

the United States, as well as communications within the United States, would significantly enhance the NSA's analytical capabilities. ~~(TS//SI//NF)~~

Hayden said he attended two additional meetings with Vice President Cheney to discuss further how NSA collection capabilities could be expanded along the lines described at the White House meeting. Vice President Cheney directed Hayden to meet with the Counsel to the Vice President, David Addington, to continue the discussion, which Hayden said he did. According to Hayden, Addington drafted the first Presidential Authorization for the Stellar Wind program based on these meetings.²²

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

The Stellar Wind program officially came into existence on October 4, 2001, when President Bush signed the Presidential Authorization drafted by Addington. The Authorization directed the Secretary of Defense to employ the signals intelligence capabilities of the NSA to collect certain foreign intelligence by electronic surveillance in order to prevent acts of terrorism within the United States.²³ The Presidential Authorization stated that an extraordinary emergency existed because of the September 11 attacks, constituting an urgent and compelling governmental interest permitting electronic surveillance within the United States for counterterrorism purposes without judicial warrants or court orders.

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Access to the Stellar Wind program was very tightly restricted. Former White House Counsel and Attorney General Alberto Gonzales told the OIG that it was the President's decision to keep the program a "close hold." Gonzales stated that the President made the decision on all requests to read in non-operational persons, including Justice Department officials, and that as far as he was aware this decision-making authority had not been delegated either within the White House or to other agencies concerning read-in decisions for operational personnel, such as NSA and

²² Hayden told us he could not recall the Justice Department having any involvement in or presence at meetings he attended to discuss enhancing NSA collection capabilities. Hayden said this mildly surprised him but that he assumed someone was keeping the Department briefed on these discussions. Gonzales, who was the White House Counsel at the time, also told the OIG that he would be "shocked" if the Department was not represented at the White House meetings, and further stated that in the immediate aftermath of September 11, he met often with lawyers from the NSA, CIA, DOD, and the Justice Department with the objective of "coordinating the legal thinking" concerning the United States' response to the attacks. Because we were unable to interview Addington, former Attorney General Ashcroft, and John Yoo, we do not know what role if any the Department played in drafting or reviewing the first Presidential Authorization.

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²³ The program was given the cover term [REDACTED] at which time the cover term was changed to "Stellar Wind." ~~(S//NF)~~

FBI employees.²⁴ However, as indicated in the NSA Office of the Inspector General's report on the President's Surveillance Program (NSA OIG Report), decisions to read in NSA, CIA, and FBI operational personnel were made by the NSA. According to the NSA OIG Report, NSA Director Hayden needed White House approval to read in members of Congress, FISA Court judges, the NSA Inspector General, and others. See NSA OIG Report at V. ~~(S//NF)~~

1. Pre-Stellar Wind Office of Legal Counsel Legal Memoranda (U)

In this section, we summarize the initial legal memoranda from the Justice Department supporting the legal basis for the Stellar Wind program, and we describe the key aspects of the first Presidential Authorization for the program. ~~(TS//STLW//SI//OC/NF)~~

a. Hiring of John Yoo (U)

OLC Deputy Assistant Attorney General John Yoo was responsible for drafting the first series of legal memoranda supporting the program.²⁵ As noted above, Yoo was the only OLC official "read into" the Stellar Wind program from the program's inception until he left the Department in May 2003.²⁶ The only other non-FBI Department officials read into the program until after Yoo's departure were Attorney General Ashcroft, who was read in on October 4, 2001, and Counsel for Intelligence Policy James Baker, who was read in on January 11, 2002.²⁷ ~~(TS//STLW//SI//OC/NF)~~

²⁴ Gonzales testified before the Senate Judiciary Committee on July 18, 2006, that "[a]s with all decisions that are non-operational in terms of who has access to the program, the President of the United States makes the decisions, because this is such an important program[.]" (U)

²⁵ The Office of Legal Counsel typically drafts memoranda for the Attorney General and the Counsel to the President, usually on matters involving significant legal issues or constitutional questions, and in response to legal questions raised by Executive Branch agencies. In addition, all Executive Orders proposed to be issued by the President are reviewed by the Office of Legal Counsel as to form and legality, as are other matters that require the President's formal approval. (U)

²⁶ The process of being "read into" a compartmented program generally entails being approved for access to particularly sensitive and restricted information about a classified program, receiving a briefing about the program, and formally acknowledging the briefing, usually by signing a nondisclosure agreement describing restrictions on the handling and use of information concerning the program. (U)

²⁷ Daniel Levin, who served as both Chief of Staff to FBI Director Robert Mueller and briefly as Ashcroft's national security counselor, also was read into the program along with Mueller in late September 2001 at the FBI. According to Levin, White House Counsel Gonzales controlled who was read into the program, but Gonzales told him that the President had to personally approve each request. ~~(TS//STLW//SI//OC/NF)~~

Jay Bybee, the Assistant Attorney General for the Office of Legal Counsel from November 2001 through March 2003, provided the OIG with background information on how Yoo came to be involved in national security issues on behalf of the OLC. Bybee's nomination to be the OLC Assistant Attorney General was announced by the White House in July 2001. Bybee was not confirmed by the Senate as the Assistant Attorney General until late October 2001.²⁸ For several weeks after the September 11, 2001, terrorist attacks, Bybee remained a law professor at the University of Nevada-Las Vegas, and was sworn in as OLC Assistant Attorney General in late November 2001. ~~(TS//SI//NF)~~

Bybee told us that he traveled to Washington, D.C., sometime in July 2001 to interview applicants for Deputy Assistant Attorney General slots in OLC. In early July 2001, Kyle Sampson, at the time a Special Assistant to the President and Associate Director for Presidential Personnel assigned to handle presidential appointments to the Department of Justice, told Bybee that John Yoo was already under consideration for one of the OLC Deputy Assistant Attorney General slots. Bybee said Sampson asked him whether he would agree to have Yoo be one of his deputies. Bybee said that he knew Yoo only by reputation but was "enthusiastic" about the prospect of having Yoo as a Deputy. Bybee told the OIG that he regarded Yoo as a "distinguished hire." Bybee said that after speaking with Sampson he called Yoo and asked him to work at OLC as a Deputy Assistant Attorney General. (U)

In addition to speaking with Yoo, Bybee interviewed other prospective OLC Deputies, and hired several individuals, including Patrick Philbin and Ed Whelan, for those positions.²⁹ The White House recommended, and Bybee agreed, that Whelan be designated Principal Deputy. Bybee stated that he knew Yoo would be disappointed because Yoo had wanted that position, and Bybee said that Yoo "didn't hide his disappointment." Bybee told us that Yoo asked him whether since he was not selected for the Principal Deputy slot he could be guaranteed the "national security portfolio." Bybee agreed to Yoo's request. Bybee told the OIG that this was an easy decision because Yoo had more national security experience than any of the other deputies. (U)

²⁸ Bybee told us that Daniel Koffsky was the Acting Assistant Attorney General at this time. (U)

²⁹ Bybee told us that all Deputy candidates were also interviewed by the White House. As described in Chapter Four of this report, Philbin played a central role in the Department's reassessment of the legal basis for the Stellar Wind program after John Yoo left the Department in May 2003. ~~(TS//SI//NF)~~

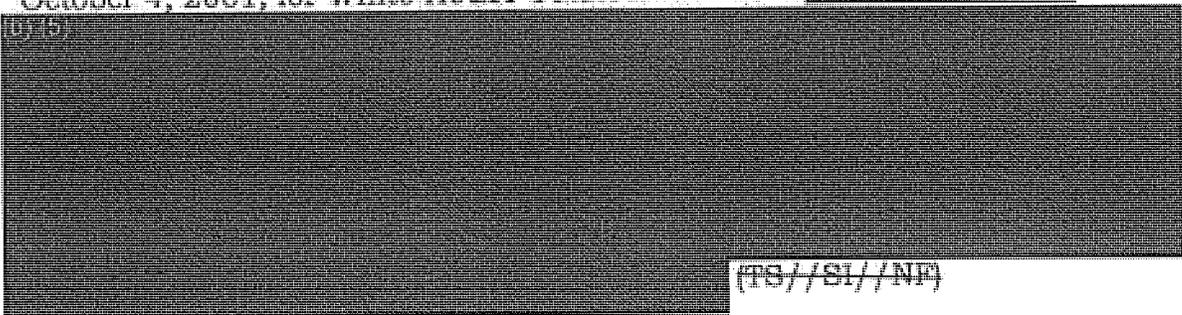
Bybee said that Yoo began working in OLC in July 2001 and that all of the Deputies were in place before Bybee began serving as head of the OLC that November. (U)

Bybee told us he was never read into the Stellar Wind program and could shed no further light on how Yoo came to draft the OLC opinions on the program. However, he said that Yoo had responsibility for supervising the drafting of opinions related to national security issues by the time the attacks of September 11 occurred.³⁰ Bybee described Yoo as "articulate and brilliant," and also said he had a "golden resume" and was "very well connected" with officials in the White House. He said that from these connections, in addition to Yoo's scholarship in the area of executive authority during wartime, it was not surprising that Yoo "became the White House's guy" on national security matters. (U)

b. Yoo's Legal Analysis of a Warrantless Domestic Electronic Surveillance Program ~~(TS//SI//NF)~~

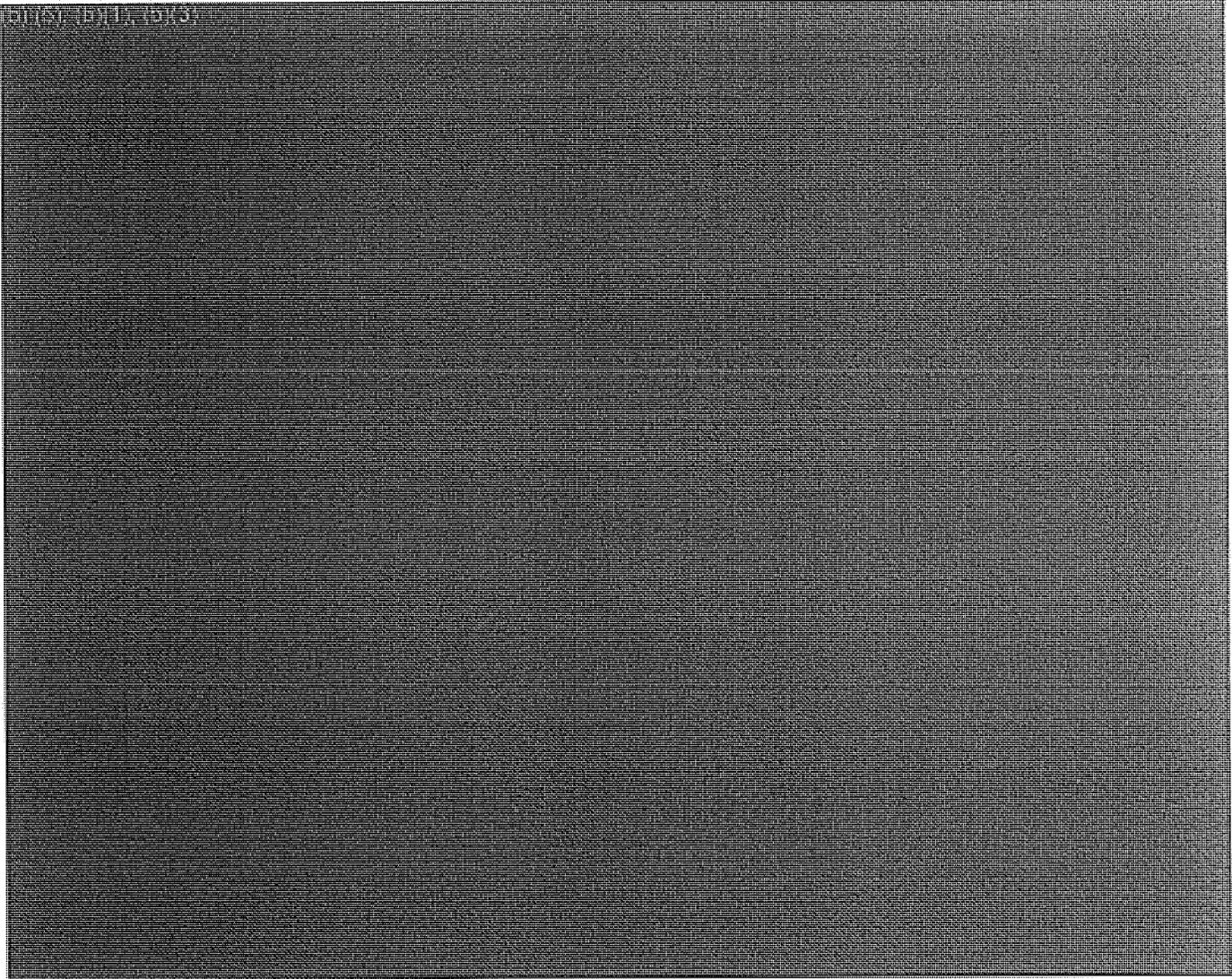
Before the start of the Stellar Wind program under the October 4, 2001, Presidential Authorization, Yoo drafted a memorandum evaluating the legality of a "hypothetical" electronic surveillance program within the United States to monitor communications of potential terrorists. His memorandum, dated September 17, 2001, was addressed to Timothy Flanigan, Deputy White House Counsel, and was entitled "Constitutional Standards on Random Electronic Surveillance for Counter-Terrorism Purposes." ~~(TS//STLW//SI//OC/NF)~~

Yoo drafted a more extensive version of this memorandum, dated October 4, 2001, for White House Counsel Gonzales. 



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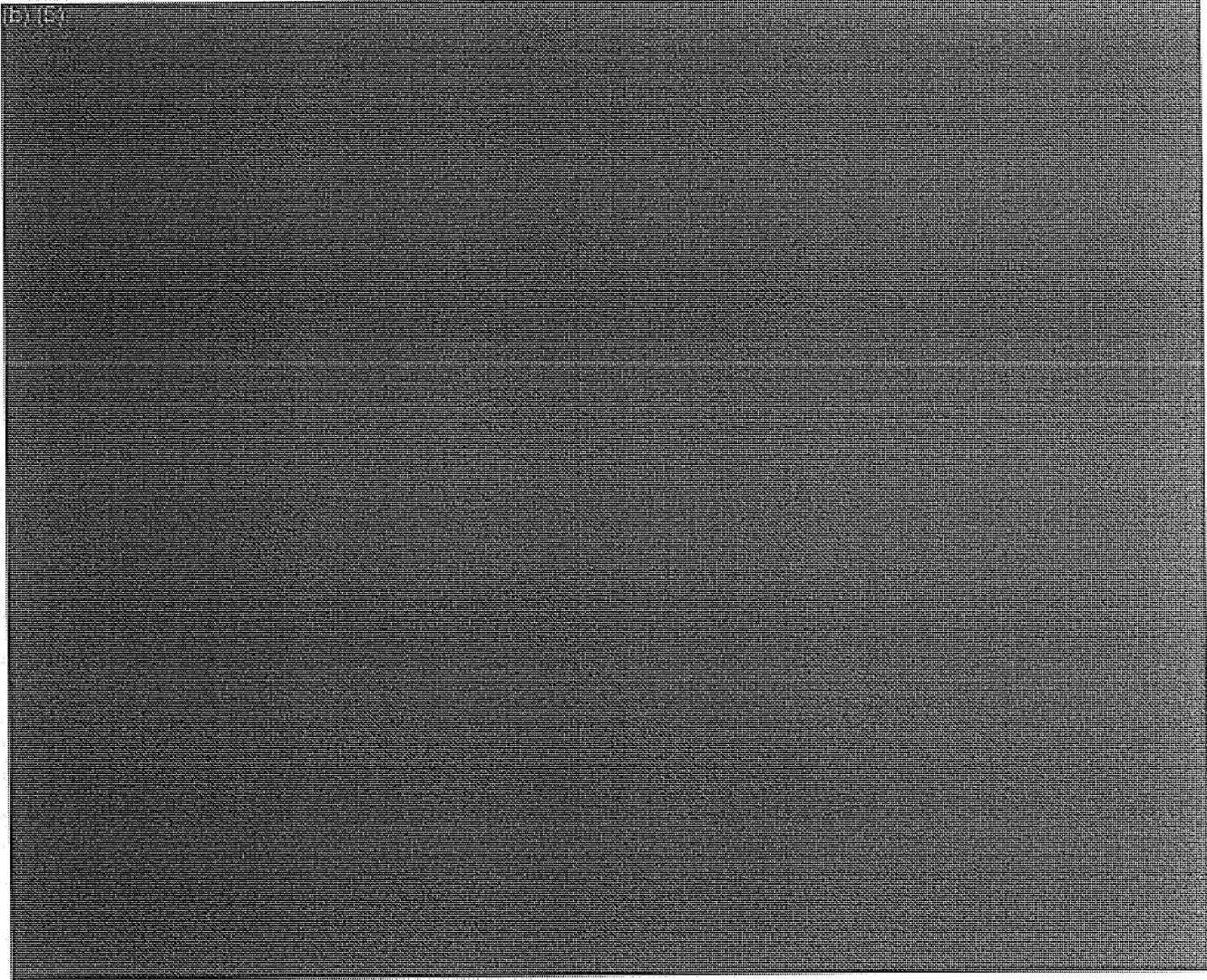
³⁰ As noted above, Yoo, Ashcroft, Card, and Addington declined or did not respond to our request for interviews, and we do not know how Yoo came to deal directly with the White House on legal issues surrounding the Stellar Wind program. In his book "War by Other Means," Yoo wrote that "[a]s a deputy to the assistant attorney general in charge of the office, I was a Bush Administration appointee who shared its general constitutional philosophy. . . . I had been hired specifically to supervise OLC's work on [foreign affairs and national security]." John Yoo, *War by Other Means*, (Atlantic Monthly Press, 2006), 19-20. ~~(TS//SI//NF)~~



³¹ As discussed below, however, his description of how communications would be collected and used under the program differed in key respects from the actual operation of the Stellar Wind program. In fact, in a January 23, 2006, address to the National Press Club, former NSA Director Hayden stated: ~~(TS//SI//NF)~~

Let me talk for a few minutes also about what this program is not. It is not a drift net over Dearborn or Lackawanna or Fremont grabbing conversations that we then sort out by these alleged keyword searches or data-mining tools or other devices that so-called experts keep talking about. (U)

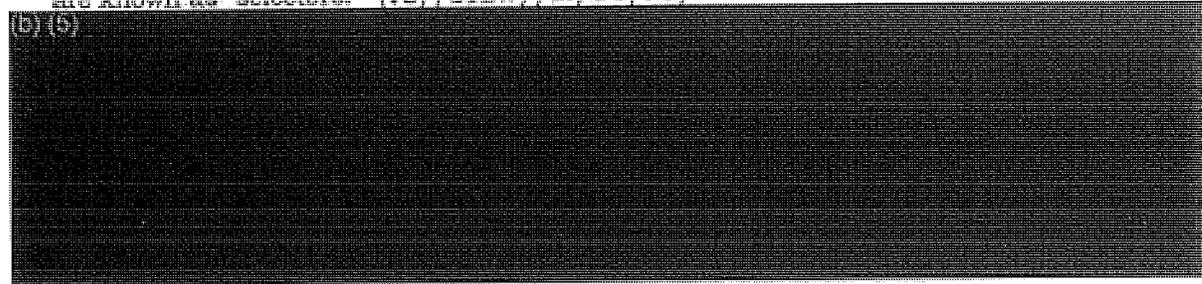




(b) (5)

33 (b) (5)

is an example of how the October 4 memorandum did not reflect the Stellar Wind program as it was actually devised and operated by the NSA. The Stellar Wind program did not contemplate bulk collection of content communications. The only information collected in bulk under the program involved telephony and e-mail meta data. This meta data was collected in bulk so that it could then be queried based on telephone numbers or e-mail addresses associated with communicants with known or suspected links to international terrorism. These telephone numbers and e-mail addresses are known as "selectors." ~~TOP SECRET//STLW//SI//ORCON//NOFORN~~



(b) (5)

Yoo's September 17 and October 4 memoranda were not addressed specifically to the Stellar Wind program, but rather to a "hypothetical" randomized or broadly scoped domestic warrantless surveillance program. As discussed below, the first Office of Legal Counsel opinion explicitly addressing the legality of the Stellar Wind program was not drafted until after the program had been formally authorized by President Bush on October 4, 2001. (TS//SI//OC/NF) —

Gonzales told the OIG that he did not believe these first two memoranda fully addressed the White House's understanding of the Stellar Wind program. Rather, as described above, these memoranda addressed the legality of a "hypothetical" domestic surveillance program rather than the Stellar Wind program as authorized by the President and carried out by the NSA.³⁵ However, Gonzales also told us that he believed these first two memoranda described as lawful activities that were broader than those carried out under Stellar Wind, and that therefore these opinions "covered" the Stellar Wind program. (TS//SI//NF)

2. Presidential Authorization of October 4, 2001
~~(TS//SI//NF)~~

On October 4, 2001, President Bush issued the first of 43 Presidential Authorizations for the Stellar Wind program. The October 4 Authorization directed the Secretary of Defense to "use the capabilities of the Department of Defense, including but not limited to the signals intelligence capabilities of the National Security Agency, to collect foreign intelligence by electronic surveillance," provided the surveillance was intended to:

- (a) acquire a communication (including but not limited to a wire communication carried into or out of the United States by cable) for which there is probable cause to believe that [REDACTED] [REDACTED] a party to such communication is a group engaged in international terrorism, or activities in preparation therefor, or an agent of such a group; or
- (b) acquire, with respect to a communication, header/router/addressing-type information, including telecommunications dialing-type data, but not the contents of the communication, when (i) at least one party to such communication is outside the United States or (ii) no party to such communication is known to be a citizen of the United States. (TS//STLW//SI//OC/NF)

³⁵ Gonzales noted that Deputy White House Counsel Timothy Flanigan, the recipient of the first Yoo memorandum, was not read into Stellar Wind. (U//FOUO)

In short, this first Authorization allowed NSA to intercept the content of any communication, including those to, from, or exclusively within the United States, where probable cause existed to believe one of the communicants was engaged in international terrorism, (b)(1), (b)(3)

~~(S//STLW//SI//OC/NF)~~ The Authorization also allowed the NSA to "acquire" telephony and e-mail meta data where one end of the communication was foreign or neither communicant was known to be a U.S. citizen.³⁶ (TS//STLW//SI//OC/NF)

The Authorization stated that it relied primarily on Article II of the Constitution and on the recently passed Authorization for the Use of Military Force (AUMF) to support the intelligence-gathering activities. The Authorization also stated that the President's directive was based on threat assessments indicating that terrorist groups remained determined to attack in the United States. The Authorization stated that it was to terminate "not later than 30 days" from the date of its execution.

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

As several Office of Legal Counsel and other Department and NSA officials acknowledged, in addition to allowing the interception of the content of communications into or out of the United States, the literal terms of paragraph 4(a)(ii) of this first Authorization would have allowed NSA to intercept the content of purely domestic communications. NSA Director Hayden told us he did not realize this until Addington specifically raised the subject during a meeting the two had to discuss renewing the first Authorization. According to Hayden, he told Addington that he did not want the NSA conducting such domestic interceptions and cited three reasons for this. First, he said the NSA was a *foreign* intelligence agency. Second, the NSA's collection infrastructure would not support the collection of purely domestic communications. Third, Hayden said he would require such a high evidentiary standard to justify intercepting purely domestic communication that such cases might just as well go to the FISA Court.³⁷

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

~~(S//STLW//SI//OC/NF)~~
36

~~(b)(1), (b)(3)~~

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

³⁷ Hayden said Addington did not pressure him on the subject and simply modified the next Authorization to provide that the NSA may only intercept the content of communications that originated or terminated in the United States. We discuss the modifications to the Authorization in the next part of this chapter.

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As a result, Hayden said the NSA did not exercise the apparent authority in the first Authorization to intercept domestic-to-domestic communications. Goldsmith stated that Hayden's position that the NSA not involve itself in domestic spying related back to NSA's "getting in a lot of trouble" for its abuses during the 1970s. In addition, former Deputy Attorney General Comey told us that Hayden had said he was willing to "walk up to the line" but would be careful "not to get chalk on [his] shoes."

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

As discussed above, subsection (b) of paragraph 4 of the Authorization covered the acquisition of both e-mail and telephony meta data. The e-mail meta data included the "to," "from," "cc," "bcc," and "sent" lines of an e-mail, but not the "subject" line or content of the e-mail.

(b)(1), (b)(3)

Telephony meta data acquisition included the dialing information from telephone billing data, such as the originating and terminating telephone number and the date, time, and duration of the telephone calls, but not the content of telephone calls. Under the Presidential Authorization, collection of both e-mail and telephony meta data was limited to circumstances in which one party to the communication was outside the United States or no party to the communication was known to be a U.S. citizen. ~~(TS//STLW//SI//OC/NF)~~

Attorney General Ashcroft approved the first Presidential Authorization as to "form and legality" on October 4, 2001. According to NSA records, this was the same day that Ashcroft was verbally read into the Stellar Wind program. Daniel Levin, who in October 2001 was both a national security counselor to Attorney General Ashcroft and FBI Director Mueller's Chief of Staff, told us that, according to Ashcroft, the Presidential Authorization was "pushed in front of" Ashcroft and he was told to sign it.³⁸ Levin stated that he was not with Ashcroft when this occurred and therefore he did not have an opportunity to advise Ashcroft about the Authorization before Ashcroft signed it. ~~(TS//STLW//SI//OC/NF)~~

James Baker, Counsel for Intelligence Policy, told us that Levin had given him the same account of how Ashcroft came to approve the October 4, 2001, Presidential Authorization. According to Baker, Ashcroft was told that the program was "critically important" and that it must be approved as to form and legality. Baker said that Levin told him Ashcroft approved the

³⁸ According to Hayden, Addington typed the Presidential Authorizations and personally couriered them around for signatures. However, the OIG was unable to determine whether Addington presented the first Authorization to Ashcroft for signature, because both Ashcroft and Addington declined or did not respond to our requests to interview them. ~~(S//NF)~~

Authorization on the spot. According to Baker, Levin also told Baker that when he learned there was no memorandum from the Office of Legal Counsel concerning the program, Levin told Yoo to draft one.

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

Levin's account to us of the instruction that Yoo draft a memorandum concerning the legality of the program differed slightly from Baker's account. Levin told us that he said to Ashcroft that it "wasn't fair" that Ashcroft was the only Justice official read into the program, and that for Ashcroft's protection Levin advised Ashcroft to have another Department official read into the program for the purpose of providing advice on the legality of the program. Levin said he learned that Ashcroft was able to get permission from the White House to have one other person read into the program to advise Ashcroft, although Levin was not certain how Yoo came to be selected as that person.³⁹ As discussed below, Gonzales told us that it was the President's decision to read John Yoo into the program.

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

C. Presidential Authorization is Revised and the Office of Legal Counsel Issues Legal Memoranda in Support of the Program (November 2001 through January 2002)

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

1. Presidential Authorization of November 2, 2001

~~(TS//SI//NF)~~

On November 2, 2001, with the first Presidential Authorization set to expire, President Bush signed a second Presidential Authorization. The second Authorization relied upon the same authorities in support of the President's actions, chiefly the Article II Commander-in-Chief powers and the AUMF. The second Authorization cited the same findings in a threat assessment as to the magnitude of the potential threats and the likelihood of their occurrence in the future. However, the scope of authorized content collection and meta data acquisition was redefined by adding the italicized language below in paragraphs 4(a) and (b):

- (a) acquire a communication (including but not limited to a wire communication carried into or out of the United States by cable) for which, *based on the factual and practical considerations of everyday life there are reasonable grounds* to believe that (b)(1), (b)(3)

³⁹ By October 4, 2001, Yoo had already drafted two legal analyses on a hypothetical warrantless surveillance program and therefore already had done some work related to the program prior to October 4 when Ashcroft was read in. ~~(TS//SI//NF)~~

(b)(1), (b)(3)

such communication originated or terminated outside the United States and a party to such communication is a group engaged in international terrorism, or activities in preparation therefor, or any agent of such a group; or

- (b) acquire, with respect to a communication, header/router/addressing-type information, including telecommunications dialing-type data, but not the contents of the communication, when (i) at least one party to such communication is outside the United States, (ii) no party to such communication is known to be a citizen of the United States, or (iii) *based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are specific and articulable facts giving reason to believe that such communication relates to international terrorism, or activities in preparation therefor.*
- ~~(TS//STLW//SI//OC/NF)~~

The new language therefore changed in three key respects the scope of collection and acquisition authorized under the Stellar Wind program. First, the "probable cause to believe" standard for the collection of e-mail and telephone content was replaced with "for which, based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are reasonable grounds to believe" Baker told us this change was made by Addington because he believed the term "probable cause" was "too freighted" with usage in judicial opinions. Baker said he believed the change to more colloquial language also was made because the standard was to be applied by non-lawyers at the NSA.

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

Second, the new standard applied to the reasonable belief that "such communication originated or terminated outside the United States" The new language therefore eliminated the authority that existed in the first Authorization to intercept the content of purely domestic communications.

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

Third, the second Authorization permitted the acquisition of a third category of e-mail and telephony meta data when "based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are specific and articulable facts giving reason to believe that such communication relates to international terrorism, or activities in preparation therefore." This language represented an expansion of meta data collection authority to include meta data pertaining to certain communications even when both parties are U.S. persons, as long as there were facts giving reason to believe that the communication was related to international terrorism.

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

In addition, former OLC Principal Deputy and Acting Assistant Attorney General Steven Bradbury described this [REDACTED]

(b) (5)

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

2. Yoo Drafts Office of Legal Counsel Memorandum Addressing Legality of Stellar Wind
(TS//STLW//SI//OC/NF)

The Stellar Wind program was first authorized by President Bush and certified as to form and legality by Attorney General Ashcroft on October 4, 2001, without the support of any formal legal opinion from the Office of Legal Counsel expressly addressing Stellar Wind. (TS//SI//NF)

The first OLC opinion directly supporting the legality of the Stellar Wind program was dated November 2, 2001, and was drafted by Yoo. His opinion also analyzed the legality of the first Presidential Authorization and a draft version of the second Authorization.⁴⁰ (TS//SI//NF)

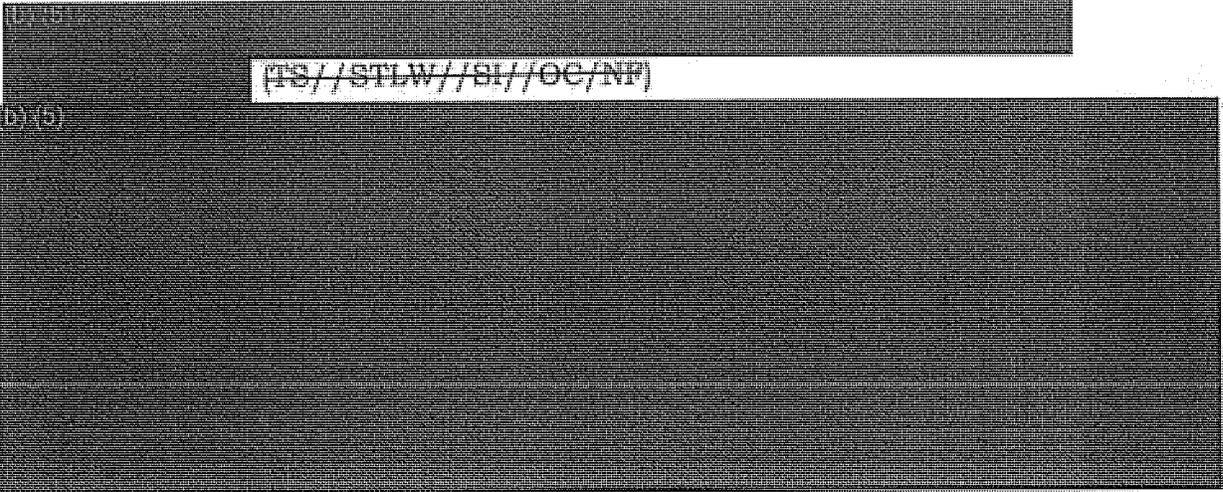
In his November 2 memorandum to Attorney General Ashcroft, Yoo opined that the Stellar Wind program [REDACTED]

[REDACTED] As discussed in Chapter Four of this report, however, perceived deficiencies in Yoo's memorandum later became critical to the Office of Legal Counsel's decision to reassess the Stellar Wind program in 2003. We therefore describe Yoo's legal analysis in his November 2 memorandum. (TS//SI//NF)

Yoo acknowledged at the outset of his November 2 memorandum that "[b]ecause of the highly sensitive nature of this subject and the time pressures involved, this memorandum has not undergone the usual editing and review process for opinions that issue from our Office [OLC]." The memorandum then reviewed the changes to NSA's collection authority between the first and second Presidential Authorizations. [REDACTED]

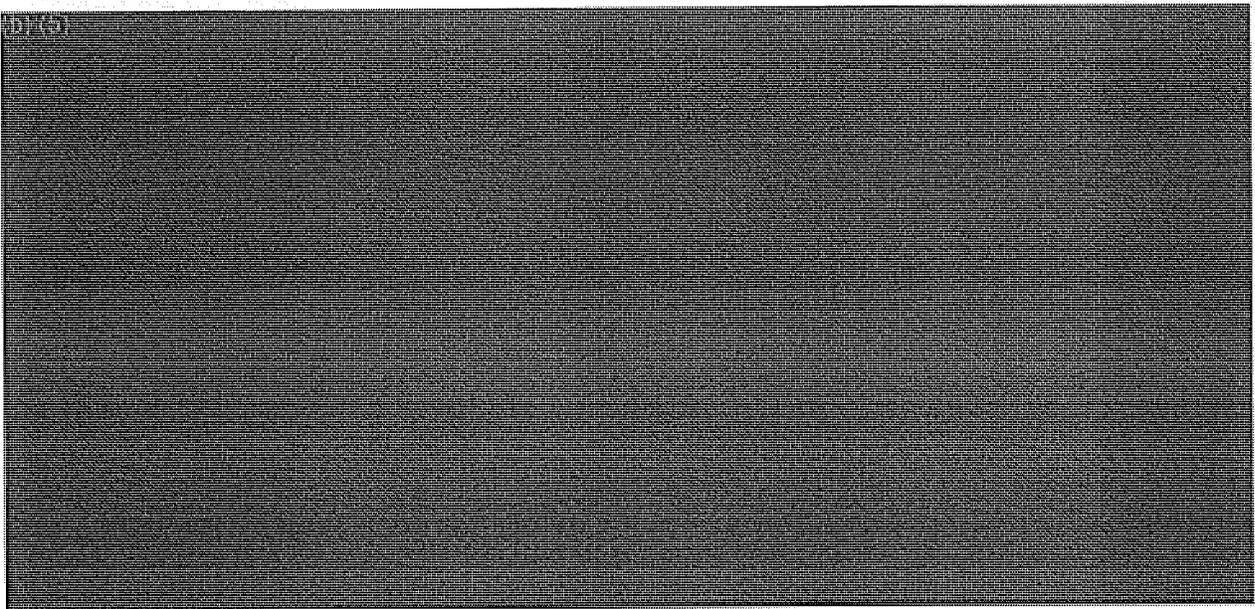
(b) (5)

⁴⁰ The second Authorization was issued on November 2, 2001. In developing his legal memorandum, Yoo analyzed a draft of the second Authorization dated October 31, 2001. The OIG was not provided the October 31 draft Presidential Authorization, but based on Yoo's description in his November 2 memorandum, it appears that the draft that Yoo analyzed tracked the language of the final November 2, 2001, Authorization signed by the President. (TS//SI//NF)



Yoo did acknowledge in his memorandum that the first Presidential Authorization was “in tension with FISA.” Yoo stated that FISA “purports to be the exclusive statutory means for conducting electronic surveillance for foreign intelligence,” but Yoo then opined that “[s]uch a reading of FISA would be an unconstitutional infringement on the President’s Article II authorities.”⁴¹ Citing advice of the OLC and the position of the Department as presented to Congress during passage of the USA PATRIOT Act several weeks earlier, Yoo characterized FISA as merely providing a “safe harbor for electronic surveillance,” adding that it “cannot restrict the President’s ability to engage in warrantless searches that protect the national security.”

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⁴¹ As discussed in Chapter Four, Goldsmith criticized this statement as conclusory and unsupported by any separation of powers analysis. (U//~~FOUO~~)

Regarding whether the activities conducted under the Stellar Wind program could be conducted under FISA, Yoo wrote that it was problematic that FISA required an application to the FISA Court to describe the (b)(1), (b)(3) or "facilities" to be used by the target of the surveillance. Yoo also stated that it was unlikely that a FISA Court would grant a warrant to cover (b)(1), (b)(3) as contemplated in the Presidential Authorization. Noting that the Authorization could be viewed as a violation of FISA's civil and criminal sanctions in 50 U.S.C. §§ 1809-10, Yoo opined that in this regard FISA represented an unconstitutional infringement on the President's Article II powers. According to Yoo, the ultimate test of whether the government may engage in warrantless electronic surveillance activities is whether such conduct is consistent with the Fourth Amendment, not whether it meets the standards of FISA.

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

Citing cases applying the doctrine of constitutional avoidance, Yoo reasoned that reading FISA to restrict the President's inherent authority to conduct foreign intelligence surveillance would raise grave constitutional questions.⁴² Yoo wrote that "unless Congress made a clear statement in FISA that it sought to restrict presidential authority to conduct warrantless searches in the national security area - which it has not - then the statute must be construed to avoid such a reading."⁴³ ~~(TS//STLW//SI//OC/NF)~~

⁴² Yoo's memorandum cited the doctrine of constitutional avoidance, which holds that "where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council*, 485 U.S. 568, 575 (1988). Yoo cited cases supporting the application of this doctrine in a manner that preserves the President's "inherent constitutional power, so as to avoid potential constitutional problems." See, e.g., *Public Citizen v. Department of Justice*, 491 U.S. 440, 466 (1989). ~~(TS//STLW//SI//OC/NF)~~

⁴³ On March 2, 2009, the Justice Department released nine opinions written by the OLC from 2001 through 2003 regarding "the allocation of authorities between the President and Congress in matters of war and national security" containing certain propositions that no longer reflect the views of the OLC and "should not be treated as authoritative for any purpose." Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, Department of Justice, Memorandum for the Files, "Re: Status of Certain OLC Opinions Issued in the Aftermath of the Terrorist Attacks of September 11, 2001," January 15, 2009, 1, 11. Among these opinions was a February 2002 classified memorandum written by Yoo which asserted that Congress had not included a clear statement in FISA that it sought to restrict presidential authority to conduct warrantless surveillance activities in the national security area and that the FISA statute therefore does not apply to the president's exercise of his Commander-in-Chief authority. In a January 15, 2009, memorandum (included among those released in March), Bradbury stated that this proposition "is problematic and questionable, given FISA's express references to the President's authority" and is "not supported by convincing reasoning." ~~(TS//STLW//SI//OC/NF)~~

Yoo's analysis of this point would later raise serious concerns for other officials in the Office of Legal Counsel and the Office of the Deputy Attorney General (ODAG) in late 2003 and early 2004.⁴⁴ Among other concerns, Yoo did not address the 15-day warrant requirement exception in FISA following a congressional declaration of war. See 50 U.S.C. § 1811. Yoo's successors in the Office of Legal Counsel criticized this omission in Yoo's memorandum because they believed that by including this provision in FISA, Congress arguably had demonstrated an intention to "occupy the field" on the matter of electronic surveillance during wartime.⁴⁵

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

Yoo's memorandum next analyzed Fourth Amendment issues raised by the Presidential Authorizations. Yoo dismissed Fourth Amendment concerns regarding the NSA surveillance program to the extent that the Authorizations applied to non-U.S. persons outside the United States. Regarding those aspects of the program that involved interception of the international communications of U.S. persons in the United States, Yoo asserted that Fourth Amendment jurisprudence allowed for searches of persons crossing the border and that interceptions of communications in or out of the United States fell within the "border crossing exception." Yoo further opined that electronic surveillance in "direct support of military operations" did not trigger constitutional rights against illegal searches and seizures, in part because the Fourth Amendment is primarily aimed at curbing law enforcement abuses. ~~(TS//STLW//SI//OC/NF)~~

Finally, Yoo wrote that the electronic surveillance described in the Presidential Authorizations was "reasonable" under the Fourth Amendment and therefore did not require a warrant. In support of this position, Yoo cited Supreme Court opinions upholding warrantless searches in a variety of contexts, such as drug testing of employees and sobriety checkpoints to detect drunk drivers, and in other circumstances "when special needs, beyond the normal need for law enforcement, make the warrant and probable cause requirement impracticable," *Veronia School Dist. 47J v. Acton*, 515 U.S. 464, 652 (1995) (as quoted in November 2, 2001, Memorandum at 20). Yoo wrote that in these situations the government's interest was found to have outweighed the individual's privacy interest, and that in this regard "no governmental interest is more compelling than the security of the Nation." *Haig v. Agee*, 435 U.S. 280, 307 (1981). According

⁴⁴ One of these officials was Patrick Philbin, who following Yoo's departure was "dual-hatted" as both an Associate Deputy Attorney General and a Deputy Assistant Attorney General in the Office of Legal Counsel. (U)

⁴⁵ We discuss the OLC's reassessment and criticism of Yoo's analysis in Chapter Four. (U)

to Yoo, the surveillance authorized by the Presidential Authorizations advanced this governmental security interest. ~~(TS//STLW//SI//OC/NF)~~

Yoo's memorandum focused almost exclusively on content interceptions.

(S) (S)

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

(TS, (S), (NF))

Yoo also omitted from his November 2 memorandum – as well as from his earlier September 17 and October 4, 2001, memoranda – any discussion of *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), a leading case on the distribution of government powers between the Executive and

(S, (NF), (S))

Legislative branches.⁴⁷ As discussed in Chapter Four, Justice Jackson's analysis of President Truman's Article II Commander-in-Chief authority during wartime in the *Youngstown* case was an important factor in the Office of Legal Counsel's reevaluation in 2004 of Yoo's opinion on the legality of the Stellar Wind program. (TS//SI//NF)

3. Additional Presidential Authorizations (U)

On November 30, 2001, the President signed a third Authorization authorizing the Stellar Wind program. The third Authorization was virtually identical to the second Authorization of November 2, 2001, in finding that the threat of terrorist attacks in the United States continued to exist, the legal authorities cited for continuing the electronic surveillance, and the scope of collection. (TS//STLW//SI//OC/NF)

OLC Principal Deputy and Acting Assistant Attorney General Bradbury told the OIG that [REDACTED]
(b)(1), (b)(3)

[REDACTED] Accordingly, the fourth Presidential Authorization, signed on January 9, 2002, modified the scope of collection to provide:

- (a) acquire a communication (including but not limited to a wire communication carried into or out of the United States by cable) for which, based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are reasonable grounds to believe such communication originated or terminated outside the United States and a party to such communication is a group

⁴⁷ In *Youngstown*, the Supreme Court held that President Truman's Executive Order directing the Secretary of Commerce to seize and operate steel plants during a labor dispute to produce steel needed for American troops during the Korean War was an unconstitutional exercise of the President's Article II Commander-in-Chief authority. In a concurring opinion, Justice Jackson listed three categories of Presidential actions against which to judge the Presidential powers. First, "[w]hen the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum[.]" Id. at 635. Second, Justice Jackson described a category of concurrent authority between the President and Congress as a "zone of twilight" in which the distribution of power is uncertain and dependant on "the imperatives of events and contemporary imponderables rather than on abstract theories of law." Id. at 637 (footnote omitted). Third, "[w]hen the President takes measures incompatible with the express or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter." Id. Justice Jackson concluded that President Truman's actions fell within this third category, and thus "under circumstances which leave Presidential power most vulnerable to attack and in the least favorable of possible constitutional postures." Id. at 640. (U)

engaged in international terrorism, or activities in preparation therefor, or any agent of such a group; or

- (b) acquire, with respect to a communication, header/router/addressing-type information, including telecommunications dialing-type data, but not the contents of the communication, when (i) at least one party to such communication is outside the United States, (ii) no party to such communication is known to be a citizen of the United States, or (iii) based on the factual and practical considerations of everyday life on which reasonable and prudent persons act, there are specific and articulable facts giving reason to believe that such communication relates to international terrorism, or activities in preparation therefor.

Presidential Authorization, January 9, 2002. (~~TS//STLW//SI//OC/NF~~)

(b)(1), (b)(3)

The language of the Authorization as modified in January 2002 remained the collection standard in subsequent Presidential Authorizations extending the Stellar Wind Program, until the disputed Presidential Authorization in March 2004, which we discuss in Chapter Four. (~~TS//STLW//SI//OC/NF~~)

4. Subsequent Yoo Opinions (U)

In a 2-page memorandum to Attorney General Ashcroft dated January 9, 2002, Yoo wrote that (b)(1), (b)(3), (b)(5)

did not affect the legality of the Authorization. (~~TS//STLW//SI//OC/NF~~)

Several identical Presidential Authorizations recertifying the Stellar Wind program were signed in 2002. (U//~~FOUO~~)

In October 2002, at Attorney General Ashcroft's request, Yoo drafted another opinion for Ashcroft concerning the Stellar Wind program. This memorandum, dated October 11, 2002, reiterated the same basic analysis in Yoo's November 2, 2001, memorandum in support of the legality of the Stellar Wind program.⁴⁸

(b)(5)

⁴⁸ As in the November 2, 2001, memorandum, Yoo's October 11, 2002, memorandum included the following caveat: "Because of the highly sensitive nature of this subject and its level of classification, this memorandum has not undergone the usual editing and review process for opinions that issue from our Office [OLC]."

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

(b) (5)

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

(b) (5)

5. Yoo's Communications with the White House (U)

As the only Office of Legal Counsel official who had been read into the Stellar Wind program through early 2003, Yoo consulted directly with White House officials about the program during this period. Because we were unable to interview Yoo, we could not determine the exact nature and extent of these consultations. We were also unable to determine whether Ashcroft was fully aware of the advice Yoo was providing directly to the White House about the program. ~~(S//NF)~~

Gonzales told the OIG that Yoo was among those with whom the White House consulted to develop advice for the President on the program, but he asserted that Yoo was not sought out to provide approval of the program for the Department. However, Gonzales told us that he did not know how Yoo came to be the primary Justice Department official that the White House consulted during this period about the program. ~~(S//NF)~~

In fact, Jay Bybee, who served as the OLC Assistant Attorney General for most of this period and was Yoo's supervisor, was never read into the Stellar Wind program. Bybee told the OIG that during his tenure as Assistant Attorney General he did not know that Yoo was working alone on a sensitive compartmented program and he had no knowledge of how Yoo

came to be selected for this responsibility. Bybee told us that he was "surprised" and "a little disappointed" to learn in media accounts that he was not privy to Yoo's work on what Bybee had later learned to be a compartmented counterterrorism program involving warrantless electronic surveillance. Bybee said that it would not be unusual for a Deputy Assistant Attorney General such as Yoo to have direct contact with the White House for the purpose of rendering legal advice, but that the OLC Assistant Attorney General must be aware of all opinions that issue from the OLC. Bybee said that the Assistant Attorney General has an obligation to "see the whole picture" and is the person in the office who knows the full range of issues that are being addressed by the OLC and who can assure that OLC opinions remain consistent. ~~(TS//SI//NF)~~

6. Gonzales's View of the Department's Role in Authorizing the Stellar Wind Program ~~(S//NF)~~

The OIG asked Gonzales about how he, as White House Counsel, viewed the role of the Justice Department during the early phase of the Stellar Wind program. Gonzales stated that he and others at the White House tried to be very careful to understand what could be done legally, and they wanted to have "constant communications with the Department" in the first few months following the September 11, 2001, terrorist attacks. Gonzales also stated that it was the President, and not the Attorney General or the White House Counsel, who authorized the warrantless surveillance activity under the Stellar Wind program. However, Gonzales acknowledged that the President's decision was based on advice from the Attorney General and White House Counsel, among others. ~~(TS//SI//NF)~~

The OIG also asked whether Gonzales had a personal belief about the justification for having a single attorney – Yoo – speak on behalf of the Department regarding the legality of the program. Gonzales stated that it was up to the Attorney General to make that determination or calculation. Gonzales stated that he understood the Department's position was that the program was legal and that Yoo would sit down with Attorney General Ashcroft to answer any legal questions when the Presidential Authorizations were presented to Ashcroft for his signature. Gonzales said he understood that the Yoo opinions represented the legal opinion of the Department. However, as noted previously, for the first year and a half of the program the Department read-ins included only Yoo, Ashcroft, and Baker. ~~(TS//SI//NF)~~

Gonzales also stated that it was Ashcroft's decision as to how to satisfy his legal obligations as Attorney General. However, when the OIG asked whether Gonzales was aware if Ashcroft ever requested to have additional people read into Stellar Wind, Gonzales stated that he recalled Ashcroft wanted Deputy Attorney General Larry Thompson and his Chief of Staff, David Ayres, read in. Gonzales acknowledged that neither official was

ever read into the program. Gonzales said that Ashcroft complained that it was "inconvenient" not to have Thompson and Ayres read in, but Gonzales also stated that he never got the sense from Ashcroft that it affected the quality of the legal advice the Department provided to the White House. Gonzales stated that other than Ashcroft's request that Thompson and Ayres be read in, he did not recall Ashcroft requesting to have additional Department officials read in.⁴⁹ ~~(S//NF)~~

II. NSA's Implementation of the Stellar Wind Program (U//~~FOUO~~)

In this section, we describe the NSA's initial implementation of the Stellar Wind program. We first describe how the NSA acquired the communications data authorized for collection under the program. We also discuss the process the NSA used to analyze the information received from the Stellar Wind program and how this information was provided to the FBI. (U//~~FOUO~~)

A. Implementation of Stellar Wind (U//~~FOUO~~)

Our description of the implementation of the Stellar Wind program is based on NSA and Justice Department documents we obtained during our review, as well as interviews of NSA and Department personnel with knowledge of Stellar Wind's technical operation. This section provides a basic overview of how the NSA obtained ~~(b)(1), (b)(3)~~ the information authorized for collection under Stellar Wind. This information is also important for later sections of this report that describe significant modifications to the Authorizations regarding the manner and scope of collection, the Department's re-assessment of the legal rationale supporting the Stellar Wind program during late 2003 and early 2004, and compliance issues that arose when the Department decided to seek collection of ~~(b)(1), (b)(3)~~

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

~~(b)(1), (b)(3)~~

⁴⁹ Gonzales stated that Ashcroft, as the Attorney General, would be well-positioned to request the President to allow additional attorneys to be read into the program. Drawing on his own experience as Attorney General, Gonzales cited his request to the President in 2006 that the then head of the Office of Professional Responsibility (OPR) and several attorneys within OPR be granted security clearances in order to conduct an inquiry into the professional conduct of Department lawyers with respect to the Stellar Wind program. Gonzales said he made his request both through White House Counsel Harriet Miers and directly to the President. However, the President initially declined the request, and the request was not granted until October 2007. (U//~~FOUO~~)

[REDACTED]

[REDACTED]

As discussed previously, the NSA collected three categories of information under Stellar Wind that came to be commonly referred to as the three "baskets." Basket 1 referred to collection of the content of telephone and e-mail communications; basket 2 referred to collection of meta data associated with telephone communications; and basket 3 referred to collection of meta data associated with e-mail and other Internet communications.

[REDACTED]

⁵² (TS//STLW//SI//OC/NF)

⁵⁰ [REDACTED]

⁵¹ We describe in Chapter Four changes made in March and [REDACTED] 2004 [REDACTED] under Presidential Authorization following a dispute between the White House and Justice Department concerning the legality of the Stellar Wind program.

[REDACTED] (TS//SI//NF)

⁵² Title 18 of the United States Code generally prohibits the interception and disclosure of wire, oral, or electronic communications, and provides for criminal penalties for any person engaging in such activity. See 18 U.S.C. § 2511. [REDACTED]

[REDACTED]

The meta data collected [REDACTED] under Stellar Wind (baskets 2 and 3), as well as the meta data associated with communications targeted for content collection under the program, was placed into an NSA database system called [REDACTED] which according to NSA officials is a configuration of databases and analytical tools. [REDACTED] databases are segregated into "realms" organized by the specific authority allowing the particular data to be collected.⁵³ The content data collected under the Stellar Wind program was placed in a separate NSA repository.⁵⁴ ~~(TS//STLW//SI//OC/NF)~~

1. **Basket 1 - Telephone and E-Mail Content Collection**
~~(TS//STLW//SI//OC/NF)~~
 - a. **Telephone Communications (U)**

In this section we describe briefly the technical means used by the NSA to access the international telephone system to accomplish the collection of international calls under the Stellar Wind program.⁵⁵
~~(TS//STLW//SI//OC/NF)~~

[REDACTED]

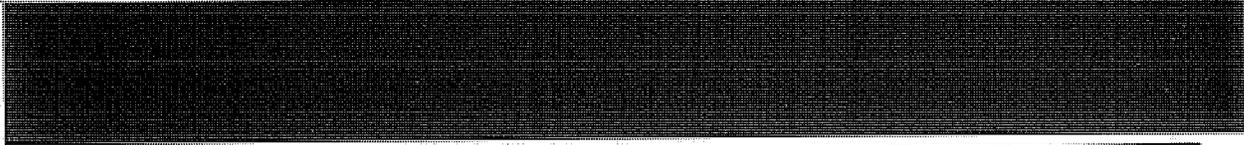
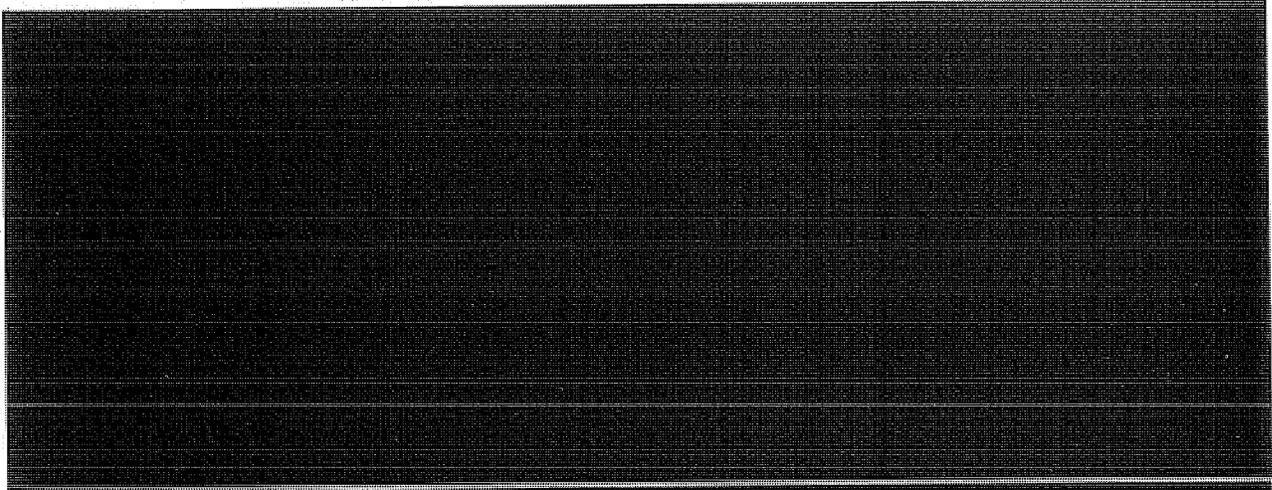
(U)

[REDACTED]

⁵³ NSA officials said the realms also establish a system of access control to ensure that only authorized users access certain data. ~~(S//NF)~~

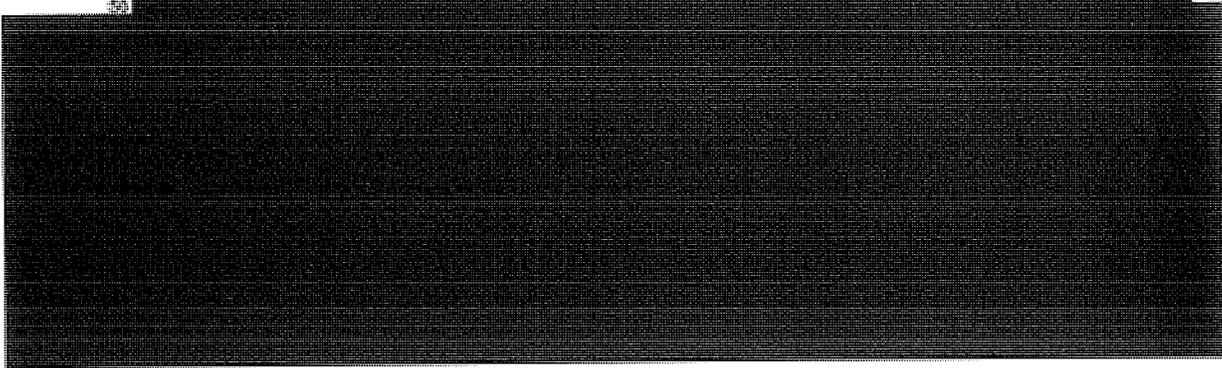
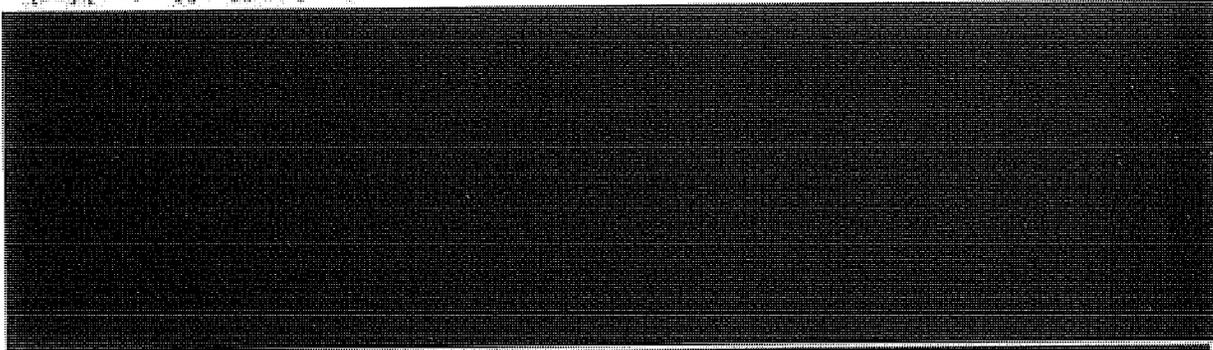
⁵⁴ As discussed in Chapter Five of this report, the NSA created an additional realm in July 2004 when the government obtained FISA authority to collect e-mail meta data, and another realm in May 2006 when it obtained authority under FISA to collect telephony meta data. These realms were separate from the realms that contained information collected under Stellar Wind. ~~(TS//STLW//SI//OC/NF)~~

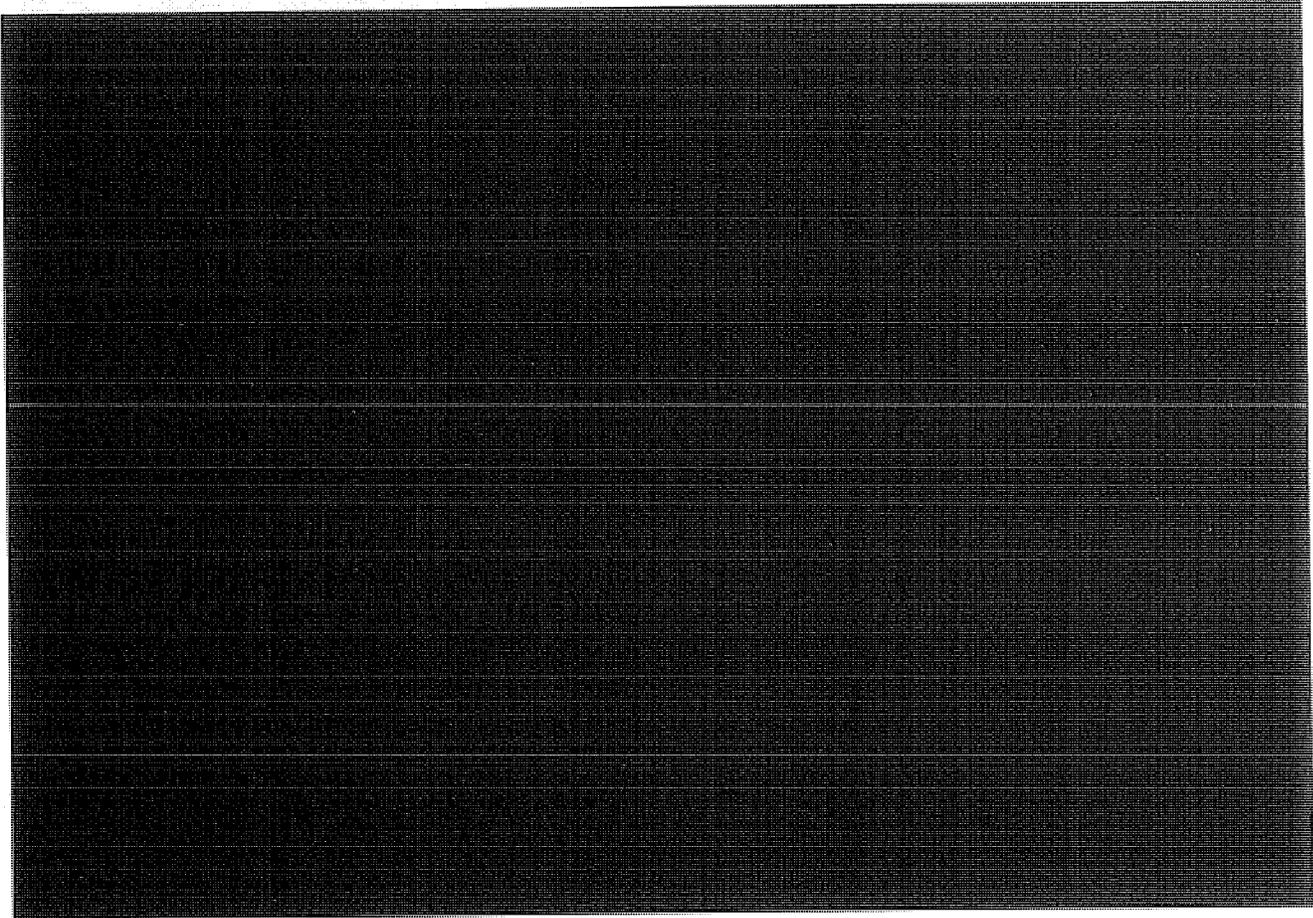
⁵⁵ The NSA's interception of international telephone communications under Stellar Wind highlighted the dramatic change in telecommunications technology that had been taking place for nearly 20 years. In 1978, when FISA was enacted, telephone calls placed by and to individuals within the United States (domestic calls) were carried mostly on copper wires, while telephone calls placed to or from individuals outside the United States (international calls) generally were transmitted by satellites. FISA reflected the state of technology then by defining the term "electronic surveillance" to be the acquisition of the contents of certain wire and radio (satellite) communications. FISA stated that as to radio
(Cont'd.)



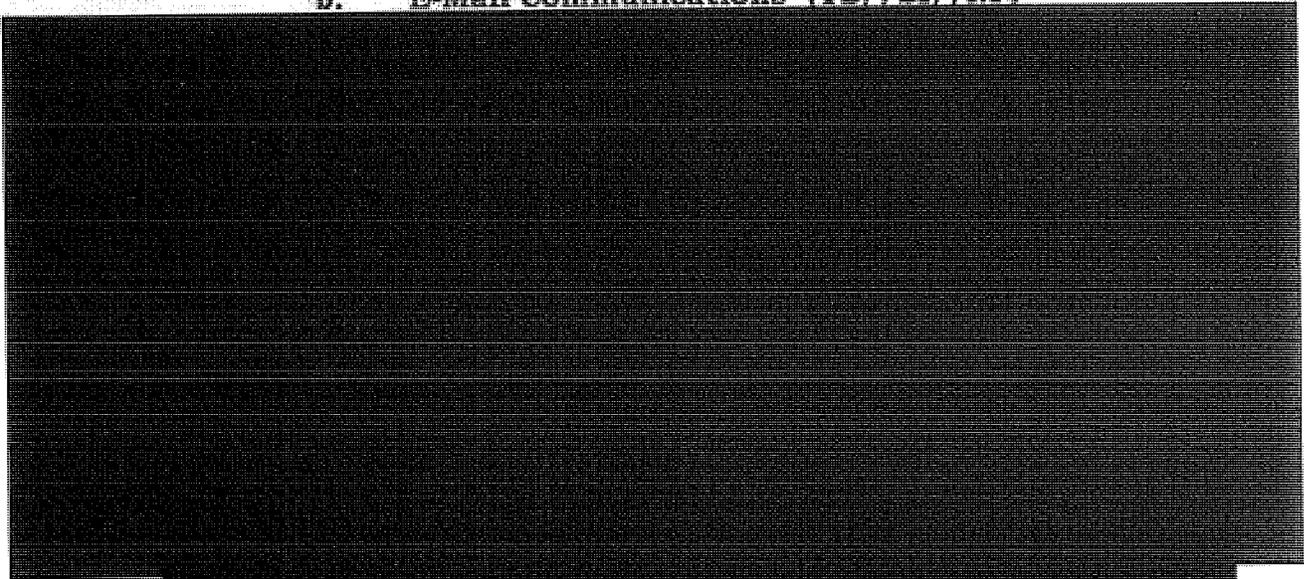
communications specifically, and thus as to most international communications, the interception of calls constituted "electronic surveillance" only if the acquisition intentionally targeted a particular known U.S. person in the United States, or if all participants to the communication were located in the United States. See 50 U.S.C. §§ 1801(f)(1) and (3). Accordingly, government surveillance that targeted foreign persons outside the United States generally was not considered electronic surveillance under FISA, and the government was not required to obtain a FISA Court order authorizing the surveillance even if one of the parties to the communication was in the United States.

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





b. E-Mail Communications (TS//SI//NF)



57



[REDACTED]

[REDACTED]

However, under the October 4, 2001, Presidential Authorization, the NSA for the first time was authorized to intercept international e-mails originating or terminating inside the United States.

[REDACTED]

[REDACTED]

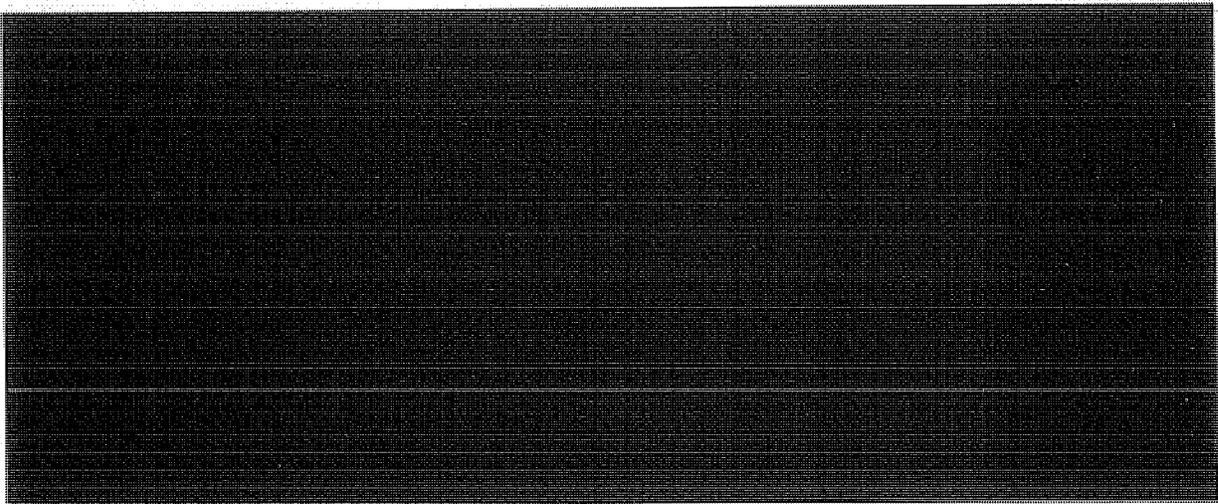
~~(TS//STLW//SI//OC/NF)~~

[REDACTED]

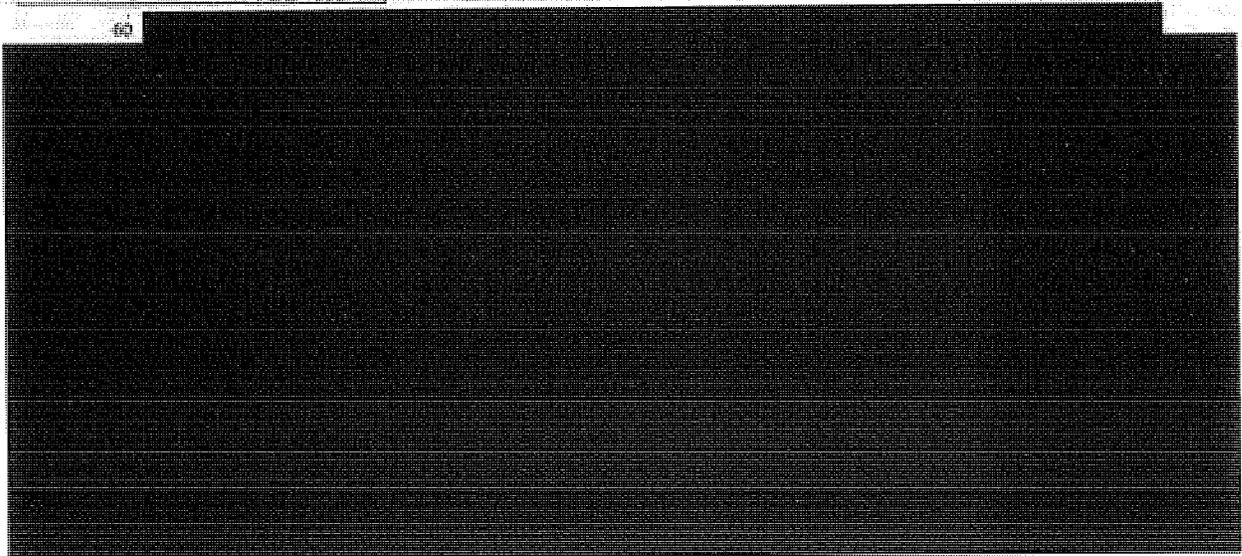
[REDACTED]

[REDACTED]

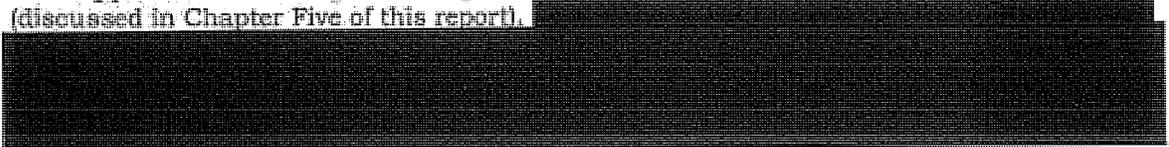
[REDACTED]



2. Basket 2 - Telephony Meta Data Collection
~~(TS//STLW//SI//OC/NF)~~



The NSA informed the FISA Court of this issue in the government's December 2006 FISA application that sought to bring Stellar Wind's content collection under FISA authority (discussed in Chapter Five of this report).



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

[REDACTED]

These records, also referred to as call detail records, consist of routing information that includes the originating and terminating telephone number of each call, and the date, time, and duration of each call. The call detail records do not include the substantive content of any communication or the name, address, or financial information of a subscriber or customer.

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

As discussed above, the initial Presidential Authorizations [REDACTED]

[REDACTED] that is, call detail records pertaining to communications where at least one party was outside the United States, where no party was known to be a United States citizen, or where there was reasonable articulable suspicion to believe the communication related to international terrorism. As noted in Chapter One, the NSA interpreted this authority to also permit it to collect telephony and e-mail meta data in bulk so that it would have a database from which to acquire the targeted meta data.

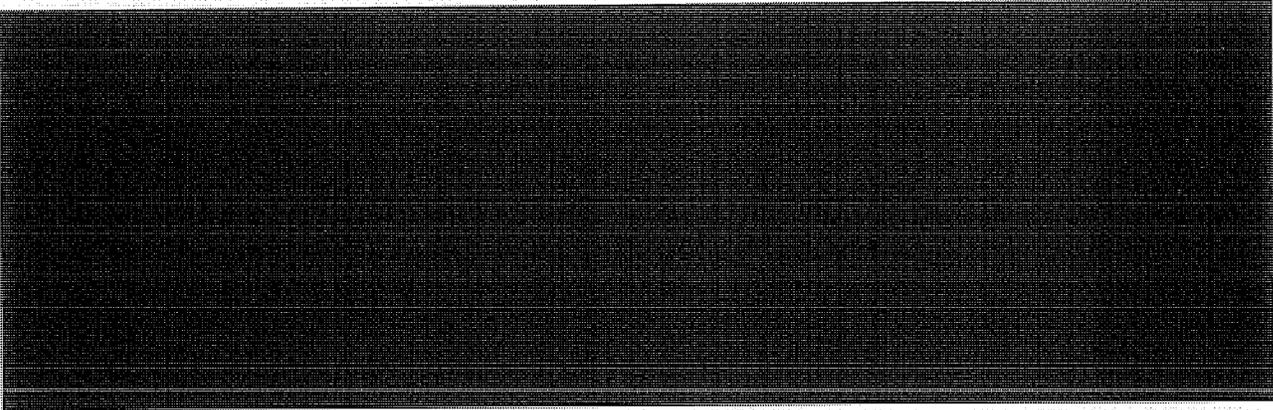
~~(TS//STLW//SI//OC/NF)~~

[REDACTED]

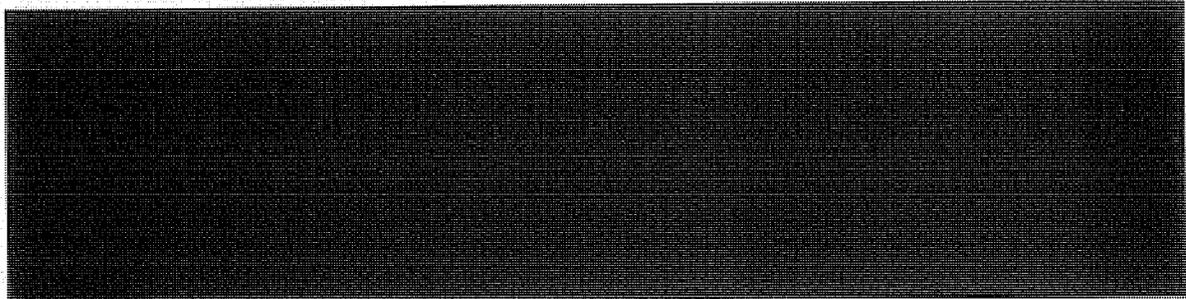
61 [REDACTED]

62 [REDACTED]

(Cont'd.)



The NSA personnel also organized the data into a format that could be used by NSA analysts responsible for analyzing the information under the Stellar Wind program. The data was archived into an NSA analytical database that contained exclusively Stellar Wind information and that was accessible only by specially authorized NSA personnel read into the program. ~~(TS//STLW//SI//OC/NF)~~

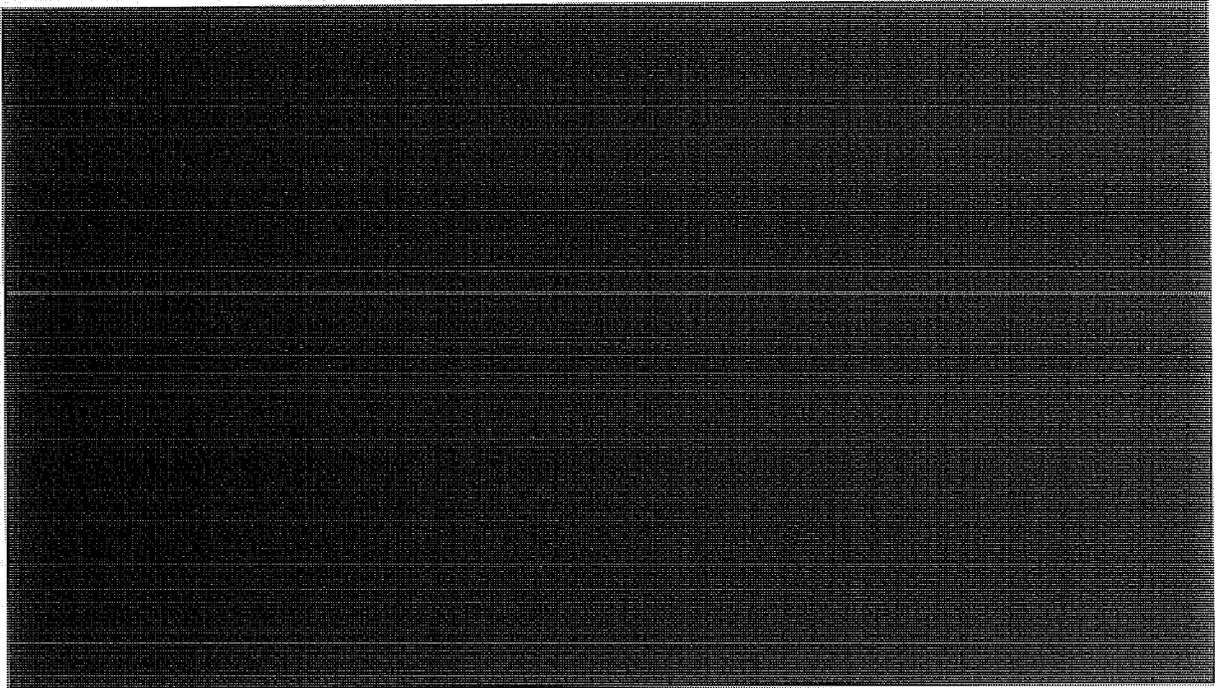


⁶³ While the magnitude of the bulk collection was enormous, the NSA did not retrieve or review most of this data because access was authorized only with respect to telephone communications that satisfied the Presidential Authorizations "acquisition" standard. In fact, the NSA reported that by the end of 2006, .001% of the data collected had actually been retrieved from its database for analysis. ~~(TS//STLW//SI//OC/NF)~~



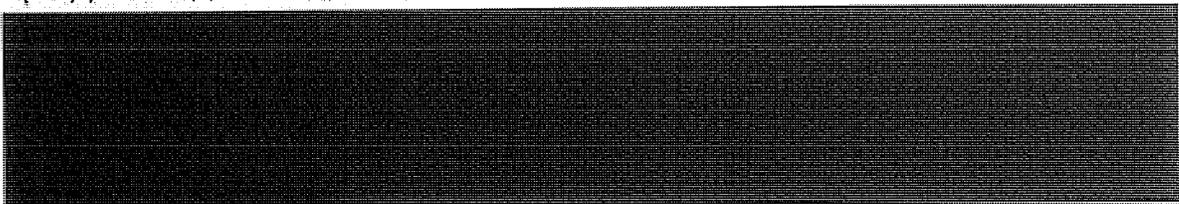
⁶³ We describe these techniques in part B of this section. (U)

3. **Basket 3 - E-Mail Meta Data Collection**
~~(TS//STLW//SI//OC/NF)~~



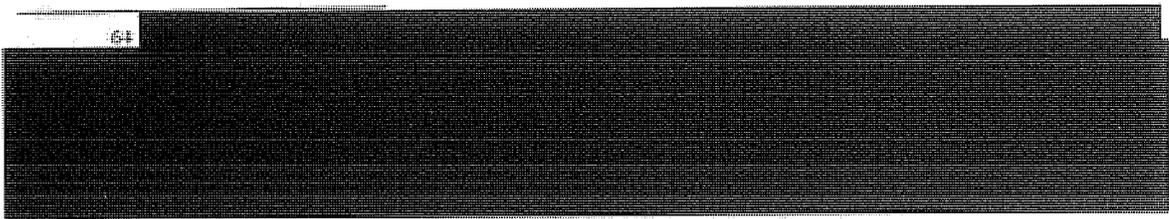
The meta data the NSA obtained from e-mail communications included the information that appeared on the "to," "from," "cc," "bcc," and "sent" lines of a standard e-mail. Thus, the NSA collected the e-mail address of the sender, the e-mail addresses of any recipients, and the information concerning the date and time when the e-mail was sent.

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



The meta data collection did not include information from the "subject" or "re" lines of the e-mails or the body of the e-mails.⁶⁴

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



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

B. NSA Process for Analyzing Information Collected Under Stellar Wind (S//NF)

The NSA conducted two functionally distinct types of review of the massive amount of data it collected under the Stellar Wind program. First, the NSA conducted procedures intended to ensure that it only reviewed or “acquired” the information that was within the scope of the Presidential Authorizations. Second, the NSA conducted substantive analysis of the acquired information to determine whether it had intelligence value that should be disseminated to customer agencies such as the FBI and the CIA.

~~(TS//SI//NF)~~

The NSA procedures to ensure that the acquisition and dissemination standards were satisfied became more formalized over time. We describe below how the NSA handled the enormous volume of data it was collecting with the Stellar Wind program.

~~(TS//SI//NF)~~

1. Basket 1: Content tasking, Analysis, and Dissemination (TS//STLW//SI//OC/NF)

Stellar Wind’s “basket 1” content database contains telephone and e-mail communications of individuals. The NSA refers to the telephone numbers and e-mail addresses tasked for interception as “selectors.” To task a selector under the Presidential Authorizations, the NSA was required to establish probable cause to believe the intercepted communications originated or terminated outside the United States and probable cause to believe a party to the communications was a group engaged in international terrorism, or activities in preparation therefor, or any agent of such a group.⁶⁵

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

The NSA had two processes for tasking selectors under Stellar Wind. One process applied to tasking foreign selectors, or selectors believed to be

used by non-U.S. persons outside the United States. The other process applied to tasking domestic selectors, or selectors believed to be used by persons inside the United States or by U.S. persons abroad. A foreign selector could be tasked for collection under Stellar Wind based upon an NSA analyst's determination, following some amount of documented research and analysis about the selector, that the terms of the Authorizations were satisfied. The NSA did not require any additional levels of approval before a foreign selector could be tasked.⁶⁶

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

A domestic selector could be tasked only after the NSA analyst obtained specific approvals. The rigor of the process to task a domestic selector evolved over time, but essentially it required an analyst to draft a formal tasking package that demonstrated, through analysis and documentation, that the selector satisfied the terms of the Authorizations. This package was reviewed by a designated senior official who could approve or reject the package, or request that additional information be provided.

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

In emergency situations, the NSA could commence content interception on a selector within [REDACTED] of identifying a number or address that satisfied the criteria in the Presidential Authorizations. In other cases, interception commenced within [REDACTED] for urgent or priority taskings and within a week for routine taskings. ~~(TS//STLW//SI//OC/NF)~~

The NSA conducted 15-, 30-, and 90-day reviews of tasked foreign and domestic selectors to assess whether the interception should continue. The NSA stated that the selectors were "de-tasked" if the user was arrested, if probable cause could no longer be established, or if other targets took priority. ~~(TS//STLW//SI//OC/NF)~~

The content intercepted under taskings was sent to the NSA and placed in a database accessible by NSA analysts cleared into the Stellar Wind program. The analysts were responsible for reviewing the communications and assessing whether a Stellar Wind report should be generated for the FBI and the CIA. [REDACTED]

[REDACTED]

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

2. **Baskets 2 and 3: Telephony and E-Mail Meta Data Queries, Analysis, and Dissemination**
~~(TS//STLW//SI//OC/NF)~~

The NSA received [REDACTED] a massive amount of telephony and e-mail meta data (basket 2 and 3 information) that was stored in a realm accessible only by NSA analysts assigned to the Stellar Wind program. The purpose of the collection was to facilitate the identification of connections [REDACTED] among particular telephone numbers and e-mail addresses by using [REDACTED] sophisticated analytical techniques called "contact chaining" [REDACTED]
[REDACTED] (TS//STLW//SI//OC/NF)

As described by the NSA in declarations filed with the FISA Court, contact chaining is used to determine the contacts made by a particular telephone number or e-mail address (tier one contacts), as well as contacts made by subsequent contacts (tier two and tier three contacts). The NSA uses computer algorithms to identify the first two tiers of contacts an e-mail address makes and the first three tiers of contacts a telephone number makes. According to the NSA, multi-tiered contact analysis is particularly useful with telephony meta data because a telephone does not lend itself to simultaneous contact with large numbers of individuals as e-mail does with spam.

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

As previously noted, the NSA interpreted the Presidential Authorizations to permit it to collect telephony and e-mail meta data in bulk.⁶⁷ The NSA "queried" the databases that held this data to identify meta data for communications to or from a particular telephone or e-mail address (the "selector," also known as the "seed number" or "seed account"). NSA analysts queried the database using a selector for which there was a reasonable articulable suspicion to believe that the number or account had been used for communications related to international terrorism.⁶⁸ [REDACTED]

[REDACTED]

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

[REDACTED]

As with proposals to task selectors, an NSA shift coordinator typically reviewed for approval proposals to query either the e-mail or telephony meta data bulk databases using particular selectors. If the shift coordinator agreed that the reasonable articulable suspicion standard was met, the selector was approved and the analyst was authorized to query the meta data bulk database to identify all of the other telephone numbers or e-mail addresses that had been in contact with the seed account. Each contact along the chain of contacts that originated with the selector was referred to as a "hop," meaning that a telephone call from the seed account to telephone number A was considered "one hop out," and a call from telephone number A to telephone number B was considered "two hops out" (relative to the seed account), and so on. NSA analysts used specialized software to chain and analyze the contacts identified by each query. The

[REDACTED]

[REDACTED]

NSA told us that Stellar Wind analysts were permitted to chain the results of queries up to three hops out from the selector. ~~(TS//STLW//SI//OC/NF)~~

The results of each query were analyzed to determine whether any of the contacts should be reported, or "tipped," to Stellar Wind customers—primarily the FBI, CIA, and the National Counterterrorism Center. In the first months of the Stellar Wind program, the NSA reported to the FBI most contacts identified between a U.S. telephone number or e-mail address and the selector used to query the meta data realm, as well as domestic contacts that were two and three hops out from a selector. As discussed in Chapter Six of this report, over time the NSA and FBI worked to improve the reporting process and the quality of the intelligence being disseminated under Stellar Wind. ~~(TS//STLW//SI//OC/NF)~~

The domestic contacts from specified numbers or e-mail addresses, called "tippers," were provided to the FBI by the NSA. These tippers were included in reports that contained two sections separated by a dashed line, commonly referred to as a "tearline," made to appear as a perforation extending across the width of a page. The purpose of the tearline was to separate the compartmented information above the tearline, which could identify the specific sources and methods used to obtain the information, from the non-compartmented information that the FBI could further disseminate to its field offices. Only FBI personnel read into the Stellar Wind program could have access to the full Stellar Wind reports from NSA. ~~(TS//STLW//SI//OC/NF)~~

The information that appeared above the tearline typically was classified Top Secret/SCI and identified Stellar Wind as the source of the intelligence. The information included specific details

as well as any pertinent comments by NSA intelligence analysts.

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

The information that appeared below the tearline of a report generally was classified Secret or Confidential and did not identify Stellar Wind as the source of the intelligence. The text typically included some version of the following statement:

The amount of information about the contacts that followed this statement varied.