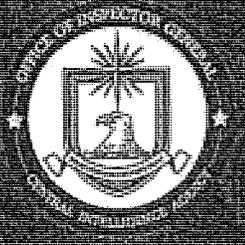
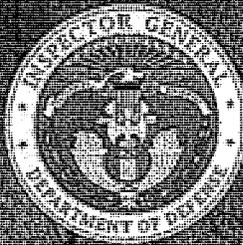


(U) ANNEX TO THE REPORT ON THE
PRESIDENT'S SURVEILLANCE PROGRAM

VOLUME II

10 JULY 2009



PREPARED BY THE
OFFICES OF INSPECTORS GENERAL
OF THE
DEPARTMENT OF DEFENSE
DEPARTMENT OF JUSTICE
CENTRAL INTELLIGENCE AGENCY
NATIONAL SECURITY AGENCY
OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

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REPORT No. 2009-0013-A

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Report No. 09-INT-09
Date: 26-2009
Review

Inspector General

United States
Department of Defense



DEPUTY INSPECTOR GENERAL FOR INTELLIGENCE

Review of the President's Surveillance Program (U)

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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).

- o Interaction with the Foreign Intelligence Surveillance Court and
- o 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 Clapper³; 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

~~(TS//STLW//SI//OC//NF)~~

² ~~(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] [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] [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's 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] [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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If you have any questions on this report, please feel free to contact Lisa
Larson, A. Esposito at (703) 616-8870.

Lisa Larson

APPENDIX (U)

REPORT DISTRIBUTION LIST (U)

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Inspector General, Department of Justice
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CONGRESSIONAL COMMITTEES

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Senate Select Committee on Intelligence
House Judiciary Committee
House Permanent Select Committee on Intelligence

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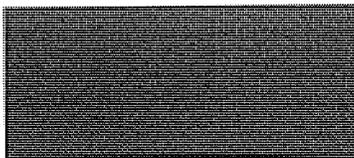
Office of Inspector General



(U) FINAL REPORT

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

Report No. 2008-0016-AS



30 June 2009

Issue Date

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~~(S//NF)~~ CIA Participation in the
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(U) EXECUTIVE SUMMARY

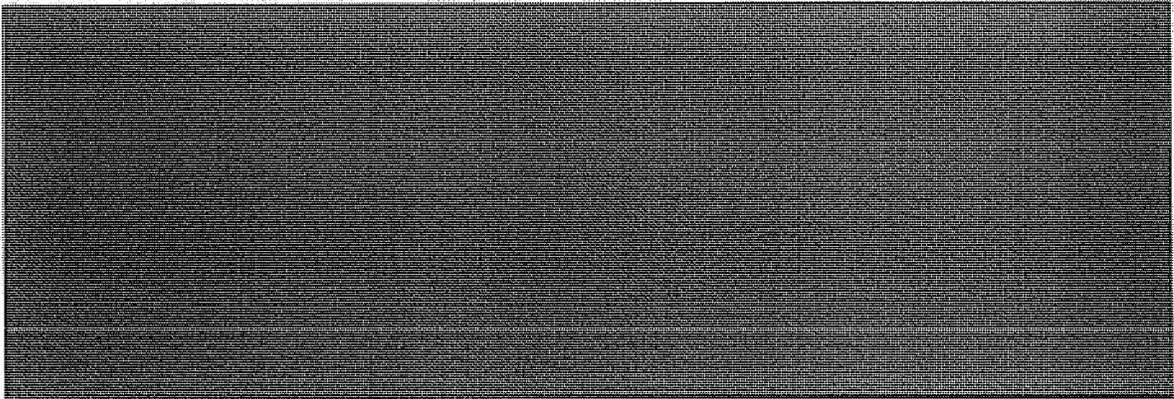
~~(S//NF)~~ Title III of the Foreign Intelligence Surveillance Act (FISA) Amendments Act of 2008 requires the Inspectors General (IGs) of the elements of the Intelligence Community (IC) that participated in the President's Surveillance Program (PSP) to conduct a comprehensive review of the program. The 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

 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.





~~(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.



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.

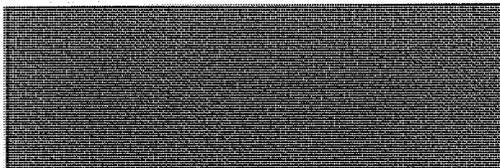


CIA officers, even those read into the program, would have been unaware of the full extent of PSP reporting. Consequently, there is no means to comprehensively track how PSP information was used. CIA officials were able to provide only limited information on how program reporting contributed to successful 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.



Assistant Inspector General for Audit

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(U) BACKGROUND

(U) Origin and Scope of the Review

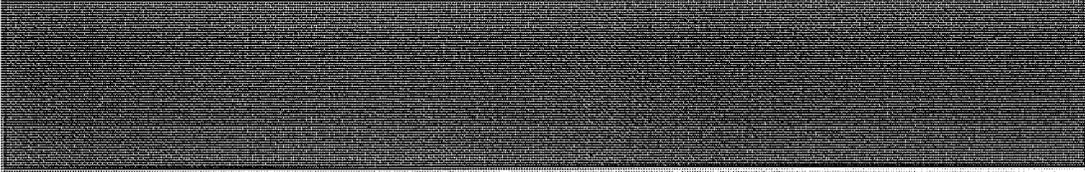
(U) Title III of the Foreign Intelligence Surveillance Act Amendments Act of 2008, which was signed into law on 10 July 2008, requires the IGs of the elements of the Intelligence Community that participated in the PSP to conduct a comprehensive review of the program.¹ The review required to be conducted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

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."



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

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.

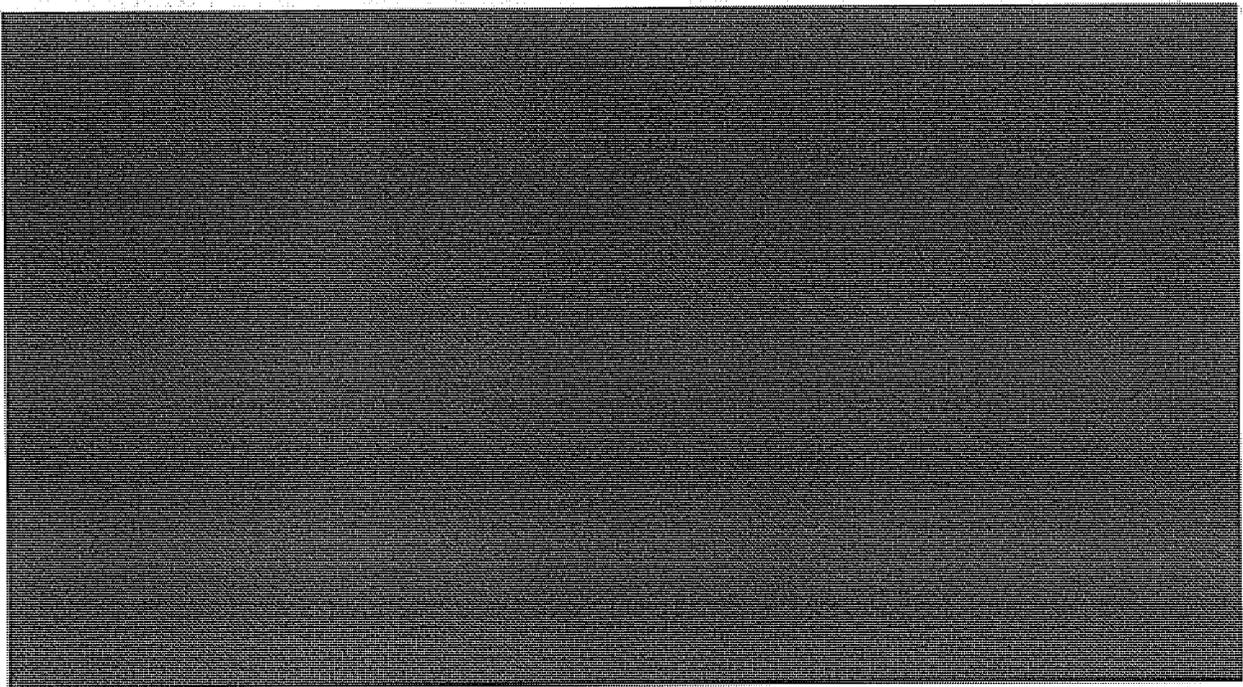
~~(TS//STLW//SI//OC/NF)~~ The PSP was intended to help prevent additional terrorist attacks against the US Homeland. Although the authorized collection activities changed over the life of the program, in general, the program authorized the NSA to acquire content and/or metadata concerning telephone and 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

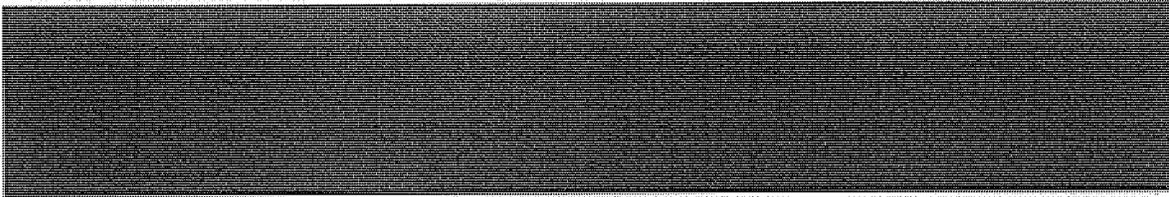
~~(TS//STLW//SI//OC/NF)~~ Under the PSP, the NSA collected three sets of data. The first set included the content of individually targeted telephone and e-mail communications. The second set consisted of telephone dialing information—the date, time, and duration of calls; the telephone number of the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



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.



~~(TS//STLW//SI//OC/NF)~~ [REDACTED]

[REDACTED] CIA personnel prepared the threat assessment memorandums that were used to support the initial Presidential authorization and subsequent reauthorizations of the PSP.



~~(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.

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

(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.

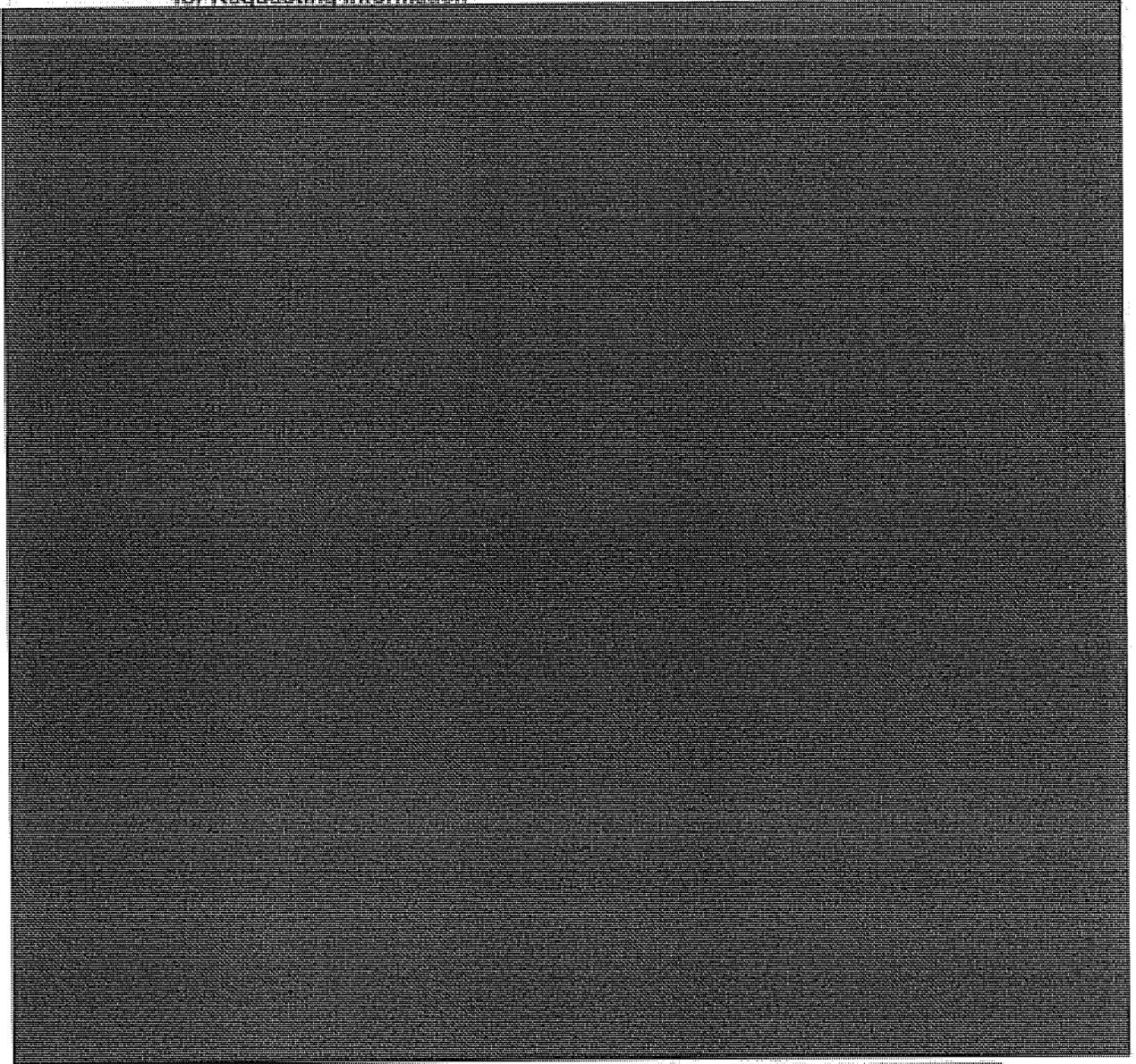
(TS//STLW//SI//OC/NF) Responsibility for drafting the threat assessment memorandums was transferred from [redacted] to the newly established Terrorist Threat Integration Center in May 2003. This responsibility was retained by TTIC's successor organization, NCTC. The DCI continued to sign the threat assessment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

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.

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

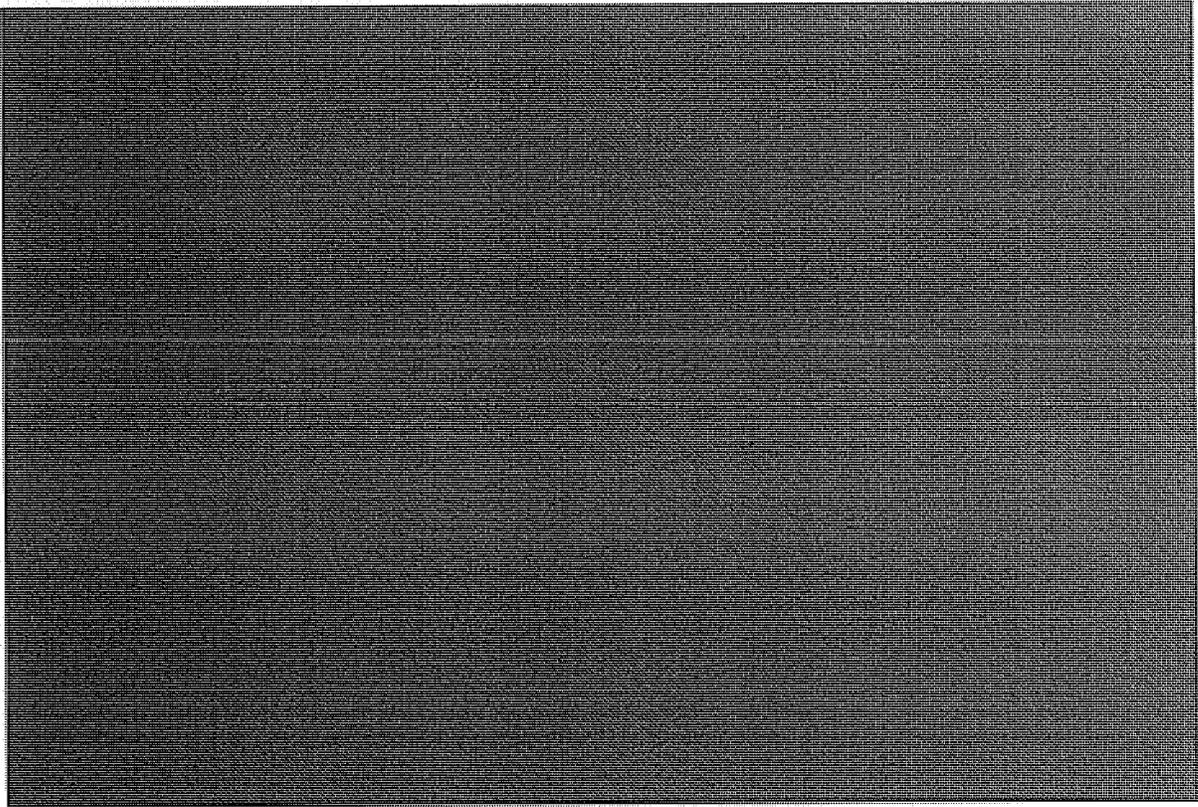
~~(U//FOUO) CIA Tasked and Received Reporting
From the President's Surveillance Program~~

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



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



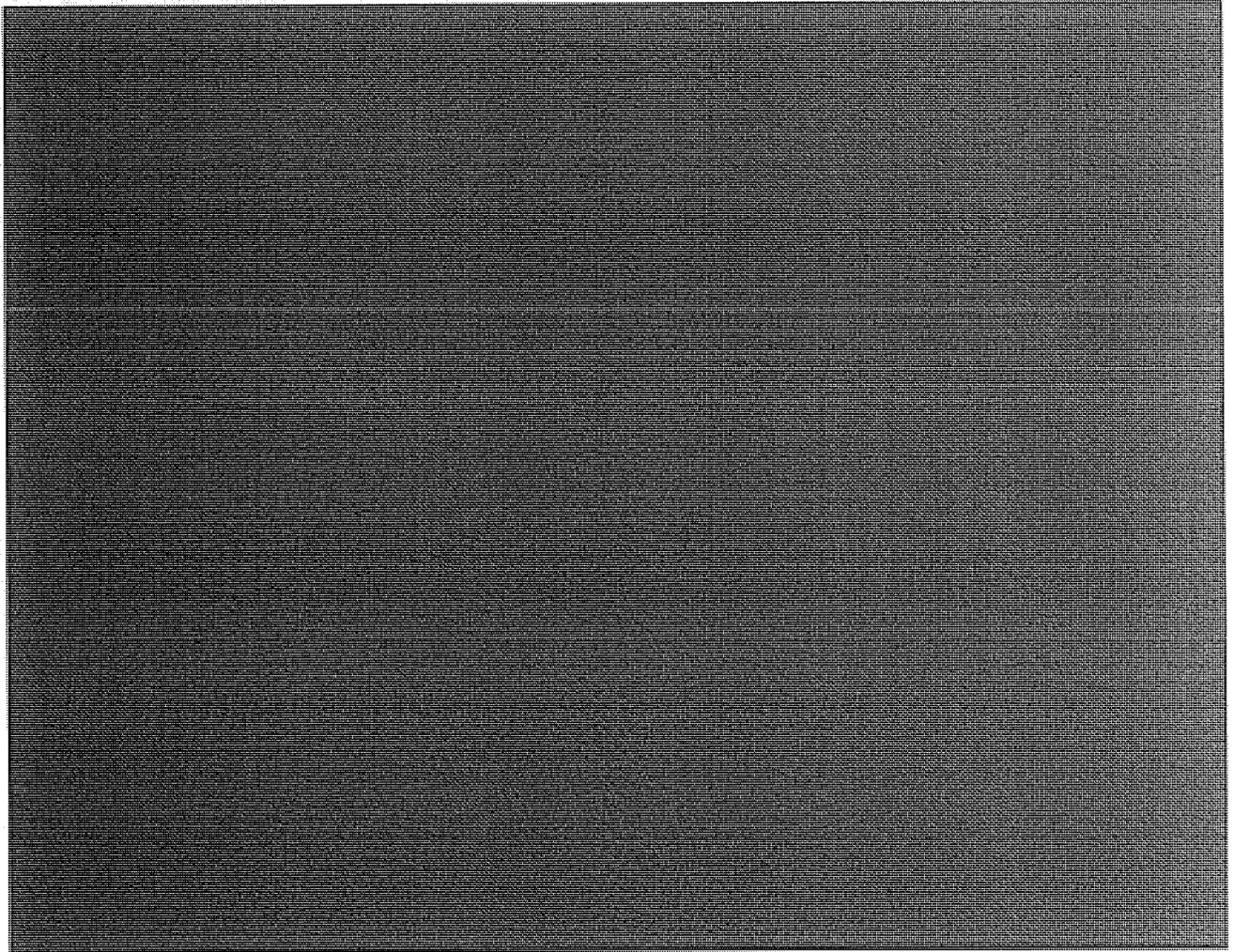
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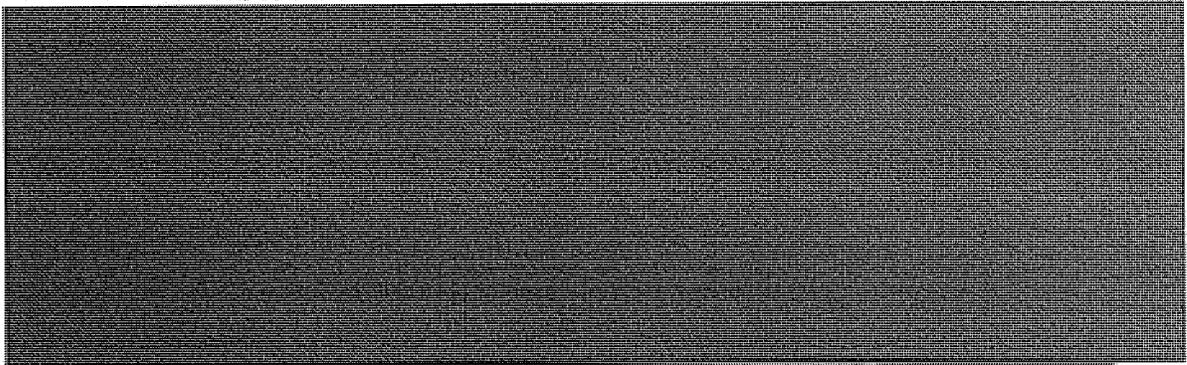
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**(U//FOUO) Primary CIA Users of the
President's Surveillance Program**

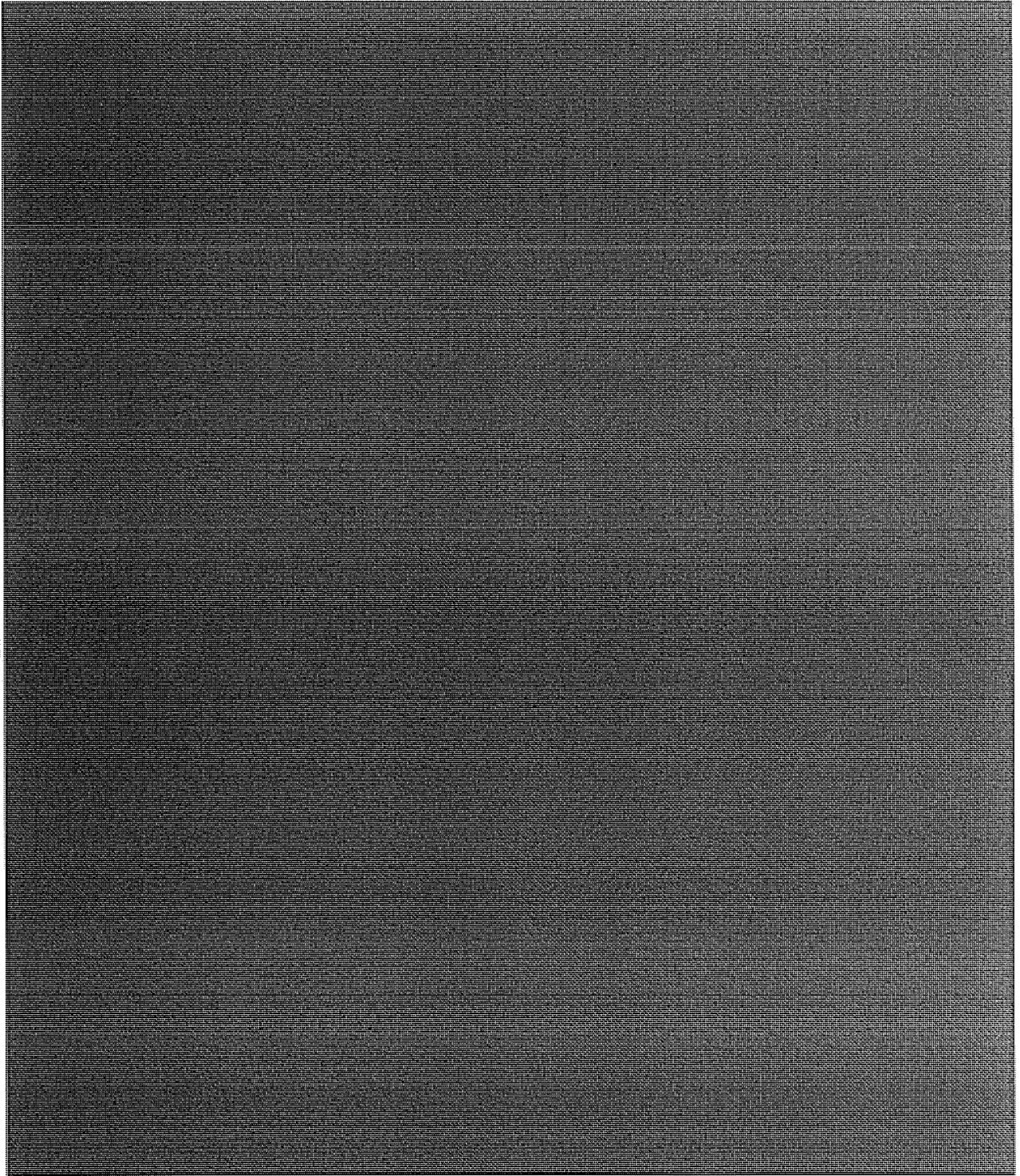


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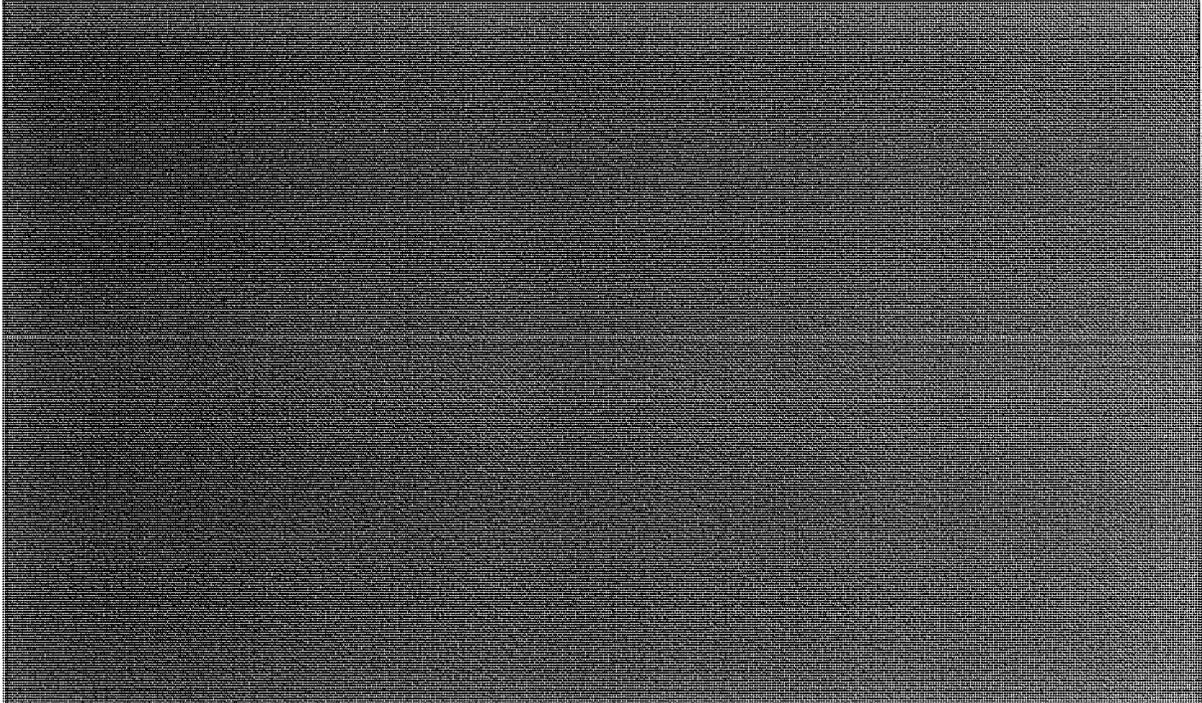
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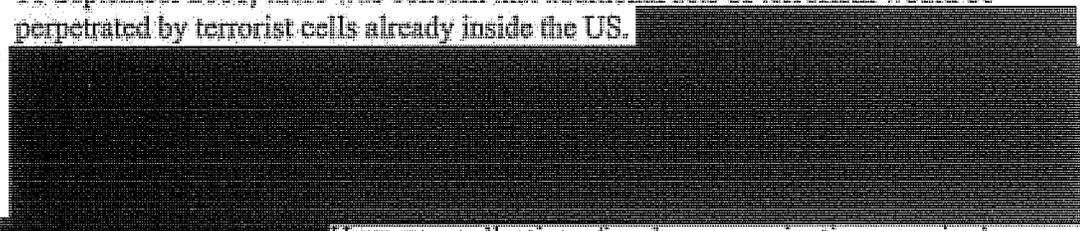
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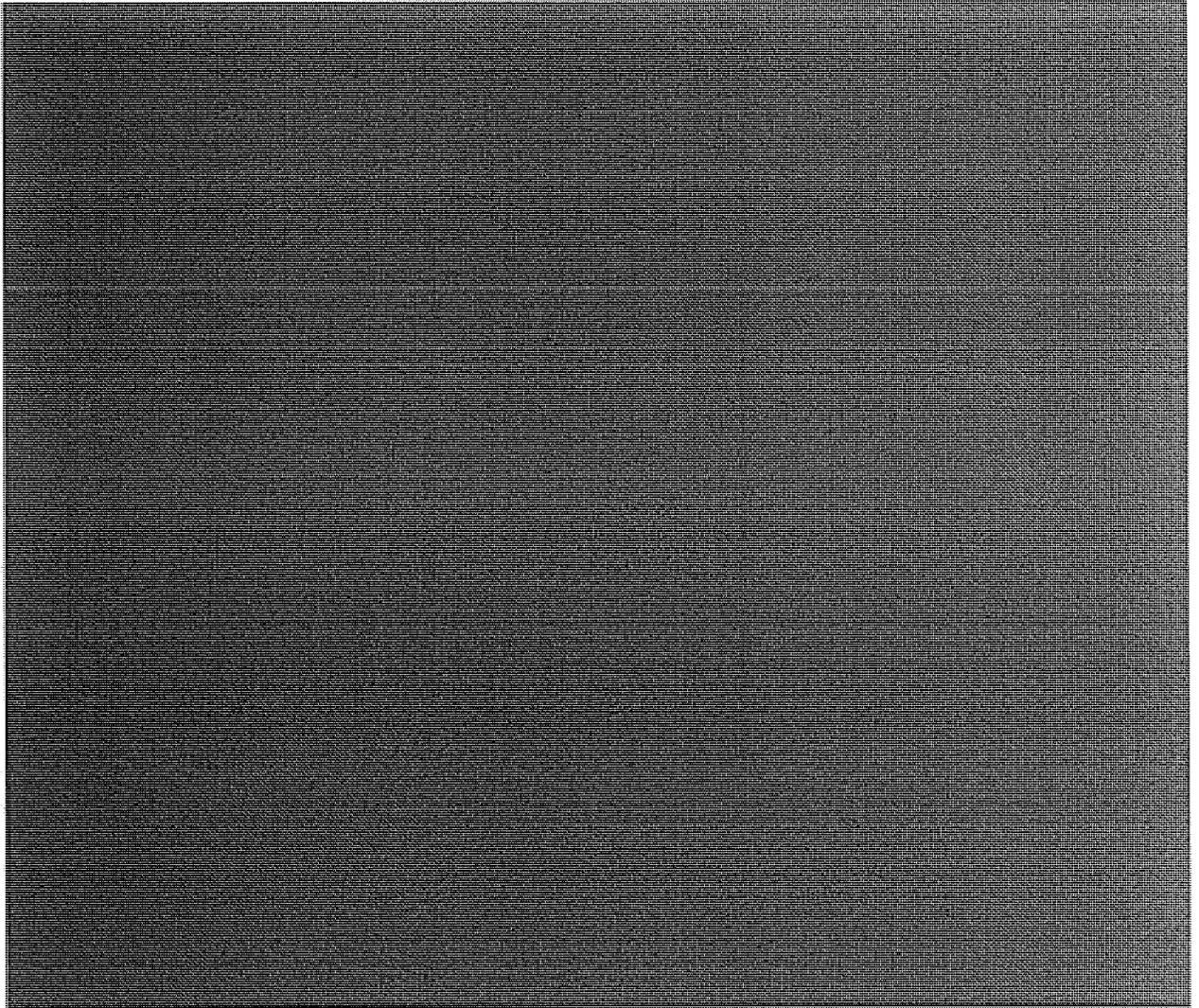


**(U//FOUO) Senior CIA Officials Believe
That the President's Surveillance Program
Filled an Intelligence Gap**

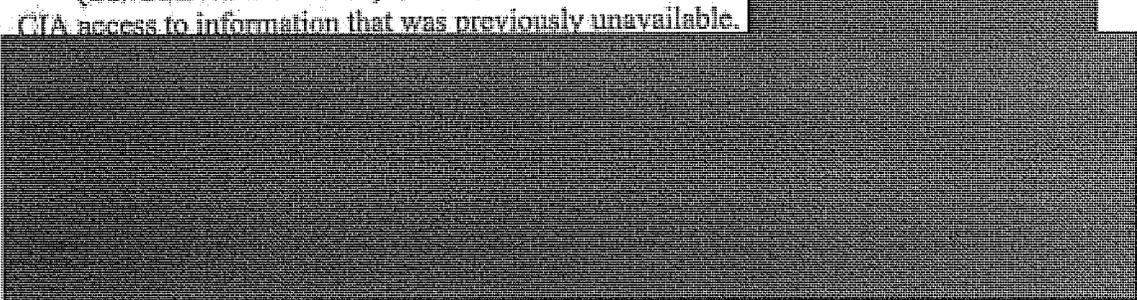
~~(TS//STLW//SI//OC/NF)~~ Former Directors Hayden and Goss, former Acting Director McLaughlin, and other senior CIA officials we interviewed told us that the PSP addressed a gap in intelligence collection. Following the terrorist attacks on 11 September 2001, there was concern that additional acts of terrorism would be perpetrated by terrorist cells already inside the US.



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.

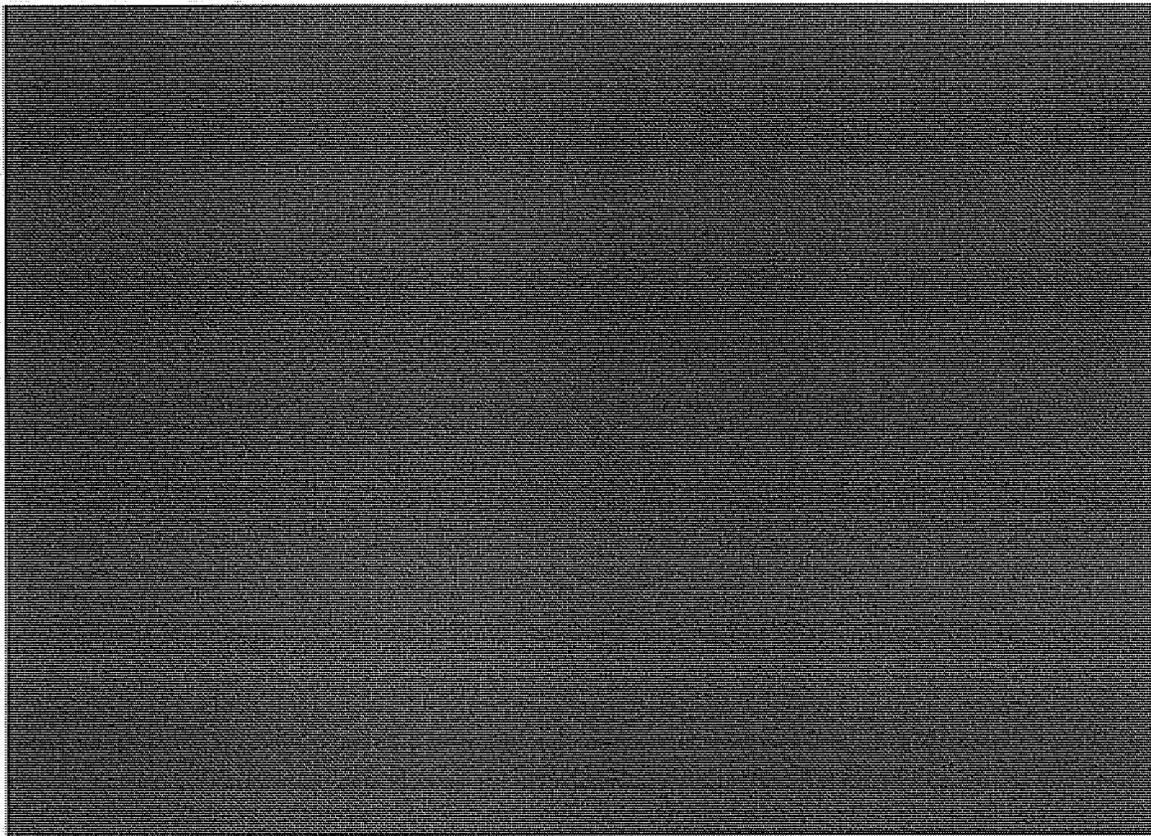


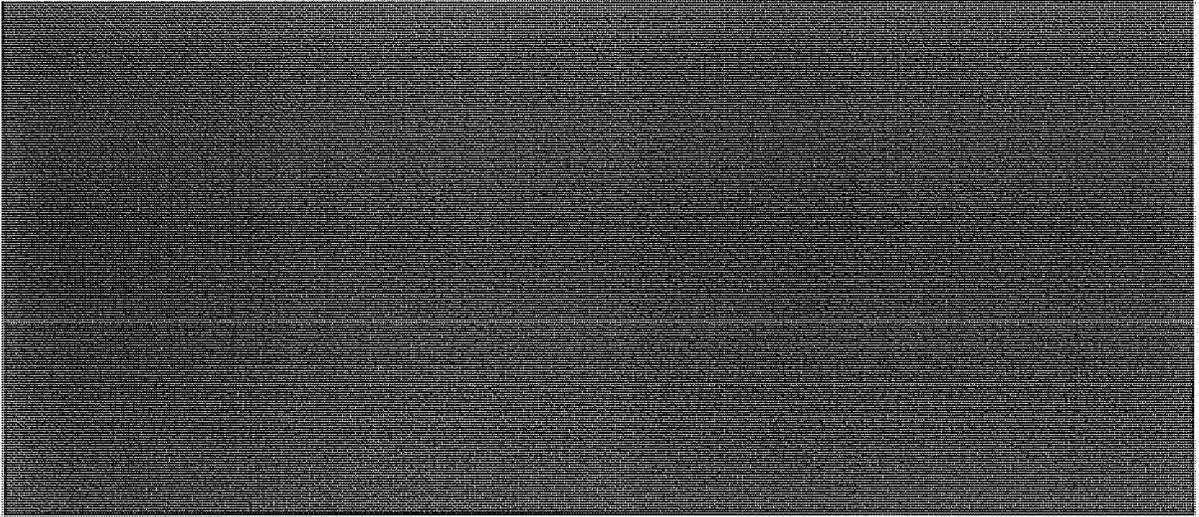
~~(TS//STLW//SI//OC/NF)~~ Other senior CIA officials told us that the PSP provided CIA access to information that was previously unavailable.



**(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 ██████ 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 ██████ officials we interviewed said that the PSP was one of many tools available to them, and that the tools were often used in combination.





(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.

