

THE MAGIC LAWYERING BEHIND STELLAR WIND

The NSA IG Report on Stellar Wind reveals this about the legal review behind the dragnet of Americans. (PDF 156)

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

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