacted]

[redacted]

~~(S//NF)~~ NSA Options to Improve SIGINT Collection Could Not Fill Intelligence Gaps on Terrorist Targets

(U) FISA Amendments Considered

[redacted]

~~(S//NF)~~ General Hayden said that, in his professional judgment, NSA could not get the needed collection using the FISA. The process for obtaining court orders was slow, and it involved extensive coordination and separate legal and policy reviews by several agencies. Although an emergency authorization provision permitted 72 hours of surveillance without a court order, it did not allow the government to undertake surveillance immediately. Rather, the Attorney General had to ensure that emergency surveillance would

satisfy the standards articulated in the FISA and be acceptable to the FISC.

[redacted]

~~(S//SI//NF)~~ Under its authorities, NSA had no other options for the timely collection of communications of suspected terrorists when one end of those communications was in the United States and the communications could only be collected from a wire or cable in the United States.

(U//~~FOUO~~) NSA Director Described to the Vice President the Impediments to Improved SIGINT Collection against Terrorist Targets

[redacted]

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[4] ~~(TS//SI//NF)~~ According to NSA OGC, DoJ has since agreed with NSA that simply processing communications metadata in this manner does not constitute electronic surveillance under the FISA.

(U//~~FOUO~~) After two additional meetings, the Vice President asked General Hayden to work with his Counsel, David Addington. Because early discussions about expanding NSA authority were not documented, we do not have records of attendees or specific topics discussed at General Hayden's meetings with White House representatives.

III. (U) THE PRESIDENTIAL AUTHORIZATIONS

[redacted]

~~(TS//STLW//SI//OC/NF)~~ Between 4 October 2001 and 8 December 2006, President George W. Bush signed 43 Authorizations, two modifications, and one document described as [redacted] The authorizations were based on the President's determination that after the 11 September 2001 terrorist attacks in the United States, an extraordinary emergency existed for national defense purposes. The Authorization documents contained the terms under which NSA executed special Presidential authority and were titled *Presidential Authorization for Specified Electronic Surveillance Activities during a Limited Period to Detect and Prevent Acts of Terrorism within the United States.* They were addressed to the Secretary of Defense.

(U) SIGINT Activity Permitted under the PSP

[redacted]

[redacted]

[redacted]

~~(TS//STLW//SI//OC/NF)~~ The authorizations changed over time, first eliminating the possibility that the Authority could be interpreted to permit collection of communications with both ends in the United States and adding an additional qualification that metadata could be collected for communications related to international terrorism or activities in preparation for international terrorism.[7] [redacted]

~~(TS//STLW//SI//OC/NF)~~ Starting in March 2004, the authorizations underwent several adjustments related to DoJ's Office of Legal Counsel's review of the Authority. [redacted] When these two clarifications were added to the 11 March 2004 and subsequent authorizations, an accompanying statement added that these clarifications had been previously understood and implemented by NSA and that they applied to past and future activities. Al-Qa'ida (also spelled al-Qaeda) was specified as a target for content collection [redacted] and NSA's authority to acquire [redacted] Finally, as a result of a subsequent change, NSA's authority to collect [redacted] but only for [redacted] with [redacted] thus [redacted]

~~(TS//STLW//SI//OC/NF)~~ The definition of "terrorist groups" within the authorities was also refined, and, for a limited

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[6] ~~(TS//SI/NF)~~ Metadata, as defined by the Authorization, is [redacted]

[7] (U) See Appendix B for information about the types of collection permitted.

period in 2004, NSA analysts were permitted to query [redacted]

~~(TS//SI//OC/NF)~~ According to General Hayden, the Authorization, for the most part, did not change the communications that NSA could collect, but did change the location from which the Agency could collect them by permitting collection [redacted] in the United States. Without that authorization, [redacted]

[redacted]

(U) NSA Discussions about the Lawfulness of the Authorization

~~(TS//SI//NF)~~ NSA leaders believed that they could lawfully carry out the President's authorizations. However, they also recognized that the Program would be controversial and politically sensitive. This section describes how key NSA leaders—the Director, the NSA General Counsel, Deputy General Counsel, and Associate General Counsel for

Operations—concluded that the Program was legally defensible.

(U) Director of NSA

~~(TS//SI//NF)~~ Generals Hayden and Alexander stated that they believed the Authorization was lawful.

(U) General Hayden

~~(TS//SI//NF)~~ When asked how he had decided to execute an Authorization that some would consider legally and politically controversial, General Hayden said that NSA's highest ranking lawyers had advised him, collectively and individually, that the Program was lawful under the President's Article II powers. He said that three factors influenced his decision to implement the Authority. First, NSA would do exactly what the Authorization stated and "not one electron or photon more." Second, the Program was simply an expansion of existing NSA collection activities. Third, the periodic renewal of the Authorization would ensure that the threat continued to justify the Program.

~~(TS//SI//NF)~~ General Hayden said that as time passed, he determined that the Program was still needed. Specifically, he and NSA's Deputy Director reviewed the DCI threat memorandum for each reauthorization and judged that the threats continued to justify the Program.

~~(TS//SI//NF)~~ General Hayden said that no one at NSA expressed concerns to him or the NSA IG that the Authorization was not lawful. Most importantly, General Hayden said that no one outside NSA asserted that he should stop the Program. He occasionally heard concerns from members of Congress, but he sensed general support for the Program from those he briefed outside NSA. He emphasized that he did not just "flip through slides" during briefings. He wanted to ensure that attendees understood the Program; consequently, briefings lasted as long as the attendees wanted.

(U) General Alexander

~~(TS//STLW//SI//OC/NF)~~ When Lieutenant General Keith B. Alexander became NSA/CSS Director in mid-2005, some of the more controversial legal questions surrounding the Authorization had been settled. [redacted] the Office of Legal Counsel had

reviewed its initial opinion and determined that the remaining three types of collection were legally supportable.

(U) NSA Office of General Counsel

~~(TS//SI//NF)~~ After the Authorization was signed on 4 October 2001, NSA's highest ranking attorneys, the NSA General Counsel and Deputy General Counsel, as well as the Associate General Counsel for Operations, orally advised General Hayden that the Authorization was legal

(U) General Counsel

~~(TS//SI//NF)~~ After having received the Authorization on 4 October 2001, General Hayden asked NSA General Counsel Robert Deitz if it was lawful. Mr. Deitz said that General Hayden understood that the Attorney General had already certified its legality by signing the Authorization, but General Hayden wanted Mr. Deitz's view. Mr. Deitz said that on 5 October he told General Hayden that he believed the Authorization to be lawful. He added that he emphasized to General Hayden that if this issue were before the Supreme Court, it would likely rule, although not unanimously, that the Authorization was legal.

(U) Associate General Counsel for Operations

~~(TS//SI//NF)~~ On 5 October 2001, the General Counsel consulted the Associate General Counsel for Operations at his home by secure telephone. The Associate General Counsel for Operations was responsible for all legal matters related to NSA SIGINT activities. According to the General Counsel, he had not yet been authorized to tell the Associate General Counsel about the PSP, so he "talked around" it and did not divulge details. The Associate General Counsel was given enough information to assess the lawfulness of the concept described, but records show that he was not officially cleared for the PSP until 11 October 2001. On Tuesday, 9 October, he told Mr. Deitz that he believed the Authorization was lawful, and he began planning for its implementation.

(U) Deputy General Counsel

~~(TS//SI//NF)~~ The Deputy General Counsel was cleared for the PSP on 11 October 2001. He reviewed the Authorization with Mr. Deitz and the Associate General Counsel for Operations and also concluded that it was lawful.

(U) Discussions on Legality

~~(TS//SI//NF)~~ OGC attorneys said that their discussions about the Program's lawfulness took into account the severity of the 11 September attacks and the fear that foreign persons were in the United States planning attacks. The NSA attorneys concluded that the Authorization was lawful. Given the following factors, the General Counsel said the Authorization was constitutional and did not violate FISA.

[redacted]

- ~~(S//NF)~~ FISA was not a realistic means of addressing the terrorist threat inside the United States because the process lacked speed and agility.
- (U//~~FOUO~~) The Authorization was a temporary 30-day grant of authority.
- (U//~~FOUO~~) The statute allowed such an exception, or, to the extent that it did not, it was unconstitutional.

~~(TS//SI//NF)~~ The NSA attorneys determined that the President could issue the Authorization through his authority under Article II of the Constitution to perform warrantless electronic surveillance for foreign intelligence purposes outside and inside the United States. This conclusion, they said, was supported by the concurring opinion in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), and appellate cases.[8]

~~(TS//SI//NF)~~ The Congressional *Authorization of Use of Military Force* and the canon of constitutional avoidance, which requires a court to attempt to interpret issues so as to avoid constitutional questions, cemented OGC's belief that the President's interpretation of Article II authority had legal merit.

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[8](U) *United States v. Truong Dinh Hung*, 629 F.2d 908 (4th Cir. 1980); *United States v Buck*, 548 F.2d 871 (9th Cir. 1977); *Zweibon v. Mitchell*, 516 F.2d 594 (DC Cir. 1975); *United States v. Brown* 484 F.2d 418 (5th Cir. 1973), *cert. denied*, 415 U.S. 960 (1974); *United States v. Butenko*, 494 F.2d 593 (3rd Cir. 1974), *cert. denied*, 419 U.S. 881 (1974).

~~(TS//SI//NF)~~ The Associate General Counsel for Operations described his position:

> ~~(TS//SI//NF)~~ Does Congress have the authority to limit Presidential Article II authority in foreign intelligence collection? Given the threat, this was a perfect storm of events—3,000 people killed, airplanes and buildings destroyed by foreign terrorists, an attack in the United States by a foreign terrorist organization. No one knew where the terrorists were or if there were more terrorists, and NSA had a collection capability unable to function because with the FISA, you cannot get [redacted] FISA orders needed to cover what you needed covered at that time to look for the terrorists. You go to the President and tell him that there is a statute that prevents you from doing something from a collection standpoint that may protect the United States from a future attack and that while the country is in danger, I have to adhere with a statute and can't get the amount of warrants I need. Any president is going to say there has got to be a way to do this – a federal law can't let me stand here and watch the country go down the tubes. Does the President have to abide by a statute depriving him of his authority and watch the country go down the tubes? Given the case law of five different circuits with the Supreme Court denying certiorari in two cases, there was good basis for deciding this.

~~(TS//SI//NF)~~ NSA OGC attorneys said that they did not prepare a formal written legal opinion because it was not necessary. The Attorney General had already certified the legality of the Program, and General Hayden had not asked for a written legal opinion. The attorneys also said that they did not have time to prepare a written legal opinion given the pace of operations.

~~(TS//SI//NF)~~ After having concluded that the Authorization was lawful, NSA attorneys believed it was important to ensure that NSA's implementation of the Program complied with the Authorization, that processes were well documented, and that strict controls and due diligence were embedded into the execution of the Program. Recognizing that the legal basis of the Program might become controversial, they said that they wanted to ensure that NSA's execution of the Authority would withstand scrutiny.

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[redacted]

~~(TS//STLW//SI//OC/NF)~~ *NSA PSP operations began on 6 October 2001 and ended on 17 January 2007 and involved the collection, analysis, and reporting of two types of information: metadata and content. NSA assumed that the PSP was temporary and did not immediately formalize processes and procedures for operations, which were quickly set up to provide SIGINT on terrorist targets. As the Authorization continued to be renewed, NSA implemented special procedures to ensure that selectors used for metadata analysis and domestic selectors tasked for content collection were linked to al-Qa'ida, its associates, or international terrorism and that related decisions were documented. NSA did not target communications with both ends in the United States under PSP authority, although some of these communications were incidentally collected, and the OIG found no intentional violations of the Authorization. Over the life of the Program, NSA issued more than [redacted] products based on PSP data. According to senior NSA leaders, the value of the PSP was that SIGINT coverage provided confidence that someone was looking at the seam between the foreign and domestic intelligence domains to detect and prevent attacks in the United States.*

(U) NSA Begins PSP Operations

~~(S//NF)~~ On 4 October 2001, General Hayden received the initial Authorization and informed the SIGINT Director and other key personnel.

[redacted]

[redacted]

[9] ~~(S//NF)~~ A permanent cover term, STELLARWIND, was assigned to Program information on 31 October 2001

[10] ~~(S//NF)~~ [redacted]

[redacted]

~~(TS//SI//NF)~~ Authorization Renewed

~~(S//NF)~~ NSA leaders assumed the PSP would be temporary, so they did not establish processes and procedures for a long-term program, and they had plans to cease operations if the Authorization was not renewed. However, the President continued to renew the Authorization, and General Hayden stated that the DCI threat memoranda accompanying each renewal continued to justify the Program.