

of the statistical report to the Senate Select Committee on Intelligence.

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The study, conducted during a 1-week period in January 2006, sampled [REDACTED] unique telephone numbers and e-mail addresses the NSA provided the FBI from the inception of the Stellar Wind program through 2005.³⁶⁸ The study sought to determine what percentage of the tipplers resulted in "significant contribution[s] to the identification of terrorist subjects or activity on U.S. soil." Working with an FBI statistician, the CAU determined that [REDACTED] randomly selected tipplers would be required to obtain statistically significant results.

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Approximately 30 analysts from the FBI's Counterterrorism Division were assigned the task of reviewing [REDACTED] tipplers to determine the disposition of each.³⁶⁹ The analysts sought to determine whether a particular tippler made a "significant" contribution to FBI counterterrorism efforts. For purposes of the study, a tippler was considered "significant" if it led to any of three investigative results: the identification of a terrorist, the deportation from the United States of a suspected terrorist, or the development of an asset that can report about the activities of terrorists." A tippler that led to a field office opening a preliminary or full investigation was not considered "significant" for purposes of the study.

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The analysts researched each tippler's disposition in investigative records contained in FBI electronic databases, beginning with the [REDACTED] EC that disseminated the tippler to the field. If an analyst concluded based on this research that a tippler was significant, a second analyst who was familiar with the Stellar Wind program further reviewed that determination. If the CAU analyst agreed with the initial finding, the tippler

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³⁶⁸ According to the CAU report, the NSA had provided the FBI [REDACTED] tipplers since the inception of Stellar Wind, but [REDACTED] were duplicates. [REDACTED] was the total number of unique tipplers. The tipplers by year were broken down as follows: [REDACTED]

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[REDACTED] The study also did not include content tipplers. ~~(TS//STLW//SI//OC/NF)~~

³⁶⁹ Most of the analysts were not read into the Stellar Wind program and were told that the study concerned the disposition of [REDACTED] leads. Of [REDACTED] tipplers reviewed by the analysts, approximately 12 percent were e-mail addresses, a figure consistent with the overall tippler breakdown between e-mail addresses and telephone numbers.

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and supporting information was presented to the CAU Unit Chief for a final review.³⁷⁰ ~~(TS//STLW//SI//OC/NF)~~

Based on this methodology, the study found that [REDACTED] 1.2 percent, of [REDACTED] tippers were "significant." The study extrapolated this figure to the entire population of [REDACTED] tippers and determined that one could expect to find [REDACTED] tippers the NSA provided the FBI under Stellar Wind were significant. ~~(TS//STLW//SI//OC/NF)~~

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The report documenting the study's findings included brief descriptions of [REDACTED] "significant" tippers. For example, according to the report, one tipper led to the opening of a full investigation that developed evidence that the user of the tipped e-mail address had "definite ties to terrorism." The user was arrested and pled guilty to charges of [REDACTED]

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[REDACTED] Another tipper led to the identification of an individual who, [REDACTED]

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

Several of the "significant" tippers related to ongoing FBI investigations. For example, information from one tipper designated as significant was already known to the relevant FBI field office, which had an investigation ongoing concerning a subject associated with the tipper prior to receiving the [REDACTED] EC. According to the study's brief description of the case's significance, the investigative file stated that the tipper was "very beneficial in the on-going investigation" by connecting the subject to terrorism, without describing that connection. Another tipper caused a field office to change a preliminary investigation to a full investigation regarding the possible illegal [REDACTED] The tipper indicated a connection between one of the subjects of the preliminary investigation and a known terrorist. ~~(TS//STLW//SI//OC/NF)~~

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The study also found that 28 percent of [REDACTED] tippers were never disseminated to FBI field offices for investigation. According to the report, the CAU filtered out these tippers based on "lack of significance" when they were first provided to the FBI by the NSA. These tippers were deemed non-significant for purposes of the study. In addition, the study found that for 22 percent of the sample tippers, FBI field offices did not report any

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³⁷⁰ According to a CAU analyst closely involved with the study, establishing a fairly "tight" criteria to identify "significant" tippers was necessary in order to obtain statistically significant results within the one-week time frame the CAU was given to complete the review. The analyst told the OIG that analysts initially applied a broader "significant" standard in their reviews of the tippers, but that it immediately became apparent that a stricter standard was required. The Unit Chief for the CAU told the OIG that the definition of "significant" ultimately used for the study was reached by consensus among Counterterrorism Division operational and analytical personnel. ~~(S//OC/NF)~~

investigative results. The study assumed that the field offices investigated the leads that were set but did not document their work in ACS. These tippers were deemed non-significant for purposes of the study.³⁷¹ Thus, combining these two categories, approximately 50 percent of the tippers reviewed as part of the CAU study either were never disseminated to FBI field offices, or were disseminated but with unknown investigative results.³⁷²
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The FBI's report of the study did not explicitly state any conclusions about whether Stellar Wind was a valuable program. FBI OGC told the OIG that based in part on the results of this study, which found [redacted] of the leads were significant, FBI executive management concluded that the program was "of value." The FBI OGC also said that FBI Director Mueller and Deputy Director Pistole provided congressional testimony in February and May 2006, respectively, about the value of the program, which the FBI OGC stated was based in part on the results of the study.
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2. **January 2006 Survey [redacted] E-Mail Meta Data Tippers**
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The CAU conducted a second study of Stellar Wind tippers in January 2006. According to Caproni, this study was in response to a request from the FISA Court about intelligence being obtained pursuant to the July 14, 2004, Pen Register/Trap and Trace Order that authorized the bulk collection of e-mail meta data. As discussed in Chapter Five, e-mail meta data was the first basket of Stellar Wind's signals collection activity that was placed under the FISA Court's authority. However, as noted earlier, the

³⁷¹ As noted, Caproni cited this lack of reporting from field offices as a reason for not being able to conduct a meaningful assessment of the Stellar Wind program's value in the spring of 2004. FBI Headquarters did not officially require field offices to report investigative results concerning [redacted] tippers until October 2004. According to the CAU analyst with whom the OIG spoke about the study, the idea of contacting field offices to discuss the disposition of tippers and to seek general observations about [redacted] was rejected because of the concern the inquiries might expose the Stellar Wind program.
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³⁷² By its methodology, the only tippers the study assessed for "significance" were those for which field offices reported investigative results to the CAU and therefore generally did not take into account tippers assigned as Discretionary leads. Discretionary leads, as distinguished from Action leads, did not require field offices to report to the CAU about how the tippers were used. Yet, according to FBI personnel, these leads sometimes were associated with ongoing investigations and sometimes provided new or additional indications of terrorist connections, or reported the content of communications indicating a subject's international movements. The "value" of this category of tippers was not captured in the FBI's study. ~~(TS//STLW//SI//OC/NF)~~

NSA continued to provide e-mail addresses to the FBI in Stellar Wind reports. ~~(TS//STLW//SI//OC/NF)~~

This second study, which reviewed each [REDACTED] e-mail tippers the NSA provided the FBI from August 2004 through January 2006, applied the same methodology for assessing "significance" that was used in CAU's first study. The second study found that none [REDACTED] e-mail tippers was "significant" under this standard. The report noted, however, that many of the investigations related to the reviewed e-mail tippers were still ongoing. In addition, the study observed that some of the tippers reviewed had only recently been disseminated to field offices for investigation and that it was possible investigation of these tippers had not been completed.

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D. FBI Judgmental Assessments of Stellar Wind Information
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To attempt to further assess the value of Stellar Wind information for the FBI, we interviewed FBI Headquarters officials and employees who regularly handled Stellar Wind information. We also interviewed personnel in FBI field offices who were responsible for handling [REDACTED] tippers. We asked these witnesses for their assessments of the impact of Stellar Wind or [REDACTED] information on FBI counterterrorism operations. We also recognize that FBI officials and agents other than those we interviewed may have had experiences with [REDACTED] different than those summarized below. ~~(TS//STLW//SI//OC/NF)~~

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The members of Team 10 and its predecessor [REDACTED] were strong advocates of the program and stated that they believed it contributed significantly to FBI international terrorism investigations. Several claimed that program tippers helped the FBI identify previously unknown subjects, although they were not able to identify for us any specific cases where this occurred. Other witnesses cited the FBI's increased cooperation with the NSA on international terrorism matters as a side benefit of the Stellar Wind program.³⁷³ ~~(TS//STLW//SI//OC/NF)~~

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FBI officials and agents from the International Terrorism and Operations Section (ITOS) expressed a more moderate assessment of Stellar Wind. None of the ITOS officials we interviewed could identify significant investigations to which Stellar Wind substantially contributed. However,

³⁷³ FBI Deputy General Counsel Julie Thomas also said that Stellar Wind helped improve the relationship between the FBI and CIA. She said the program provided an opportunity to demonstrate the "interoperability of different agencies," and based on her experience dealing with program-related matters the relationship between the FBI and the NSA was "better now than it has ever been." ~~(TS//STLW//SI//OC/NF)~~

they were generally supportive of the program, often stating that it was "one tool of many" in the FBI's fight against international terrorism.
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ITOS personnel frequently noted for us the deficiencies in the Stellar Wind information disseminated to field offices, such as the lack of details about the foreign individuals allegedly involved in terrorism with whom domestic telephone numbers and e-mail addresses were in contact. However, these FBI employees believed the possibility that such contacts related to terrorism made investigating the tips worthwhile. Some ITOS witnesses also told us that in their experience the FBI was already aware of many of the telephone numbers and e-mail addresses disseminated under [redacted] but that this duplication did not mean the information was without investigative value. For example, one witness said such contacts could "help move cases forward" by confirming a subject's contacts with individuals involved in terrorism or identifying additional terrorist contacts.
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One FBI Headquarters supervisory special agent said that FBI field offices might have been less critical of [redacted] had there been agents in the offices read into Stellar Wind. He said that such agents would have been better positioned than FBI Headquarters' officials to assure others in their respective offices about the reliability of the information being disseminated. A former ITOS section chief told the OIG that he proposed to the NSA that the head of each FBI field office be read into Stellar Wind for this reason and to be able to make fully informed decisions about handling the Stellar Wind tippers. ~~(TS//STLW//SI//OC/NF)~~

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The most critical comments we heard about [redacted] impact came primarily from the supervisory special agents we interviewed who managed counterterrorism programs at the two FBI field offices we visited. These agents said the [redacted] tippers and any information developed from the leads might be useful, but that the [redacted] program was not an effective way to identify threats. For example, one supervisor stated that [redacted] represented FBI Headquarters' failure to prioritize threat information. He said that by simply disseminating [redacted] tippers to field offices in ECs that often provided little in the way of details, FBI Headquarters effectively made the field offices "insurance carriers," placing the responsibility solely on them to timely and adequately investigate every lead. The supervisor stated that ordinarily he accepts this responsibility as part of his job, but that the [redacted] tippers were especially frustrating

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as compared to other counterterrorism leads the office received because they did not provide sufficient information for him to prioritize the leads.³⁷⁴

Another supervisory special agent expressed a similar assessment of [redacted] stating that he felt the project "perverted the logical priority of tasking." He said that absent the leads' special status as part of [redacted] a very low percentage of the tippers would have been considered priority matters. He told us that he did not have the freedom to prioritize the leads in the manner he felt was warranted by the information provided in [redacted] ECs. ~~(TS//SI//NF)~~

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Field office agents who investigated [redacted] leads also were critical of the lack of details contained in [redacted] ECs about the nature of the terrorist connection to the domestic contact, or about the contact itself, such as the duration or frequency of the calling activity. Some agents we interviewed said they also occasionally were frustrated by the prohibition on using [redacted] information in any judicial process, such as in FISA applications, although none could identify an investigation in which the restrictions adversely affected the case. ~~(TS//STLW//SI//OC/NF)~~

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Most of the agents we interviewed viewed [redacted] tippers as just another type of lead that required appropriate attention, and the agents generally did not handle the leads with any greater care or sense of urgency than non-[redacted] counterterrorism leads. ~~(TS//SI//NF)~~

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Moreover, none of the agents we interviewed identified an investigation in their office in which [redacted] played a significant role, nor could they recall how such a tipper contributed to any of their international terrorism cases. Nevertheless, the agents generally viewed [redacted] tippers as a potentially valuable source of information, noting that the information developed from the investigations of tippers might prove useful in the future. ~~(TS//SI//NF)~~

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Agents also stated that through the threat assessment interviews they conducted of the subscribers to tipped telephone numbers, [redacted] "opened a window" to populations within the field offices' jurisdiction that

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³⁷⁴ The supervisor stated that [redacted] leads had little investigative value to his office. First, he said the leads did not provide enough detail about the reliability of the information being provided. Such details might include, for example, what other individuals had access to the foreign telephone allegedly used by someone involved in international terrorism, and how many calls were made from that number and for what durations. These details would help evaluate the threat represented by the foreign number's contact with the tipped domestic number. Second, the supervisor said the [redacted] tippers lacked direction about what the office should do with a tipped number after a threat assessment has been conducted. ~~(TS//SI//NF)~~

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might not otherwise be as accessible. For example, [REDACTED]

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In 2007, FBI Deputy Director John Pistole briefed the Senate Select Committee on Intelligence concerning the FBI's participation in the Stellar Wind program. A document prepared in connection with that briefing addressed, among other subjects, the program's value in FBI national security investigations. The document stated,

[S]uccessful national security investigations are rarely the result of a single source of information. Rather they occur after exhaustive hours of investigation and the use of legal process in which bits and pieces of intelligence from many sources are gathered and combined into a coherent whole. The *success or effectiveness* of any intelligence program – whether Stellar Wind . . . or anything else – is sometimes difficult to assess in the abstract because of that blending of multiple strains of intelligence and because success should never be measured only in terms of terrorist plots that have visibly been disrupted, but also in plots that never formed because our investigative actions themselves had a disruptive effect. (Italics in original.)³⁷⁵ ~~(TS//STLW//SI//OC/NF)~~

We interviewed FBI Director Mueller in connection with this review and asked him about the value of Stellar Wind to the FBI's counterterrorism program. FBI Director Mueller told us that he believes the Stellar Wind program was useful and that the FBI must follow every lead it receives in order to prevent future terrorist attacks. He said "communications are absolutely essential" to this task and called meta data the "key" to the FBI's

³⁷⁵ A "talking points" document the FBI drafted for Director Mueller also expressed this view. The document stated:

[The] impact of any single piece of intelligence or program is difficult to quantify. Combination of various information, including humint, sigint, and elsur, is necessary to address the global threat. Accordingly, it is not possible to make an unequivocal "but for" connection between a tip and any particular FBI investigation that has resulted in a seizure or arrest. However, the information has amplified, corroborated and directed FBI investigative resources. ~~(TS//STLW//SI//OC/NF)~~

communications analysis. Mueller also stated that to the extent such information can be gathered and used legally it must be exploited and that he "would not dismiss the potency of a program based on the percentage of hits." Asked if he was familiar with any specific FBI investigations that represent Stellar Wind successes, Mueller said that as a general matter it is very difficult to quantify the effectiveness of an intelligence program without "tagging" the leads that are produced in order to evaluate the role the program information played in any investigation. ~~(TS//STLW//SI//OC/NF)~~

We also asked Mueller about the issue of allocating finite FBI resources to respond to Stellar Wind leads. Mueller said that in the period after the September 11 terrorist attacks, the FBI remained in a state of continuous alert for several years. Mueller stated that he understood the President's desire to take every step to prevent another terrorist attack, and believes that it would be wrong not to utilize all available capabilities to accomplish this, so long as it is done legally. ~~(TS//STLW//SI//OC/NF)~~

Mueller also commented on media reports regarding FBI agents' frustration with the volume of [REDACTED] leads. For example, articles described complaints of unidentified FBI field agents regarding the lack of information in the tippers they received under [REDACTED] and how the high volume of tippers necessitated devoting significant resources to what were described as "dry leads."³⁷⁶ Mueller said that the agents' frustration was similar to that expressed about other sources for the thousands of leads the FBI received after September 11, such as calls from citizens. Mueller stated that he understood the frustration associated with expending finite resources on numerous leads unlikely to have a terrorism nexus, but said that his philosophy after September 11 was that "no lead goes unaddressed." Moreover, he stated that frustrations can result from any counterterrorism program. ~~(S//NF)~~

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We also interviewed Kenneth Wainstein, the first Assistant Attorney General for the Justice Department's National Security Division, which was created in September 2006. Wainstein told us that he was aware of "both sides" on the question of Stellar Wind's value. He also said that he heard the government had not "gotten a heck of a lot out of it," but noted that NSA Director Hayden and FBI Director Mueller have stated that the program was valuable. ~~(S//NF)~~

Hayden told us that he always felt the Stellar Wind program was worthwhile and successful. [REDACTED]

³⁷⁶ See, e.g., Lowell Bergman, et al., "Domestic Surveillance: The Program; Spy Agency Data After Sept. 11 Led F.B.I. to Dead Ends," The New York Times, January 17, 2006. (U)



Hayden said the FBI believed the leads represented "something certain," when in fact the leads were only "narrow threads" and that the idea was to help build the FBI's intelligence base. Hayden also observed that the enemy may not have been as embedded in the United States as much as feared, but said that he believes Stellar Wind helped determine this. ~~(TS//STLW//SI//OC/NF)~~

E. Examples of FBI Counterterrorism Cases Involving Stellar Wind Information ~~(S//NF)~~

As part of our review, we sought to identify specific FBI international terrorism investigations in which Stellar Wind information was used and to describe the information's specific contributions to the investigations. We agree with FBI officials that this is a difficult task in view of the nature of these investigations, which frequently are predicated on multiple sources of information. To the extent Stellar Wind tips played a role in an investigation, the tips could be one of several sources of information acquired over time and used by the FBI to pursue the investigation. Moreover, the FBI agents and analysts we interviewed during our review could not say that "but for" a Stellar Wind tipper a given investigation would not have been productive, and they were unable to recall specifically how, if at all, Stellar Wind intelligence may have caused their investigations to take a particular direction. ~~(S//NF)~~

Our review did not seek to describe Stellar Wind's impact on each FBI field office, and we recognize that FBI officials and agents other than those we interviewed might have had experiences with [redacted] different than those summarized in this chapter. [redacted]

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Because such reporting was not disseminated to FBI field offices under [redacted] any contribution the information might have made to investigations FBI personnel we interviewed were familiar with might not have been accounted for in our questions about Stellar Wind and [redacted] information. ~~(TS//STLW//SI//OC/NF)~~

In view of these difficulties, we examined several investigations frequently cited in NSA and FBI documents the OIG obtained during this

review as examples of Stellar Wind information that contributed to the FBI's counterterrorism efforts.³⁷⁷ For these investigations, we examined [REDACTED] ECs, FBI Letterhead Memoranda describing the status of investigative activities in specific cases, Counterterrorism Division responses to OIG questions about the role of [REDACTED] in specific investigations, government pleadings filed in international terrorism prosecutions, and FBI briefing materials.³⁷⁸ ~~(TS//STLW//SI//OC/NF)~~

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



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³⁷⁷ As noted above, the FBI was not the only customer of Stellar Wind information. The CIA and the National Counterterrorism Center also received Stellar Wind reports potentially relevant to their operations. Pursuant to a directive in the FISA Amendments Act of 2008, Intelligence Community OIGs are examining the impact Stellar Wind had on their respective agencies or if Stellar Wind information contributed to their agencies' operations. ~~(TS//STLW//SI//OC/NF)~~

³⁷⁸ The briefing materials were prepared by the FBI's Communications Exploitation Section (CXS) shortly after aspects of the Stellar Wind program were publicly revealed in a series of New York Times articles in December 2005. The briefing materials were prepared at the direction of FBI General Counsel Valarie Caproni, who anticipated that Director Mueller and Deputy Director Pistole would be called to testify about the program. These briefing materials were intended to help prepare Mueller and Pistole for their testimony. The briefing materials include summaries of specific cases relating to Stellar Wind information that were highlighted by the NSA. ~~(TS//STLW//SI//OC/NF)~~

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several [REDACTED] This information generated leads for FBI field offices. ~~(TS//STLW//SI//OC/NF)~~

Several of these leads resulted in the FBI initiating investigations of [REDACTED] to identify any involvement in terrorism. In most cases, the FBI concluded that the individuals' connection [REDACTED] was not related to any involvement in terrorism. However, in one case FBI investigation determined that the individual was in contact with additional [REDACTED] engaged in activities indicating possible involvement in terrorist activities.³⁸¹ In another case, the FBI

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³⁷⁹ We described [REDACTED] in Chapter Three. ~~(S//OC/NF)~~

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[REDACTED]

382 The individual, who had come to the FBI's attention [REDACTED] but who was not under investigation at the time of the [REDACTED] tipper, voluntarily departed the country [REDACTED] (TS//STLW//SI//OC/NF)

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The subject of another of the [REDACTED] leads generated by [REDACTED] was already under investigation by an FBI field office. The [REDACTED] lead caused the FBI office to convert its preliminary investigation into a full investigation and obtain emergency authorization to conduct electronic surveillance under FISA [REDACTED]

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[REDACTED] used by the individual. The FBI also interviewed the individual several times and issued National Security Letters [REDACTED] However, the FBI did not develop any information that linked the individual to terrorism or terrorist groups.

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[REDACTED]

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On [REDACTED] the FBI's field office [REDACTED]

[REDACTED]

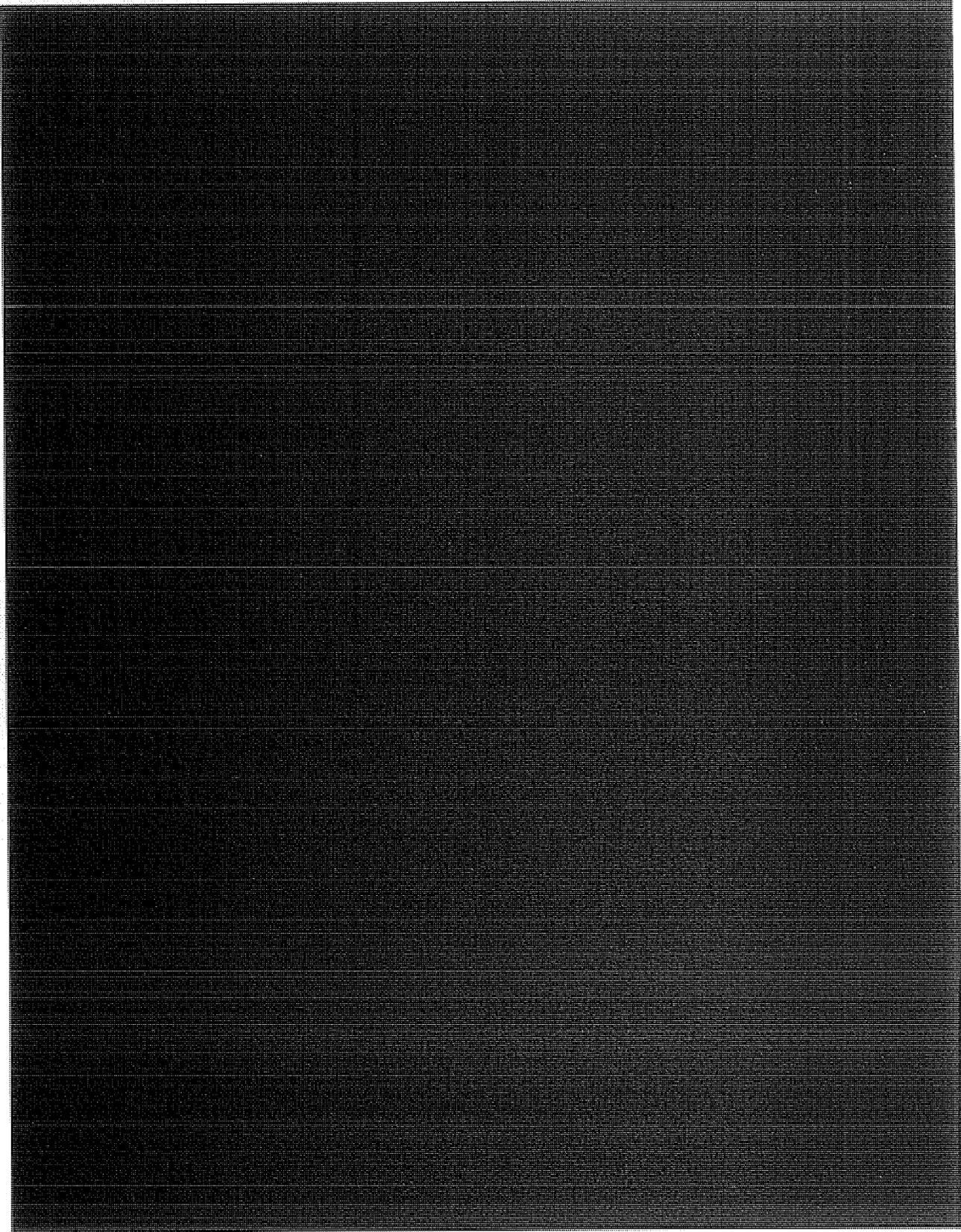
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[REDACTED]



However, according to documents provided to the OIG, the FBI was

[REDACTED]

The FBI therefore was unable to establish that there was a nationwide conspiracy [REDACTED] to provide material support to terrorism. (S//OC/NF)

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Nevertheless, FBI documents state that after [REDACTED] was closed, field offices with [REDACTED]-related investigations conducted "successful disruption operations" of criminal activities that were identified during the course of the investigations. (S//OC/NF)

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

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The FBI's [REDACTED] opened a full investigation on [REDACTED] based on his statements [REDACTED] (S//OC/NF)

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Acting in coordination with [REDACTED] law enforcement and intelligence agencies, the FBI learned that a group of

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[REDACTED]

This investigation came to be known by the code name [REDACTED] 384 (TS//SI//OC/NF)

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The EC set a discretionary lead for the FBI [REDACTED] but encouraged the field office to "provide any pertinent follow-up questions to . . . CAU, for submission to and consideration by the source." (TS//STLW//SI//OC/NF)

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[REDACTED]

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An FBI response to an OIG request for information about the role of [REDACTED] in [REDACTED] case stated that as a result of the [REDACTED] tipper, the [REDACTED] located [REDACTED] after [REDACTED] return to the United States and established surveillance on [REDACTED]. In an FBI document entitled [REDACTED]

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³⁸⁵ FBI documents we reviewed do not indicate how this information was obtained or whether it was derived from Stellar Wind. (TS//STLW//SI//OC/NF)

³⁹¹ The briefing materials state that it could not be verified whether [REDACTED] [REDACTED] (S//OC/NF)

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██████████ it is noted that at the time ██████████ returned to the United States the FBI had FISA coverage on ██████████. According to the document, ██████████

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██████████³⁸⁷ (TS//STLW//SI//OC/NF)

FBI briefing materials state that the FBI first began surveillance of an individual later determined to be misidentified ██████████. Through open source investigation, the FBI obtained the telephone number of the misidentified subject and was granted emergency FISA authority on that number. FISA surveillance was initiated on the telephone believed to be used ██████████ (TS//STLW//SI//OC/NF)

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On ██████████ the FBI employees located at the NSA (Team 10) submitted a request to the NSA for call chaining analysis and consideration for Stellar Wind "tasking," or content collection. The NSA initiated content collection on the erroneous telephone number the same day. Contact chaining on the telephone number did not reveal any contacts with any known terrorist-associated numbers. On ██████████ it was determined ██████████ was not using the telephone number tasked and chained under Stellar Wind authority. The FBI also ceased FISA-authorized electronic surveillance of the number ██████████. By ██████████ ongoing physical surveillance confirmed that the telephone number believed to be associated ██████████ had been misidentified. (TS//STLW//SI//OC/NF)

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On ██████████ the primary suspects in the ██████████ were arrested ██████████

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██████████ (S//OC/NF)

An FBI document stated that since ██████████ arrest ██████████ "has provided a wealth of intelligence to the FBI and the Intelligence Community," and that the intelligence ██████████ provided has been disseminated to intelligence services ██████████

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³⁸⁷ A CXS intelligence analyst who drafted the summary of ██████████ for the CXS briefing materials told the OIG that she concluded that the FBI "probably would have figured out eventually" ██████████ was back in the United States based on ██████████

██████████ (TS//STLW//SI//OC/NF)

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On [redacted] pled guilty to [redacted] of [redacted]

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b7C, b7E

[redacted] remains incarcerated [redacted]

(S//NF)

[redacted]

b1,
b3,
b6,
b7C,
b7D,
b7E

According to a [redacted] FBI PowerPoint presentation about the FBI's role in Stellar Wind, the [redacted] tipper "facilitated the FBI's ability to locate, initiate physical surveillance, and debrief [redacted] in a timely manner." The facts reviewed by the OIG show that [redacted] failed to result in notification to the FBI of [redacted] return to the United States, but that through Stellar Wind information the FBI was able to locate [redacted] and obtain surveillance of [redacted] (TS//STLW//SI//OC/NF)–

b1, b3, b6,
b7C, b7E

4. [redacted] (TS//STLW//SI//OC/NF)–

b1, b3, b6, b7C,
b7E

[redacted]

b1,
b3,
b6,
b7C,
b7E

[redacted]

b1, b3,
b6, b7C,
b7E

According to FBI briefing material, as a result of the [redacted] tipper the [redacted] opened a full international terrorism investigation on [redacted] (S//OC/NF)

b1, b3, b6, b7C, b7E

[Large redacted block]

b1, b3, b6, b7C, b7E

b1, b3, b6, b7C, b7E

After receiving the [redacted] tipper in [redacted] the [redacted] requested that FBI Headquarters apply for a FISA order to conduct surveillance of [redacted]. The FBI subsequently obtained [redacted] and began FISA electronic surveillance [redacted] (TS//STLW//SI//OC/NF)

b1, b3, b6, b7C, b7E

According to an [redacted] Letterhead Memorandum (LHM) drafted by the FBI case agent on [redacted] the FBI determined from [redacted]

b1, b3, b6, b7C, b7E

[Large redacted block] (TS//STLW//SI//OC/NF)

³⁸⁹ According to the EC [redacted] interviewed in connection with the FBI's effort to ascertain [redacted] who the FBI suspected of having ties to [redacted] (S//NF)

b1, b3, b6, b7C, b7E

³⁹⁰ According to the EC, the individual was reported to have told the police [redacted] (S//OC/NF)

[REDACTED]

b1,
b3,
b6,
b7C,
b7E

The [REDACTED] LHM described other evidence seized [REDACTED]

[REDACTED]

b1,
b3,
b6,
b7C,
b7E

In addition, the LHM described additional evidence gathered through several detainee interviews [REDACTED]

[REDACTED] (S//OG/NF)

The FBI arrested [REDACTED] and an associate [REDACTED]

were indicted on [REDACTED]

b1, b3,
b6, b7C,
b7E

[REDACTED] indicted on [REDACTED]

(S//NF)

The arrest and indictment arose out of [REDACTED]

[REDACTED]

b1,
b3,
b6,
b7C,
b7E

(S//NF)

[REDACTED]

b1, b3,
b6, b7C,
b7E

[REDACTED]

b1,
b3,
b6,
b7C,
b7E

b1,
b3,
b6,
b7C,
b7E

b1, b3,
b6,
b7C,
b7E

Following [REDACTED] trial, [REDACTED] was convicted on [REDACTED] [REDACTED]
[REDACTED] ³⁹³ He was sentenced to [REDACTED] prison term. ~~(S//NF)~~

In an undated summary of successes under the Stellar Wind program, the NSA characterized [REDACTED] as

b1, b3,
b6, b7C,
b7E

[REDACTED]

b1, b3,
b6,
b7C,
b7E

[REDACTED]

b1,
b3,
b6,
b7C,
b7E

[REDACTED] ³⁹³ was convicted on [REDACTED] against [REDACTED]
~~(S//NF)~~

b1, b3,
b6,
b7C,
b7E

The government's response to the [REDACTED] stated that the FBI initiated a national security-international terrorism investigation of [REDACTED] after receiving the [REDACTED] EC. The government stated that the [REDACTED]

b1, b3,
b6,
b7C,
b7E

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

5.

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

b1,
b3,
b6,
b7C,
b7E

The FBI closed its preliminary investigation of [REDACTED] after it concluded [REDACTED] had no nexus to terrorist activities.

b1, b3, b6,
b7C, b7E

~~(S//NF)~~

b1, b3,
b6,
b7C,
b7E

b1,
b3,
b6,
b7C,
b7E

[REDACTED]

b1,
b3,
b6,
b7C,
b7E

According to FBI briefing materials, based on the [REDACTED] investigation of [REDACTED] associates [REDACTED] a FISA order was obtained for [REDACTED]

[REDACTED] According to an FBI declaration filed in discovery litigation concerning [REDACTED] the [REDACTED] tipper in [REDACTED] investigation was not used to obtain the FISA order; however, the declaration stated that the tipper [REDACTED]

b1,
b3,
b6,
b7C,
b7E

[REDACTED]

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

[REDACTED] was arrested by the FBI later in [REDACTED] According to the FBI briefing materials, [REDACTED]

b1,
b3,
b6,
b7C,
b7E

[REDACTED]

(S//OC/NF)

On [REDACTED] the FBI applied for and obtained a FISA order to conduct electronic surveillance and a physical search [REDACTED]

[REDACTED] By this time [REDACTED] had been in FBI custody for several days.³⁹⁵ In support of the FISA application, the government reported that [REDACTED] also in custody at that time, recently had [REDACTED]

b1,
b3,
b6,
b7C,
b7E

[REDACTED]

³⁹⁴ Based on the specific wording of the EC, it is evident that the tipper was derived [REDACTED]

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

[REDACTED]

b1, b3,
b6,
b7C,
b7E

[REDACTED]

b1, b3, b7E

On [REDACTED] pleaded guilty to [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] 397 (S//NF)

b1, b3,
b6,
b7C,
b7E

The NSA recommended that the FBI cite [REDACTED] investigation in briefing materials as an example of Stellar Wind's contribution to counterterrorism efforts. The FBI briefing materials also state that the tipper in [REDACTED] investigation was "instrumental in [REDACTED] becoming the subject of a Full Investigation on [REDACTED]" (TS//STLW//SI//OC/NF)

b1, b3,
b6,
b7C,
b7E

In response to the OIG's request for information about the role [REDACTED] information played in the investigation [REDACTED] the FBI's Counterterrorism Division told us [REDACTED] that, based on its searches of internal FBI databases and discussions with the case agents, "no [REDACTED] reporting factored into [REDACTED] investigation." According to a [REDACTED] declaration the FBI filed in [REDACTED] prosecution, the [REDACTED] tipper in [REDACTED] investigation "did not directly lead to any information or evidence that was used in the prosecution of the case against [REDACTED] and was not incorporated into any application to a court, including the [FISA Court]."³⁹⁸ (TS//STLW//SI//OC/NF)

b1, b3,
b6,
b7C,
b7E

[REDACTED]

b6,
b7C
b7E

[REDACTED]

b1,
b3,
b6,
b7C,
b7E

[REDACTED]

b1, b3,
b6,
b7C,
b7E

V. **OIG Analysis (U)**

The FBI created the [REDACTED] project to disseminate Stellar Wind information as leads to FBI field offices and assigned the CAU's Team 10 to the NSA to work on Stellar Wind full-time for this purpose. We found that the co-location improved the FBI's knowledge about Stellar Wind operations and gave the NSA better insight about how FBI field offices investigated Stellar Wind information. We were told these benefits translated to improvements in the Stellar Wind report drafting process, and by extension, in [REDACTED] leads. (TS//STLW//SI//OC/NF)

b1,
b3,
b7E

One of the changes the FBI implemented to attempt to improve the investigation of [REDACTED] leads was to make FBI Headquarters-based CAU, instead of the field offices, responsible for issuing National Security Letters (NSL) to obtain subscriber information on tipped telephone numbers and e-mail addresses. This measure, initiated in July 2003, was intended to address agent concerns that [REDACTED] leads did not provide sufficient information to initiate national security investigations, a prerequisite under Justice Department investigative guidelines to issuing NSLs. (TS//STLW//SI//OC/NF)

b1,
b3,
b7E

However, we found that the CAU issued the NSLs from the [REDACTED] control file, a non-investigative file created in September 2002 to serve as a repository for [REDACTED]-related communications between FBI Headquarters and field offices. Issuing the NSLs from a control file instead of an investigative file was contrary to internal FBI policy. The FBI finally opened an investigative file for the [REDACTED] project in November 2006. We believe the CAU and OGC officials involved in the decision to issue NSLs from the [REDACTED] control file concluded in good faith that the FBI had sufficient predication either to connect the [REDACTED] NSLs with existing preliminary or full investigations of al Qaeda and affiliated groups or to open new preliminary or full investigations in compliance with Justice Department investigative guidelines. However, we also concluded that the FBI could have, and should have, opened an investigative file for the [REDACTED] project when the decision first was made to have FBI Headquarters issue NSLs for [REDACTED] leads. (TS//STLW//SI//OC/NF)

b1,
b3,
b7E

We also described in this chapter a change the FISA Court made in March 2004 to the "scrubbing" process used to account for Stellar Wind information in international terrorism FISA applications. The change requires the FBI's Team 10 and FBI OGC, in coordination with the Department's Office of Intelligence (formerly OIPR), to determine whether any facility (telephone number or e-mail address) that appears in a FISA application also appeared in a Stellar Wind report and, if so, whether the FBI had developed, independent of Stellar Wind, an investigative interest in the facility before it was the subject of an [REDACTED] tipper, or whether the

b1, b3,
b7E

facility would have been "inevitably discovered." FISA Court Presiding Judge Kollar-Kotelly imposed this additional scrubbing requirement after being advised of modifications made to Stellar Wind in March 2004 following the Justice Department's revised legal analysis of the program. The FBI and Office of Intelligence continue to expend significant resources to comply with this scrubbing requirement.³⁹⁹ However, we did not find any instances of the requirement causing the FBI not to be able to obtain FISA surveillance coverage on a target. ~~(TS//STLW//SI//OC/NF)~~

Our primary focus in this chapter was to assess the general role of Stellar Wind information in FBI investigations and its value to the FBI's overall counterterrorism efforts. Similar to the FBI, we had difficulty assessing the specific value of the program to the FBI's counterterrorism activities. However, based on our interviews of FBI managers and agents and our review of documents, and taking into account the substantial volume of leads the program generated for the FBI, we concluded that although the information produced under the Stellar Wind program had value in some counterterrorism investigations, it played a limited role in the FBI's overall counterterrorism efforts. ~~(S//NF)~~

The vast majority of Stellar Wind information the NSA provided the FBI related to telephone numbers and e-mail addresses the NSA identified through meta data analysis as having connections to individuals believed to be involved in international terrorism. The NSA rated a small percentage of these contacts

b1, b3,
b7E

[REDACTED]

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

FBI agents and analysts with experience investigating [REDACTED] leads told us that most leads were determined not to have any connection to

b1, b3, b7E

³⁹⁹ As noted earlier, the scrubbing procedure applies both to NSA information derived from the Stellar Wind program and to information derived from the FISA Court's PR/TT and Section 215 bulk meta data orders. This is so because until mid-2008, when the Stellar Wind program officially was closed, leads the NSA developed from the FISA-authorized bulk meta data collections were disseminated under the Stellar Wind compartment. ~~(TS//STLW//SI//OC/NF)~~

⁴⁰⁰ Stated another way, the Stellar Wind program generated [REDACTED] leads for the FBI each month from October 2001 to February 2006. ~~(TS//STLW//SI//OC/NF)~~

b1, b3,
b7E

terrorism, and they did not identify for us any specific cases where leads helped the FBI identify previously unknown subjects involved in terrorism (although several stated that this did occur). This is not surprising given that the vast majority of leads sent to FBI field offices for investigation concerned telephone numbers and e-mail addresses that the NSA already had determined were at best one or two steps removed from numbers and addresses suspected of being used by individuals believed to be involved in terrorism. (TS//STLW//SI//OC/NF)

The FBI's two statistical studies that attempted to assess the "significance" of Stellar Wind meta data leads to FBI counterterrorism efforts did not include explicit conclusions on the program's usefulness. The first study found [redacted] samples taken from [redacted] meta data leads the NSA provided the FBI from approximately October 2001 to December 2005, [redacted] or 1.2 percent [redacted] made "significant" contributions. The FBI's second statistical study, which reviewed each [redacted] e-mail tippers the NSA provided the FBI from August 2004 through January 2006, identified no examples of "significant" contributions to FBI counterterrorism efforts.⁴⁰¹ The FBI OGC told us that FBI executive management's statements in congressional testimony that the Stellar Wind program had value was based in part on the results of the first study. (TS//STLW//SI//OC/NF)

b1,
b3,
b7E

While we believe Stellar Wind's role in FBI cases was limited, assessing the value of the program to the FBI's overall counterterrorism efforts is more complex. Some witnesses commented that an intelligence program's value cannot be assessed by statistical measures alone. Other witnesses, such as General Hayden, said that the value of the program may lie in its ability to help the Intelligence Community determine that the terrorist threat embedded within the country is not as great as once feared. Witnesses also suggested that the value of the program should not depend on documented "success stories," but rather on maintaining an intelligence capability to detect potential terrorist activity in the future. (TS//SI//NF)

FBI personnel we interviewed generally were supportive of the Stellar Wind (or [redacted] program, calling the information "one tool of many" in the FBI's anti-terrorism efforts that "could help move cases forward" by, for example, confirming a subject's contacts with individuals involved in terrorism or identifying additional terrorist contacts. However, FBI personnel also frequently noted for us the deficiencies in the Stellar Wind information disseminated to FBI field offices, such as the lack of details

b1,
b3,
b7E

⁴⁰¹ As described earlier in this chapter, the FBI considered a tipper "significant" if it led to any of three investigative results: the identification of a terrorist, the deportation from the United States of a suspected terrorist, or the development of an asset that can report about the activities of terrorists. (TS//STLW//SI//OC/NF)

about the foreign individuals allegedly involved in terrorism with whom domestic telephone numbers and e-mail addresses were in contact. Yet, these FBI employees also believed the possibility that such contacts related to terrorism made investigating the tips worthwhile. Some FBI employees also cited the FBI's increased cooperation with the NSA on international terrorism matters as a side benefit of the Stellar Wind program. (TS//STLW//SI//OC/NF)

FBI Director Mueller told us that he believes the Stellar Wind program was useful and that the FBI must follow every lead it receives in order to prevent future terrorist attacks. He said "communications are absolutely essential" to this task and called meta data the "key" to the FBI's communications analysis. Mueller also stated that to the extent such information can be gathered and used legally it must be exploited and that he "would not dismiss the potency of a program based on the percentage of hits." (TS//STLW//SI//OC/NF)

We sought to look beyond these comments of general support for Stellar Wind to specific, concrete examples of the program's contributions that also illustrated the role Stellar Wind information could play. We therefore examined five cases frequently cited in documents we reviewed and during our interviews as examples of Stellar Wind's contribution to the FBI's counterterrorism efforts. The cases include

[REDACTED]

b1, b3,
b6,
b7C,
b7E

In another case, Stellar Wind information revealed to the FBI that

[REDACTED]

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

In another case

[REDACTED]

b1, b3,
b6, b7C,
b7E

According to the FBI, while the Stellar Wind information was either never used or "was of no value" in the criminal investigation that led to [REDACTED] arrest and conviction, it was an [REDACTED] tipper that led to the national security investigation that preceded the criminal prosecution. (TS//STLW//SI//OC/NF)

The final investigation we examined [REDACTED] did not appear to result directly from Stellar Wind information. The NSA and the FBI at times have cited [REDACTED] case as an example of the contributions of Stellar Wind to

b1, b3,
b6, b7C, b7E

counterterrorism investigations. An FBI declaration filed in [REDACTED] prosecution indicated that [REDACTED]

[REDACTED] Moreover, the FBI told us in response to our inquiry that Stellar Wind information did not "factor into [REDACTED] investigation." However, we concluded that Stellar Wind may have played some indirect role [REDACTED] becoming the subject of a Full Investigation by the FBI. Our review of documents indicated that [REDACTED] investigation, which appears to have been advanced by Stellar Wind reporting, might have caused the FBI to reopen its investigation. We were unable to describe with the same certainty as in [REDACTED] investigation the extent of Stellar Wind's contribution to [REDACTED] investigation, in part because of differing assessments in the FBI's own documents regarding the role of Stellar Wind this matter.

b1,
b3,
b6,
b7C,
b7E

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

In short, we found that Stellar Wind generally has played a limited role in FBI counterterrorism investigations, but that the evidence shows there are cases where Stellar Wind information had value. For example, in some of the cases we examined Stellar Wind information caused the FBI to take action that led to useful investigative results. However, in others the connection between the Stellar Wind information and the FBI's investigative actions was more difficult to discern. (S//NF)

As discussed in Chapter Five and in this chapter, Stellar Wind's bulk meta data collection activities were transitioned to FISA authority and are ongoing. The FBI, under the [REDACTED] project (the successor to [REDACTED]), requires field offices to conduct, at a minimum, threat assessments on telephone numbers and e-mail addresses the NSA derives from this FISA-authorized collection that the FBI is not already aware of, including numbers and addresses one or two steps removed from direct contacts with individuals involved in terrorism. In view of our findings about the Stellar Wind program's contribution to the FBI's counterterrorism efforts, we believe that the FBI should regularly assess the impact [REDACTED] leads have on FBI field offices and whether limited FBI resources should be used to investigate all of them. (TS//STLW//SI//OC/NF)

b1, b3,
b7E

Another consequence of the Stellar Wind program and the FBI's approach to assigning leads was that many threat assessments were conducted on individuals located in the United States, including U.S. persons, who were determined not to have any nexus to terrorism or

represent a threat to national security.⁴⁰² These assessments also caused the FBI to collect and retain a significant amount of personal information about the users of tipped telephone numbers and e-mail addresses. In addition to an individual's name and home address, such information could include where the person worked, records of foreign travel, and the identity of family members. The results of these threat assessments and the information that was collected generally were reported in communications to FBI Headquarters and uploaded into FBI databases.

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

The FBI's collection of U.S. person information in this manner is ongoing under the NSA's FISA-authorized bulk meta data collection. To the extent leads derived from this program generate results similar to those under Stellar Wind, the FBI will continue to collect and retain a significant amount of information about individuals in the United States, including U.S. persons, that do not have a nexus to terrorism or represent a threat to national security. ~~(TS//STLW//SI//OC/NF)~~

We recommend that as part of the [REDACTED] project, the Justice Department's National Security Division (NSD), working with the FBI, should collect information about the quantity of telephone numbers and e-mail addresses disseminated to FBI field offices that are assigned as Action leads and that require offices to conduct threat assessments. The information compiled should include whether individuals identified in threat assessments are U.S. or non-U.S. persons and whether the threat assessments led to the opening of preliminary or full national security investigations. With respect to threat assessments that conclude that users of tipped telephone numbers or e-mail addresses are not involved in terrorism and are not threats to national security, the Justice Department should take steps to track the quantity and nature of the U.S. person information collected and how the FBI retains and utilizes this information. This will enable the Justice Department and entities with oversight responsibilities, including the OIG and congressional committees, to assess the impact this intelligence program has on the privacy interests of U.S. persons and to consider whether, and for how long, such information should be retained. ~~(TS//SI//OC/NF)~~

b1, b3,
b7E

[REDACTED]

b1, b3,
b7E

We also recommend that, consistent with NSD's current oversight activities and as part of its periodic reviews of national security investigations at FBI Headquarters and field offices, NSD should review a representative sampling [REDACTED] leads to those offices. For each lead examined, NSD should assess FBI compliance with applicable legal requirements in the use of the lead and in any ensuing investigations, particularly with the requirements governing the collection and use of U.S. person information. ~~(TS//SI//OC/NF)~~

b1, b3,
b7E

In sum, we agree that it is difficult to assess or quantify the effectiveness of a particular intelligence program. However, based on the interviews we conducted and documents we reviewed, we found that Stellar Wind information generally played a limited role in the FBI's counterterrorism efforts, but that the information had value in some cases. In addition, some witnesses said the program provides an "early warning system" to allow the Intelligence Community to detect potential terrorist attacks, even if the system has not specifically uncovered evidence of preparations for such an attack. Moreover, other OIGs in the Intelligence Community are reviewing their agency's involvement with the program and the results of those reviews, analyzed together, will provide a more comprehensive picture of the program's overall usefulness.
~~(TS//STLW//SI//OC/NF)~~

Finally, because the bulk meta data aspect of the Stellar Wind program continues under FISA authority, we recommend that the NSD take steps to gather information on the continuing operations of the program, including the use and handling of vast amounts of information on U.S. persons and the effectiveness of the program in FBI counterterrorism investigations. ~~(TS//STLW//SI//OC/NF)~~

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

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

CHAPTER SEVEN
DISCOVERY ISSUES RELATED TO STELLAR WIND
INFORMATION ~~(TS//SI//NF)~~

In this chapter we discuss the government's statutory and judicial discovery obligations in international terrorism cases relating to Stellar Wind-derived information. Under the Stellar Wind program, the federal government collected vast amounts of information, including the content of communications and meta data about telephone and e-mail communications involving U.S. citizens and non-U.S. citizens. [REDACTED]

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

[REDACTED] potentially triggering an obligation under the Federal Rules of Criminal Procedure and applicable case law for the government to disclose certain information to the defendant. This obligation created a tension between the need to protect the secrecy of the Stellar Wind program and the need to comply with legal disclosure requirements.

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

In this chapter, we examine the process by which the Department of Justice attempted to resolve this tension and meet its discovery obligations to criminal defendants.⁴⁰³ (U)

I. Relevant Law (U)

The government's obligation to disclose certain statements made by a defendant and to disclose other information concerning a defendant in a criminal proceeding comes primarily from two sources: Federal Rule of Criminal Procedure 16 and the U.S. Supreme Court case of *Brady v. Maryland*, 373 U.S. 83 (1963). (U)

Federal Rule of Criminal Procedure 16(a)(1)(B)(i) requires the government to make various disclosures at the request of a criminal defendant. Among other things, the government must disclose "any relevant written or recorded statement by the defendant if the statement is within the government's possession, custody, or control; and the attorney for the government knows - or through due diligence could know - that the statement exists[.]" Rule 16(a)(1)(E) provides that, upon a defendant's request, the government must allow a defendant to inspect and copy papers,

⁴⁰³ In our review, we did not seek to determine what the government disclosed in specific cases. Rather, we focused on the adequacy of the process that the Justice Department implemented to comply with its discovery obligations in cases that involved Stellar Wind-derived information. ~~(TS//STLW//SI//OC/NF)~~

documents, data, and other materials "if the item is within the government's possession, custody, or control" and the item is material to preparing the defense; the government intends to use the item in its case-in-chief at trial; or the item was obtained from or belongs to the defendant. (U)

Under Rule 16, a defendant's statements carry a "near presumption of relevance," and "the production of a defendant's statements has become 'practically a matter of right even without a showing of materiality.'" *United States v. Yunis*, 867 F.2d 617, 621-22, 625 & n.10 (D.C. Circuit 1989).⁴⁰⁴ (U)

Disclosure of a defendant's statements is usually made by the government after receiving a request pursuant to Rule 16. However, even without making a Rule 16 request, a defendant has an independent right to discovery of his statements and certain other relevant information under *Brady v. Maryland*, 373 U.S. 83 (1963). *Brady* requires the government to disclose evidence in its possession favorable to the defendant and material to either guilt or punishment. Material evidence must be disclosed if it is exculpatory or if it could be used to impeach a government witness. (U)

According to an Office of Intelligence Policy and Review (OIPR) memorandum on the government's Rule 16 and *Brady* obligations

NSD D(6) - AWF

405 (U)

However, according to the memorandum, when production of the defendant's statements or other information would reveal classified information, the government may assert a national security privilege, sometimes known as the state secrets privilege.⁴⁰⁶ If the government asserts a colorable claim in a legal proceeding that classified information is privileged, the defendant must show that the information is not only

⁴⁰⁴ See also *United States v. Scarpa*, 913 F.2d 993, 1011 (2nd Cir. 1990), citing *United States v. McElroy*, 697 F.2d 459, 464 (2nd Cir. 1982) ("Rule 16 does not cover oral statements unrelated to the crime charged or completely separate from the government's trial evidence."). (U)

⁴⁰⁵ Counsel for Intelligence Policy James Baker told us the memorandum was drafted at his request by an Assistant U.S. Attorney who had been detailed to OIPR. Baker said he requested the memorandum to refresh his understanding of the government's discovery obligations in criminal prosecutions. (U//~~FOUO~~)

⁴⁰⁶ The state secrets privilege is a common law doctrine asserted by the United States government to protect classified information. See generally, *United States v. Reynolds*, 345 U.S. 1 (1952). (U)

relevant but material. If the defendant can show materiality, some courts balance the defendant's need for disclosure against the government's substantial interest in protecting sources and methods associated with the sensitive information. See *United States v. Sarkissian*, 841 F.2d 959, 965 (9th Cir. 1988); *United States v. Smith*, 781 F.2d 1102, 1180 (4th Cir. 1985) (en banc). (U)

The government can also invoke the Classified Information Procedures Act (CIPA), 18 U.S.C. App. 3, to protect classified information in federal prosecutions. CIPA does not expand or limit a defendant's right to discovery under Rule 16; rather, CIPA allows a court, "upon a sufficient showing" to authorize the government to delete specified items of classified information from otherwise discoverable documents, substitute a summary of the information, or stipulate to relevant facts that the classified information would tend to prove. (U)

As detailed below, after aspects of the Stellar Wind program were disclosed in *The New York Times* and confirmed by the President in December 2005, the Justice Department invoked CIPA to prevent disclosure of the program and any program-derived information in (b)(1), (b)(3) criminal cases (b)(1), (b)(3) (TS//STLW//SI//OC/NF)

II. Cases Raise Questions about Government's Compliance with Discovery Obligations (U)

The tension between the highly classified nature of the Stellar Wind program and the government's discovery obligations in criminal cases initially arose in (b)(1), (b)(3) (TS//STLW//SI//OC/NF)

b1, b3, b7E

A. (b)(1), (b)(3) (TS//STLW//SI//OC/NF)

b1, b3, b6, b7C, b7E

The Department's awareness that Stellar Wind would have implications in criminal discovery arose in a case involving (b)(1), (b)(3)

(b)(1), (b)(3), b6, b7C, b7E

107

(Cont'd.)
b1, b3, b6, b7C, b7E

information collected under Stellar Wind would be discoverable and, more generally, how the Stellar Wind collections might be treated in view of the government's discovery obligations in criminal prosecutions.

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

Baker said he raised these issues with Attorney General Ashcroft, FBI Director Mueller, and other Justice Department, FBI, and NSA officials. Baker stated that they concluded that a determination should first be made whether the [REDACTED] obtained through Stellar Wind also were captured through FISA and therefore could be produced. Baker said it turned out [REDACTED] had been intercepted under FISA and could be produced under that authority rather than as a result of Stellar Wind collections. Baker told the OIG that he was relieved by this outcome, but continued to be concerned about future cases.

b1,
b3,
b6,
b7C,
b7E

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

B.

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

(b)(1), (b)(3), (b)(5)



b1,
b3,
b6,
b7C
b7E



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

b1,
b3,
b6,
b7C,
b7E