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8.2. (U) General Counsel. The General Counsel shall:

- a. Provide legal advice and assistance to all elements of the USSS regarding SIGINT activities. Requests for legal advice on any aspect of these procedures should be sent by CRITICOMM to DDI XDI, or by NSA/CSS secure telephone 963-3121, or [REDACTED]
- b. Prepare and process all applications for Foreign Intelligence Surveillance Court orders and requests for Attorney General approvals required by these procedures.
- c. Advise the Inspector General in inspections and oversight of USSS activities.
- d. Review and assess for legal implications as requested by the DIRNSA/CHCSS, Deputy Director, Inspector General or Key Components Chief, all new major requirements and internally generated USSS activities.
- e. Advise USSS personnel of new legislation and case law that may affect USSS missions, functions, operations, activities, or practices.
- f. Report as required to the Attorney General and the President's Intelligence Oversight Board and provide copies of such reports to the DIRNSA/CHCSS and affected agency elements.
- g. Process requests from any DoD intelligence component for authority to use signals as described in Procedure 5, Part 5, of DoD 5240.1-R, for periods in excess of 90 days in the development, test, or calibration of ELECTRONIC SURVEILLANCE equipment and other equipment that can intercept communications.

8.3. (U) Deputy Director for Operations (DDO).
The DDO shall:

- a. Ensure that all SIGINT production personnel understand and maintain a high degree of awareness and sensitivity to the requirements of this USSID.
- b. Apply the provisions of this USSID to all SIGINT production activities. The DDO staff focal point for USSID 18 matters is P02 (use CRITICOMM DDI XAO).
- c. Conduct necessary reviews of SIGINT production activities and practices to ensure consistency with this USSID.
- d. Ensure that all new major requirements levied on the USSS or internally generated activities are considered for review by the General Counsel. All activities that raise questions of law or the proper interpretation of this USSID must be reviewed by the General Counsel prior to acceptance or execution.

8.4. (U) All Elements of the USSS. All elements of the USSS shall:

- a. Implement this directive upon receipt.
- b. Prepare new procedures or amend or supplement existing procedures as required to ensure adherence to this USSID. A copy of such procedures shall be forwarded to NSA/CSS, Attn: P02.

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c. Immediately inform the DDO of any tasking or instructions that appear to require actions at variance with this USSID.

d. Promptly report to the NSA Inspector General and consult with the NSA General Counsel on all activities that may raise a question of compliance with this USSID.

SECTION 9 - DEFINITIONS

9.1. ~~(S-CCO)~~ AGENT OF A FOREIGN POWER means:

a. Any person, other than a U.S. PERSON, who:

(1) Acts in the UNITED STATES as an officer or employee of a FOREIGN POWER, or as a member of a group engaged in INTERNATIONAL TERRORISM or activities in preparation therefor; or

(2) Acts for, or on behalf of, a FOREIGN POWER that engages in clandestine intelligence activities in the UNITED STATES contrary to the interests of the UNITED STATES, when the circumstances of such person's presence in the UNITED STATES indicate that such person may engage in such activities in the UNITED STATES, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities; or

b. Any person, including a U.S. PERSON, who:

(1) Knowingly engages in clandestine intelligence gathering activities for, or on behalf of, a FOREIGN POWER, which activities involve, or may involve, a violation of the criminal statutes of the UNITED STATES; or

(2) Pursuant to the direction of an intelligence service or network of a FOREIGN POWER, knowingly engages in any other clandestine intelligence activities for, or on behalf of, such FOREIGN POWER, which activities involve or are about to involve, a violation of the criminal statutes of the UNITED STATES; or

(3) Knowingly engages in sabotage or INTERNATIONAL TERRORISM, or activities that are in preparation therefor, for or on behalf of a FOREIGN POWER; or

(4) Knowingly aids or abets any person in the conduct of activities described in paragraphs 9.1.b.(1) through (3) or knowingly conspires with any person to engage in those activities.

c. For all purposes other than the conduct of ELECTRONIC SURVEILLANCE as defined by the Foreign Intelligence Surveillance Act (see Annex A), the phrase "AGENT OF A FOREIGN POWER" also means any person, including U.S. PERSONS outside the UNITED STATES, who are officers or employees of a FOREIGN POWER, or who act unlawfully for or pursuant to the direction of a FOREIGN POWER, or who are in contact with or acting in collaboration with an intelligence or security service of a FOREIGN POWER for the purpose of providing access to information or material classified by the UNITED STATES Government and to which the person has or has had access. The mere fact that a person's activities may benefit or further the aims of a FOREIGN POWER is not enough to bring that person under this provision.

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absent evidence that the person is taking direction from or acting in knowing concert with a FOREIGN POWER.

9.2. ~~(S)~~ COLLECTION means intentional tasking or SELECTION of identified nonpublic communications for subsequent processing aimed at reporting or retention as a file record.

9.3. (U) COMMUNICANT means a sender or intended recipient of a communication.

9.4. (U) COMMUNICATIONS ABOUT A U.S. PERSON are those in which the U.S. PERSON is identified in the communication. A U.S. PERSON is identified when the person's name, unique title, address, or other personal identifier is revealed in the communication in the context of activities conducted by that person or activities conducted by others and related to that person. A mere reference to a product by brand name or manufacturer's name, e.g., "Boeing 707" is not an identification of a U.S. person.

9.5. (U) CONSENT, for SIGINT purposes, means an agreement by a person or organization to permit the USSS to take particular actions that affect the person or organization. An agreement by an organization with the National Security Agency to permit COLLECTION of information shall be deemed valid CONSENT if given on behalf of such organization by an official or governing body determined by the General Counsel, National Security Agency, to have actual or apparent authority to make such an agreement.

9.6. (U) CORPORATIONS, for purposes of this USSID, are entities legally recognized as separate from the persons who formed, own, or run them. CORPORATIONS have the nationality of the nation state under whose laws they were formed. Thus, CORPORATIONS incorporated under UNITED STATES federal or state law are U.S. PERSONS.

9.7. (U) ELECTRONIC SURVEILLANCE means:

a. In the case of an electronic communication, the acquisition of a nonpublic communication by electronic means without the CONSENT of a person who is a party to the communication.

b. In the case of a nonelectronic communication, the acquisition of a nonpublic communication by electronic means without the CONSENT of a person who is visibly present at the place of communication.

c. The term ELECTRONIC SURVEILLANCE does not include the use of radio direction finding equipment solely to determine the location of a transmitter.

9.8. ~~(S)~~ FOREIGN COMMUNICATION means a communication that has at least one COMMUNICANT outside of the UNITED STATES, or that is entirely among FOREIGN POWERS or between a FOREIGN POWER and officials of a FOREIGN POWER, but does not include communications intercepted by ELECTRONIC SURVEILLANCE directed at premises in the UNITED STATES used predominantly for residential purposes.

9.9. (U) FOREIGN INTELLIGENCE means information relating to the capabilities, intentions, and activities of FOREIGN POWERS, organizations, or persons, and for purposes of this USSID includes both positive FOREIGN INTELLIGENCE and counterintelligence.

9.10. (U) FOREIGN POWER means:

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- a. A foreign government or any component thereof, whether or not recognized by the UNITED STATES,
- b. A faction of a foreign nation or nations, not substantially composed of UNITED STATES PERSONS,
- c. An entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments,
- d. A group engaged in INTERNATIONAL TERRORISM or activities in preparation thereof,
- e. A foreign-based political organization, not substantially composed of UNITED STATES PERSONS, or
- f. An entity that is directed and controlled by a foreign government or governments.

9.11. (U) INTERCEPTION means the acquisition by the USSS through electronic means of a nonpublic communication to which it is not an intended party, and the processing of the contents of that communication into an intelligible form, but does not include the display of signals on visual display devices intended to permit the examination of the technical characteristics of the signals without reference to the information content carried by the signal.

9.12. (U) INTERNATIONAL TERRORISM means activities that:

- a. Involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the UNITED STATES or of any State, or that would be a criminal violation if committed within the jurisdiction of the UNITED STATES or any State, and
- b. Appear to be intended:
 - (1) to intimidate or coerce a civilian population,
 - (2) to influence the policy of a government by intimidation or coercion, or
 - (3) to affect the conduct of a government by assassination or kidnapping, and
- c. Occur totally outside the UNITED STATES, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

9.13. (U) PUBLICLY AVAILABLE INFORMATION means information that has been published or broadcast for general public consumption, is available on request to a member of the general public, has been seen or heard by a casual observer, or is made available at a meeting open to the general public.

9.14. ~~(S)~~ SELECTION, as applied to manual and electronic processing activities, means the intentional insertion of a [REDACTED] telephone number, [REDACTED] into a computer scan dictionary or manual scan guide for the purpose of identifying messages of interest and isolating them for further processing.

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9.15. ~~(C)~~ SELECTION TERM means the composite of individual terms used to effect or defeat SELECTION of particular communications for the purpose of INTERCEPTION. It comprises the entire term or series of terms so used, but not any segregable term contained therein. It applies to both electronic and manual processing.

9.16. (U) TARGET, OR TARGETING: See COLLECTION.

9.17. (U) UNITED STATES, when used geographically, includes the 50 states and the District of Columbia, Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the UNITED STATES exercises sovereignty.

9.18. ~~(C)~~ UNITED STATES PERSON:

- a. A citizen of the UNITED STATES,
- b. An alien lawfully admitted for permanent residence in the UNITED STATES,
- c. Unincorporated groups and associations a substantial number of the members of which constitute a, or b. above, or
- d. CORPORATIONS incorporated in the UNITED STATES, including U.S. flag nongovernmental aircraft or vessels, but not including those entities which are openly acknowledged by a foreign government or governments to be directed and controlled by them.
- e. The following guidelines apply in determining whether a person is a U.S. PERSON:

(1) A person known to be currently in the United States will be treated as a U.S. PERSON unless that person is reasonably identified as an alien who has not been admitted for permanent residence or if the nature of the person's communications or other indicia in the contents or circumstances of such communications give rise to a reasonable belief that such person is not a U.S. PERSON.

(2) A person known to be currently outside the UNITED STATES, or whose location is not known, will not be treated as a U.S. PERSON unless such person is reasonably identified as such or the nature of the person's communications or other indicia in the contents or circumstances of such communications give rise to a reasonable belief that such person is a U.S. PERSON.

(3) A person known to be an alien admitted for permanent residence may be assumed to have lost status as a U.S. PERSON if the person leaves the UNITED STATES and it is known that the person is not in compliance with the administrative formalities provided by law (8 U.S.C. Section 1203) that enable such persons to reenter the UNITED STATES without regard to the provisions of law that would otherwise restrict an alien's entry into the UNITED STATES. The failure to follow the statutory procedures provides a reasonable basis to conclude that such alien has abandoned any intention of maintaining status as a permanent resident alien.

(4) An unincorporated association whose headquarters are located outside the UNITED STATES may be presumed not to be a U.S. PERSON unless the USSS has information indicating that a substantial number of members are citizens of the UNITED STATES or aliens lawfully admitted for permanent residence.

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(5) CORPORATIONS have the nationality of the nation-state in which they are incorporated. CORPORATIONS formed under U.S. federal or state law are thus U.S. persons, even if the corporate stock is foreign-owned. The only exception set forth above is CORPORATIONS which are openly acknowledged to be directed and controlled by foreign governments. Conversely, CORPORATIONS incorporated in foreign countries are not U.S. PERSONS even if that CORPORATION is a subsidiary of a U.S. CORPORATION.

(6) Nongovernmental ships and aircraft are legal entities and have the nationality of the country in which they are registered. Ships and aircraft fly the flag and are subject to the law of their place of registration.

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No. OP 2008-0009

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
OFFICE OF THE INSPECTOR GENERAL



~~(S//NF)~~ REVIEW OF THE PARTICIPATION OF THE
OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
IN THE PRESIDENT'S SURVEILLANCE PROGRAM

July 2, 2009

ROSLYN A. MAZER
INSPECTOR GENERAL

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~~(S//NF)~~ REVIEW OF THE PARTICIPATION OF THE
OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
IN THE PRESIDENT'S SURVEILLANCE PROGRAM

I. (U) EXECUTIVE SUMMARY

~~(TS//STLW//SI//OC/NF)~~ The Office of Inspector General (OIG), Office of the Director of National Intelligence (ODNI), was one of five Intelligence Community Inspectors General that conducted a review of their agency's participation in the President's Surveillance Program (hereafter "the Program"), a top secret National Security Agency (NSA) electronic surveillance activity undertaken at the direction of the President. The Program became operational on October 4, 2001, three weeks after the deadly terrorist attacks of September 11, 2001. The review examined the ODNI's involvement in the Program from the period beginning with the stand-up of the ODNI in April 2005 through the termination of the Program in January 2007.

~~(TS//STLW//SI//OC/NF)~~ The ODNI's primary role in the Program was the preparation of the threat assessments that summarized the al Qaeda terrorist threat to the United States and were used to support the periodic reauthorization of the Program. That role began in April 2005, shortly after the ODNI stand-up and contemporaneous with the arrival of General Michael Hayden as the first Principal Deputy Director of National Intelligence (PDDNI). Prior to his ODNI appointment, Hayden was Director of NSA. In April 2005, ODNI personnel in the National Counterterrorism Center (NCTC) began to prepare the first of 12 Program threat assessments. In coordination with the Department of Justice (DOJ), then Director of National Intelligence (DNI) John Negroponte or PDDNI Hayden approved 12 ODNI-prepared threat assessments over an 18-month period. Once approved by the DNI or PDDNI, the Program threat assessments were reviewed and approved by the Secretary of Defense, and were subsequently used by DOJ, NSA, and White House personnel in support of the Program reauthorization. In addition to the preparation of the threat assessments, we found that NCTC used Program information in producing analytical products that were distributed to senior IC community officials and analysts.

[REDACTED]

~~(TS//STLW//SI//OC/NF)~~ During the review, we made several related findings and observations. We learned that the ODNI usage of Program-derived information in ODNI intelligence products was consistent with the standard rules and procedures for handling NSA intelligence. We learned that ODNI personnel were not involved in nominating specific targets for collection through the Program. While ODNI personnel were identified as having contact [REDACTED] regarding the Program, we found that those communications were limited in frequency and scope. We also found that the ODNI intelligence oversight components -- the Civil Liberties Protection Officer (CLPO), Office of General Counsel (OGC), and the OIG -- had little involvement in oversight of the Program and had limited opportunity to participate in Program oversight due to delays in ODNI oversight personnel being granted access to the

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Program and temporary resource limitations attendant to the stand-up of the ODNI. Finally, we found that the 2008 amendments to Executive Order 12333 and the current ODNI staffing levels provide the ODNI oversight components with sufficient resources and authority to fulfill their current oversight responsibilities, assuming timely notification.

II. (U) INTRODUCTION

~~(TS//STLW//SI//OC/NF)~~ *The Foreign Intelligence Surveillance Act Amendments Act of 2008*, Pub L. No. 110-261, 122 Stat. 2438 (hereafter "FISA Amendments Act") required the IGs of the DOJ, ODNI, NSA, Department of Defense (DOD), and any other element of the intelligence community that participated in the President's Surveillance Program to conduct a comprehensive review of the Program.¹ The FISA Amendments Act defined the "President's Surveillance Program" as the "intelligence activity involving communications authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007, including the program referred to by the President in a radio address on December 17, 2005." In response to this tasking, the IGs of the following five agencies were identified as having a role in Program review: DOJ, ODNI, NSA, DOD, and the Central Intelligence Agency (CIA).

~~(S//NF)~~ The participating IGs organized the review in a manner where each OIG conducted a review of its own agency's involvement in the Program. CIA IG John Helgerson was initially designated by the IGs to coordinate the review and oversee the preparation of an interim report due within 60 days after the enactment of the Act, and a later final report due not later than 1 year after the enactment of the Act.² Because of IG Helgerson's recent retirement, DOJ IG Glenn Fine was selected to coordinate the preparation of the final report. This report contains the results of the ODNI OIG review.

III. (U) SCOPE AND METHODOLOGY

~~(TS//STLW//SI//OC/NF)~~ We sought to identify the role of the ODNI in implementing the Program beginning with the stand-up of the ODNI in April 2005 through the Program's termination in January 2007. This review examined the:

- A. Role of the ODNI and its component the National Counterterrorism Center (NCTC) in drafting and coordinating the threat assessments that supported the periodic reauthorization of the Program;

¹ ~~(S//NF)~~ The Program is also known within the Intelligence Community by the cover term STELLARWIND. The Program is a Top Secret/Sensitive Compartmented Information (SCI) program.

² (U) The participating IGs submitted an interim report, dated September 10, 2008, to the Chairman and Ranking member of the Senate Select Committee on Intelligence (SSCI) and a revised interim report, dated November 24, 2008, to the Chairman and Ranking member of the House of Representatives Permanent Select Committee on Intelligence (HPSCI).

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- B. NCTC's use of Program information to support counterterrorism analysis;
- C. NCTC's role in identifying Program targets and tasking Program collection;
- D. [REDACTED] and
- F. Role of the ODNI in providing compliance oversight of the Program.

~~(TS//STLW//SI//OC/NF)~~ During the review, we interviewed 23 current or former ODNI officials and employees involved in the Program. The ODNI personnel we interviewed were cooperative and helpful. Our interviews included the following ODNI senior officials:

John Negroponte, former Director of National Intelligence
Michael McConnell, former Director of National Intelligence
Michael V. Hayden, former Principal Deputy Director of National Intelligence
Ronald Burgess, former Acting Principal Deputy Director of National Intelligence
David R. Shedd, Deputy Director of National Intelligence for
Policy, Plans, and Requirements
Alexander W. Joel, Civil Liberties Protection Officer
Edward Maguire, former Inspector General
Benjamin Powell, former General Counsel
Corin Stone, Deputy General Counsel and Acting General Counsel
Joel Brenner, former National Counterintelligence Executive³
John Scott Redd, former NCTC Director
Michael Leiter, NCTC Director

~~(S//NF)~~ In addition to the interviews noted above, we reviewed Program-related documents made available by the NSA OIG, the DOJ OIG, and the ODNI OGC.

IV. (U) DISCUSSION OF FINDINGS

~~(TS//STLW//SI//OC/NF)~~ The following discussion contains our findings regarding the topics identified above. First, we briefly describe the terrorist attacks of September 11, 2001, and the initial government response to the attacks, including the authorization of the President's Surveillance Program. Next, we discuss the ODNI and NCTC role in implementing the Program. Finally, we set forth our conclusions and observations.

A. (U) Initial Response by the President and Congress to the Terrorist Attacks of September 11, 2001

(U) The devastating al Qaeda terrorist attacks against the United States quickly triggered an unprecedented military and intelligence community response to protect the

³ (U) Brenner was the NSA Inspector General before joining the ODNI.

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country from additional attacks. The following quote describes the initial terrorist attacks and the intended al Qaeda goal to deliver a decapitating strike against our political institutions.

(U) On September 11, 2001, the al Qaeda terrorist network launched a set of coordinated attacks along the East Coast of the United States. Four commercial airliners, each carefully selected to be fully loaded with jet fuel for a transcontinental flight, were hijacked by al Qaeda operatives. Two of the jetliners were targeted at the Nation's financial center in New York and were deliberately flown into the Twin Towers of the World Trade Center. The third was targeted at the headquarters of the Nation's Armed Forces, the Pentagon. The fourth was apparently headed toward Washington, D.C., when passengers struggled with the hijackers and the plane crashed in Shanksville, Pennsylvania. The intended target of this fourth jetliner was evidently the White House or the Capitol, strongly suggesting that its intended mission was to strike a decapitation blow on the Government of the United States — to kill the President, the Vice President, or Members of Congress. The attacks of September 11th resulted in approximately 3,000 deaths — the highest single-day death toll from hostile foreign attacks in the Nation's history.⁴

(U) On September 14, 2001, in response to the attacks, the President issued a *Declaration of National Emergency by Reason of Certain Terrorist Attacks* stating that “(a) national emergency exists by reason of the terrorist attacks at the World Trade Center, New York, New York, and the Pentagon, and continuing immediate threat of further attacks on the United States.”⁵

(U) On September 18, 2001, by an overwhelming majority in both the Senate and House of Representatives, a joint resolution was passed that authorized the use of United States military force against those responsible for the terrorist attacks launched against the United States. The joint resolution, also known as the *Authorization for Use of Military Force (AUMF)*, is often cited by White House and DOJ officials as one of the principal legal authorities upon which the Program is based. In relevant part, the AUMF provides:⁶

(a) IN GENERAL — That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organization or persons, in order to

⁴ (U) This summary of the events of September 11, 2001, was prepared by DOJ personnel and is set forth in the unclassified DOJ “White Paper” entitled *Legal Authorities Supporting the Activities of the National Security Agency Described by the President*, dated January 19, 2006.

⁵ (U) Proclamation 7463, 66 Fed. Reg. No. 181, September 14, 2001.

⁶ (U) *Authorization for Use of Military Force*, Section 2(a), Pub. L. No. 107-190, 115 Stat. 224, September 18, 2001.

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prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

~~(TS//STLW//SI//OC/NF)~~ On October 4, 2001, three days before the start of overt military action against the al Qaeda and Taliban terrorist camps, the President authorized the Secretary of Defense to implement the President's Surveillance Program.⁷ The Program, a closely held top-secret NSA electronic surveillance project, authorized the Secretary of Defense to employ within the United States the capabilities of the DOD, including but not limited to the signals intelligence capabilities of the NSA, to collect international terrorism-related foreign intelligence information under certain specified circumstances. Each Program reauthorization was supported by a written threat assessment, approved by a senior Intelligence Community official, that described the threat of a terrorist attack against the United States.

(U) On October 7, 2001, in a national television broadcast, the President announced the start of military operations against al Qaeda and Taliban terrorist camps in Afghanistan.⁸

~~(TS//STLW//SI//OC/NF)~~ On April 22, 2005, the ODNI began operations as the newest member of the Intelligence Community. The ODNI was created, in part, in response to the findings of the *Independent National Commission on Terrorist Attacks Upon the United States* (hereafter 9/11 Commission) that recommended the creation of a national "Director of National Intelligence" to oversee and coordinate the planning, policy, and budgets of the Intelligence Community.⁹ In late April 2005, ODNI personnel began to prepare the threat assessments used in the periodic reauthorization of the Program. In June 2005, ODNI officials began to approve the threat assessments.

B. ~~(TS//STLW//SI//OC/NF)~~ ODNI Role in Preparing Threat Assessments in Support of the Program Reauthorizations

~~(TS//STLW//SI//OC/NF)~~ Prior to the ODNI's involvement in the Program, the Program was periodically reauthorized approximately every 30 to 45 days pursuant to a reauthorization process overseen by DOJ, NSA, and White House personnel. Each reauthorization relied, in part, on a written threat assessment approved by a senior Intelligence Community official that described the current threat of a terrorist attack against the United States and contained the approving official's recommendation regarding the need to reauthorize the Program. Before the ODNI's involvement in the

⁷ ~~(TS//STLW//SI//OC/NF)~~ The NSA materials we reviewed identified October 4, 2001, as the date of the first Program authorization.

⁸ (U) The CNN.com webpage article entitled *President announces opening of attack*, dated, October 7, 2001, provides a summary of the President's announcement and describes the national television broadcast.

⁹ (U) While the *Intelligence Reform and Terrorism Prevention Act of 2004* (IRTPA) that created the ODNI was signed by the President on December 17, 2004, the actual ODNI stand-up occurred months later. The official ODNI history, *A Brief History of the ODNI's Founding*, sets April 22, 2005, as the date when the ODNI commenced operations.

Program, every threat assessment prepared by the Intelligence Community in support of the Program reauthorization identified the threat of a terrorist attack against the United States and recommended that the Program be reauthorized. Accordingly, the Program was regularly reauthorized during the approximately 3-year period prior to the involvement of the ODNI. During that period, the Director of Central Intelligence or his designee approved 31 threat assessments in support of the reauthorization of the Program.

~~(TS//STLW//SI//OC/NF)~~ In reviewing the circumstances that led to the decision to transfer responsibility for preparing the Program threat assessments to the ODNI, we found that the ODNI does not have identifiable records regarding that decision. Senior ODNI officials involved with the Program told us that after the merger of the Terrorist Threat Integration Center (TTIC) into the NCTC, and the later incorporation of NCTC into the ODNI, it made sense for the ODNI to take responsibility for preparing the Program threat assessments as both TTIC and NCTC previously handled that task. Former PDDNI Hayden told us that the primary reason that the ODNI became involved in the Program was the statutory creation of the new DNI position as the senior Intelligence Community advisor to the President. When Ambassador Negroponte was confirmed as the first DNI, Hayden and other senior intelligence officials believed that DNI Negroponte, as the President's new senior intelligence advisor, should make the Intelligence Community's recommendation to the President regarding the need to renew the Program. Hayden commented that the new DNI's involvement in this important intelligence program enhanced the DNI's role as the leader of the Intelligence Community and gave immediate credibility to the ODNI as a new intelligence agency.

~~(TS//STLW//SI//OC/NF)~~ Once the ODNI became involved in the Program, the preparation and approval of the threat assessments became the ODNI's primary Program role.¹⁰ Beginning in April 2005, and continuing at about 30 to 45 day intervals until the Program's termination in January 2007, ODNI personnel prepared and approved 12 written threat assessments in support of the periodic reauthorization of the Program. We found that the ODNI threat assessments were drafted by experienced NCTC personnel who prepared the documents following an established DOJ format used in earlier Program reauthorizations. NCTC analysts prepared the threat assessments in a memorandum format, usually 12 to 14 pages in length. Senior ODNI and NCTC officials told us that each threat assessment was intended to set forth the ODNI's view regarding the current threat of an al Qaeda attack against the United States and to provide the DNI's recommendation whether to continue the Program. NCTC personnel involved in preparing the threat assessments told us that the danger of a terrorist attack described in the threat assessments was sobering and "scary," resulting in the threat assessments becoming known by ODNI and Intelligence Community personnel involved in the Program as the "scary memos."

¹⁰ ~~(TS//STLW//SI//OC/NF)~~ The joint interim report prepared by the participating IGs notified congressional oversight committees that the review would examine the ODNI's involvement in preparing "threat assessments and legal certifications" submitted in support of the Program. Because we did not identify any ODNI officials executing a legal certification, we treated our review of the legal certifications to be the same as the review of the threat assessments. The Attorney General made legal certifications in support of the Program that are addressed in the DOJ OIG report.

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~~(TS//STLW//SI//OC/NF)~~ During interviews, ODNI personnel said they were aware that the threat assessments were relied upon by DOJ and the White House as the basis for continuing the Program and further understood that if a threat assessment identified a threat against the United States, the Program was likely to be reauthorized. NCTC analysts also said that on a less frequent basis they prepared a related document that set forth a list of al Qaeda-affiliated groups that they understood were targets of the Program. Both the threat assessments and the less frequent list of al Qaeda-affiliated groups underwent the same ODNI approval process.

~~(TS//STLW//SI//OC/NF)~~ We examined the ODNI process for preparing the Program documents, particularly the threat assessments, and found that the documents were drafted by experienced NCTC analysts under the supervision of the NCTC Director and his management staff, who were ultimately responsible for the accuracy of the information in the documents. We determined that the ODNI threat assessments were prepared using evaluated intelligence information chosen from a wide-variety of Intelligence Community sources. ODNI personnel told us that during the period when the ODNI prepared the threat assessments, the Intelligence Community had access to fully evaluated intelligence that readily supported the ODNI assessments that al Qaeda terrorists remained a significant threat to the United States.

~~(TS//STLW//SI//OC/NF)~~ Once the ODNI threat assessments were approved within NCTC and by the NCTC Director, the documents were forwarded through an established approval chain to senior ODNI personnel who independently satisfied themselves that the documents were accurate, properly prepared, and in the appropriate format. Throughout the ODNI preparation and approval process, the threat assessments were also subject to varying degrees of review and comment by DOJ and OGC attorneys, including then General Counsel Benjamin Powell and Deputy General Counsel Corin Stone. Powell said his review of the threat assessments was not a legal review, but was focused on spotting issues that might merit further review or analysis. Powell said he relied on DOJ to conduct the legal review. Once the draft threat assessments were subjected to this systematic and multi-layered management and legal review, the documents were provided to the DNI or PDDNI for consideration and, if appropriate, approval. Overall, we found the process used by the ODNI to prepare and obtain approval of the threat assessments was straightforward, reasonable, and consistent with the preparation of other documents requiring DNI or PDDNI approval.

~~(TS//STLW//SI//OC/NF)~~ Negroponte told us that because of time-sensitive issues present in 2005 relating to the ongoing ODNI start-up as a new agency and other Intelligence Community matters requiring his attention, he tasked his deputy, then PDDNI Hayden, to oversee the ODNI approval of the threat assessments and related documents. Negroponte told us that when making this decision, he was aware of Hayden's prior experience with the Program during Hayden's earlier assignment as Director of NSA. In June 2005, shortly after his arrival at ODNI, Hayden received and approved the first ODNI threat assessment. Hayden later approved the next six ODNI threat assessments. After Hayden left the ODNI in May 2006 to become Director of CIA, Negroponte approved the next five ODNI threat assessments, including a December

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2006 threat assessment used in the final reauthorization of the Program. In total, Negroponte and Hayden approved 12 ODNI threat assessments prepared in support of the Program reauthorizations.¹¹

~~(TS//STLW//SI//OC/NF)~~ In discussing the ODNI process used to prepare and approve the threat assessments, Negroponte told us he was "extremely satisfied" with the quality and content of the threat assessments provided for his approval. He did not recall any inaccuracies or problems relating to preparation of the ODNI threat assessments. Negroponte said the al Qaeda threat information described in the Program threat assessments was consistent with the terrorism threat information found in *The President's Daily Briefing* and other senior-level Intelligence Community products he had read. Hayden had a similar view. Negroponte and Hayden separately told us that when they approved the threat assessments, credible intelligence was readily available to the Intelligence Community that demonstrated the ongoing and dangerous al Qaeda terrorist threat to the United States. Similarly, Negroponte and Hayden each told us that the nature and scope of the al Qaeda terrorist threat to the United States was well documented and easily supported the ODNI threat assessments used in the Program reauthorizations.

~~(TS//STLW//SI//OC/NF)~~ Because of questions raised in the media about the legal basis for the Program, we asked the ODNI personnel involved in the preparation or approval of the threat assessments about their concerns, if any, regarding the legal basis for the Program. We found that ODNI personnel involved in the Program generally understood that the Program had been in operation for several years and was approved by senior Intelligence Community and DOJ officials. During our interviews, ODNI officials told us they were satisfied with the legal basis for the Program, primarily because of their knowledge that the Attorney General and senior DOJ attorneys had personally approved the Program and remained directly involved in the Program reauthorization process. We did not identify any ODNI personnel who believed that the program was unlawful.

~~(TS//STLW//SI//OC/NF)~~ Former ODNI General Counsel Powell told us that after his Program briefings in early 2006, he had questions regarding the DOJ description of the legal authority for the Program but lacked the time to conduct his own legal review of the issue given the many time-sensitive ODNI legal issues that required his attention. Powell said he understood the rationale of DOJ's legal opinion that the Program was lawful and described the DOJ opinion as a "deeply complex issue" with "legal scholarship on both sides." Powell said he recognized that he was a latecomer to a complex legal issue that was previously and continuously approved by DOJ, personally supported by the Attorney General, and was being transitioned to judicial oversight — an idea he strongly supported. Powell said he relied on the DOJ legal opinion regarding the Program and directed his efforts to supporting the Program's transition to judicial oversight under traditional FISA, the 2007 Protect America Act, and the subsequent FISA Amendments Act of 2008.

¹¹ ~~(TS//STLW//SI//OC/NF)~~ The DNI and PDDNI together approved 12 of the 43 threat assessments used in support of the Program reauthorizations. CIA officials approved the other 31 threat assessments.

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~~(TS//STLW//SI//OC/NF)~~ Negroponte recalled having regular contact with senior NSA and DOJ officials who raised no legal concerns to him about the Program. He said he remembered attending a Program-related meeting that included members of the FISA Court who did not raise any legal concerns to him about the authority for the Program and seemed generally supportive of the Program. Negroponte also recalled attending meetings in which the Program was briefed to congressional leadership who not did raise legal concerns to him. Overall, the direct involvement of DOJ and other senior Intelligence Community officials in the Program resulted in Negroponte and other ODNI personnel having few, if any, concerns about the legal basis for the Program.

C. ~~(TS//STLW//SI//OC/NF)~~ NCTC Use of Program Information to Support Counterterrorism Analysis

~~(TS//STLW//SI//OC/NF)~~ The Program information was closely held within the ODNI and was made available to no more than 15 NCTC analysts for review and, if appropriate, use in preparing NCTC analytical products.¹² Generally, the NCTC analysts approved for access received the Program information in the form of finished NSA intelligence products.

The NCTC analysts said the Program information was subject to stringent security protections.

The NCTC analysts told us they received training regarding proper handling of NSA intelligence. They said they handled the NSA intelligence, including Program information, consistent with the standard rules and procedures for handling NSA intelligence information, including the minimization of U.S. person identities.

~~(TS//STLW//SI//OC/NF)~~ Hayden told us that during his tenure as Director of NSA, he sought to disseminate as much Program information as possible to the Intelligence Community.

~~(TS//STLW//SI//OC/NF)~~ During our review, NCTC analysts told us they often did not know if the NSA intelligence available to them was derived from the Program.

¹²~~(TS//STLW//SI//OC/NF)~~ The number of NCTC analysts read into the Program ranged from 5 to 15 analysts.

[REDACTED]

On those occasions when the NCTC analysts knew that a particular NSA intelligence product was derived from the Program, the analysts said they reviewed the Program information in the same manner as other NSA intelligence products and, if appropriate, incorporated the Program information into analytical products being prepared for the DNI and other senior intelligence officials. They identified the *President's Terrorism Threat Report* and the *Senior Executive Terrorism Report* as examples of the types of finished intelligence products that would, at times, contain Program information.

~~(TS//STLW//SI//OC/NF)~~ NCTC analysts with Program access said they had broad access to a wide variety of high quality and fully evaluated terrorism related intelligence. In particular, NCTC analysts told us that by virtue of their NCTC assignments, they had access to some of the most sensitive and valuable terrorism intelligence available to the Intelligence Community. NCTC analysts characterized the Program information as being a useful tool, but also noted that the Program information was only one of several valuable sources of information available to them from numerous collection sources and methods. During interviews, NCTC analysts and other ODNI personnel described the Program information as "one tool in the tool box," "one arrow in the quiver," or in other similar phrases to connote that the Program information was not of greater value than other sources of intelligence. The NCTC analysts we interviewed said they could not identify specific examples where the Program information provided what they considered time-sensitive or actionable intelligence, but they generally recalled attending meetings in which the benefits of the Program were discussed. [REDACTED]

[REDACTED]

The NCTC analysts uniformly told us that during the period when NCTC prepared the threat assessment memoranda, the intelligence demonstrating the al Qaeda threat to the United States was overwhelming and readily available to the Intelligence Community.

~~(TS//STLW//SI//OC/NF)~~ When asked about the value of the Program, Hayden said "without the Program as a skirmish line you wouldn't know what you don't know." He explained that by using the Program to look at a "quadrant of communications" the Intelligence Community was able to assess the threat arising from those communications, which allowed Intelligence Community leaders to make valuable judgments regarding the allocation of national security resources. He said looking at the terrorist threat in this manner was similar to soldiers on a combat patrol who look in all directions for the threat and assign resources based on what they learn. Hayden said that NSA General Counsel Vito Potenza often described the Program as an "early warning system" for terrorist threats, which Hayden thought was an accurate description of the Program. Hayden told us the Program was extremely valuable in protecting the United States from an al Qaeda terrorist attack. Hayden cited [REDACTED]

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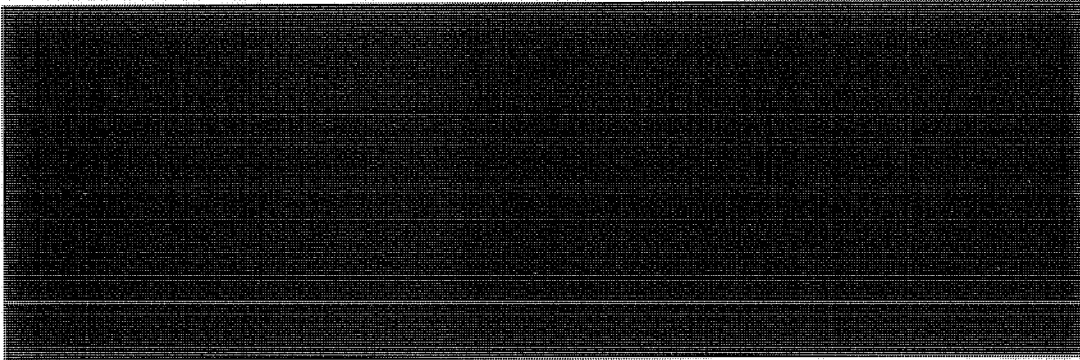
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[REDACTED] as examples where
the Program information was effectively used to disrupt al Qaeda operatives.¹³

D. [REDACTED]

[REDACTED]

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E. ~~(TS//STLW//SI//OC/NF)~~ No NCTC Role in Identifying Program Targets and Tasking Collection

~~(TS//STLW//SI//OC/NF)~~ We did not identify any information that indicated that ODNI or NCTC personnel were involved in identifying or nominating targets for collection within the Program. ODNI personnel told us that ODNI and NCTC are non-operational elements of the Intelligence Community and were not involved in nominating targets for Program collection.

F. ~~(S/NF)~~ ODNI Oversight of the Program

~~(TS//STLW//SI//OC/NF)~~ We examined the role of the ODNI oversight components -- CLPO, OIG, and OGC -- in providing compliance oversight for the Program. We found that while the Program was subject to oversight by the NSA OIG, the ODNI oversight components had a limited role in providing oversight for the Program. During the review, we learned that within the first year of the Program, then NSA Director Hayden obtained White House approval allowing the NSA IG and designated NSA OIG officials to be read into the Program to provide compliance oversight for the Program. In furtherance of the NSA oversight program, the NSA IG provided compliance reports and briefings to the NSA Director, NSA General Counsel, and cleared White House personnel, including the Counsel to the President.¹⁶

~~(TS//STLW//SI//OC/NF)~~ In reviewing the ODNI oversight role regarding the Program, we found that the ODNI oversight components had limited involvement in oversight of the Program. We found that the opportunity for the ODNI to participate in Program oversight was limited by the fact that ODNI oversight personnel were not



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



¹⁶ ~~(S/NF)~~ According to the General Counsel to the President's Intelligence Oversight Board (IOB), the IOB members and staff were not read into the Program and did not receive compliance reports from the NSA IG.

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granted timely access to the Program by the White House personnel responsible for approving access. In addition, we found that the newly formed ODNI oversight offices were in varying stages of agency stand-up and lacked the necessary experienced staff and resources to effectively participate in oversight of the Program.

~~(TS//STLW//SI//OC/NF)~~ For example, General Counsel Powell received Program access after his arrival in January 2006, but his predecessor, then Acting General Counsel Corin Stone, was not read into the Program until a few days before Powell in January 2006, several months after the Program became operational within ODNI and only after she had read about the Program in a December 2005 newspaper article.¹⁷ Similarly, CLPO Alexander Joel, who is responsible for reviewing the privacy and civil liberties implications of intelligence activities, requested but did not receive Program access until October 2006, shortly before the Program terminated.¹⁸ Joel told us that Negroonte and Hayden supported his request for Program access, but White House staff delayed approval for several months. Joel said that while waiting for approval of his Program access, Hayden gave him some insight about the Program that did not require the disclosure of compartmented information. Joel found this information helpful in planning his later review. Finally, then ODNI Inspector General Edward Maguire and his oversight staff did not obtain Program access until 2008, long after the Program had terminated.¹⁹

~~(TS//STLW//SI//OC/NF)~~ Once read into the Program, Powell and Joel were provided with reasonable access to NSA compliance reports and briefings relating to the NSA OIG oversight program. Powell told us that he was satisfied that the NSA IG provided a reasonable degree of Program oversight. Similarly, Joel said he believed that he had received full disclosure regarding the NSA oversight program and found the NSA oversight effort to be reasonable.

~~(TS//STLW//SI//OC/NF)~~ We also learned that the members of the President's Privacy and Civil Liberties Oversight Board (PCLOB) reviewed the Program, in part, in association with Joel.²⁰ The PCLOB review was contemporaneous with Joel's review

¹⁷ (U//FOUO) Powell was appointed General Counsel in January 2006 and served in that position as a recess appointment until his Senate confirmation in April 2006. Prior to his appointment, Powell was an Associate Counsel to the President and Special Assistant to the President where he worked on initiatives related to the Intelligence Community. However, Powell was not read into the Program while serving at the White House.

¹⁸ (U//FOUO) Joel is the Civil Liberties Protection Officer (CLPO) with the responsibility for ensuring that the protection of privacy and civil liberties is incorporated in the policies and procedures of the Intelligence Community. The CLPO responsibilities are set forth in the Section 103d of *Intelligence Reform and Terrorism Prevention Act of 2004*.

¹⁹ (S//NF) While OIG personnel were not read into the Program until 2008, OIG officials were alerted to the existence of the NSA collection program through a December 2005 newspaper report. Shortly after that report, the NSA IG told ODNI OIG officials that the NSA OIG was conducting oversight of that NSA program. PDDNI Hayden also told IG Maguire that the NSA program was subject to NSA OIG oversight.

²⁰ (U) The PCLOB was created by the *Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA)*, which requires the Board to "ensure that concerns with respect to privacy and civil liberties are appropriately considered in the implementation of laws, regulations, and executive branch policies related to efforts to protect the Nation against terrorism (P.L. 108-458, 2004).

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and resulted in an independent and generally favorable finding regarding the NSA implementation of the Program. After the PCLOB review, a PCLOB board member published an editorial article, in part, quoted below, that summarized his observations regarding the NSA effort in implementing the Program.

There were times, including when the Board was "read into" and given complete access to the operation of the Terrorist Surveillance Program that I wondered whether the individuals doing this difficult job on behalf of all of us were not being too careful, too concerned, about going over the privacy and liberties lines – so concerned, with so many internal checks and balances, that they could miss catching or preventing the bad guys from another attack. And I remember walking out of these briefing sessions in some dark and super-secret agency with the thought: I wish the American people could meet these people and observe what they are doing.²¹

~~(S//NF)~~ In sum, the ODNI oversight components had limited and belated involvement in the oversight of the Program. However, once read into the Program, Powell and Joel determined that the Program was subject to reasonable oversight by the NSA OIG. Moreover, the initial White House delay in granting ODNI oversight personnel access to the Program occurred prior to the 2008 revision to Executive Order (EO) 12333, which expressly grants ODNI oversight components broad access to any information necessary to performing their oversight duties. In particular, EO 12333 provides in relevant part that:

Section 1.6 *Heads of Elements of the Intelligence Community*. The heads of elements of the Intelligence Community shall:

(h) Ensure that the inspectors general, general counsels, and agency officials responsible for privacy and civil liberties protection for their respective organizations have access to any information or intelligence necessary to perform their duties.

~~(TS//STLW//SI//OC/NF)~~ EO 12333, as amended, clarifies and strengthens the ODNI's ability to provide compliance oversight. In light of the recent change to EO 12333, and with current staffing, we believe that ODNI's oversight components have sufficient resources and authority to perform their responsibilities to conduct oversight of closely held intelligence activities, assuming timely notification.

²¹ (U) The quote is taken from a May 5, 2007, article by former PCLOB member Lanny Davis, entitled, "Why I Resigned From The President's Privacy and Civil Liberties Oversight Board – And Where We Go From Here." The article was published on webpage of The Huffington Post, www.huffingtonpost.com.

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V. (U) CONCLUSION

~~(TS//STLW//SI//OC/NF)~~ We found that the ODNI's primary role in the Program was the preparation of 12 ODNI threat assessments approved by the DNI or PDDNI for use in the Program reauthorizations. The ODNI-prepared threat assessments set forth the ODNI's view regarding the existing threat of an al Qaeda terrorist attack against the United States and provided the DNI's recommendation regarding the need to reauthorize the Program. We found that the ODNI threat assessments were drafted by experienced NCTC personnel under the supervision of knowledgeable NCTC supervisors. We noted that the threat assessments were subject to review by OGC and DOJ attorneys before approval. Additionally, we found that the process used by the ODNI to prepare and obtain approval of the threat assessments was straightforward, reasonable, and consistent with the preparation of other documents requiring DNI approval. Overall, we found the ODNI process for the preparation and approval of the threat assessments was responsible and effective.

~~(TS//STLW//SI//OC/NF)~~ We also found that the ODNI oversight components played a limited role in oversight of the Program. The limited ODNI oversight role was due to delays in obtaining Program access for ODNI oversight personnel and to temporary resource limitations related to the stand-up of the agency. However, we believe that the 2008 amendments to EO 12333 and improved staffing levels provide the ODNI oversight components with sufficient resources and authority to fulfill their current oversight responsibilities, assuming timely notification.

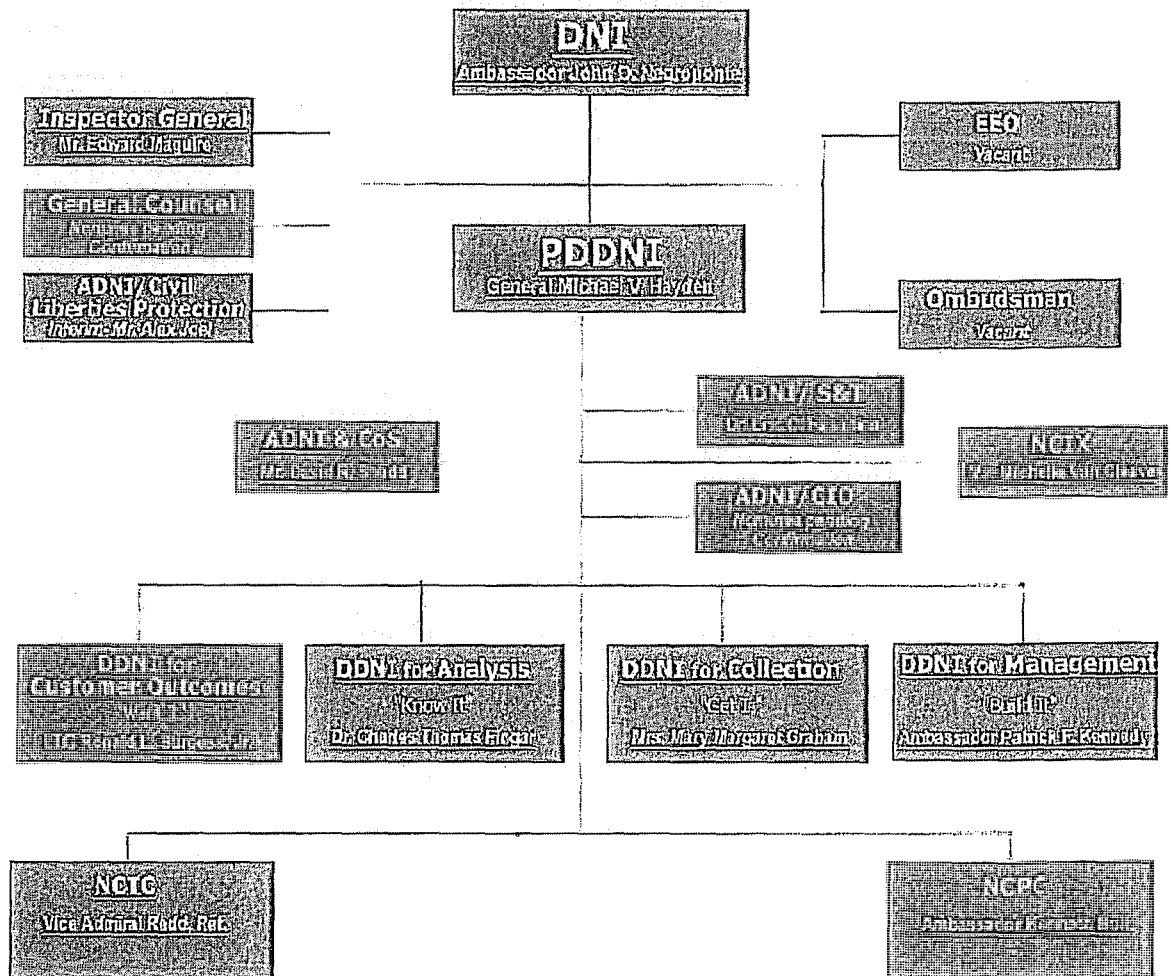
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VI. (U) APPENDIX - STRUCTURE OF THE ODNI - 2005



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OF THE
DEPARTMENT OF DEFENSE
DEPARTMENT OF JUSTICE
CENTRAL INTELLIGENCE AGENCY
NATIONAL SECURITY AGENCY
OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

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

REPORT NO. 2009-0013-AS

VOLUME II