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~~(S//NF)~~ Legal Analysis of XKEYSCORE  
20 January 2016

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(b) (3) -18 USC 798  
(b) (3) -50 USC 3024 (i)  
(b) (3) -P.L. 86-36  
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**(U) I. Executive Summary**

~~S//SI//REL TO USA, FVEY~~

The President's Privacy and Civil Liberties Oversight Board ("PCLOB" or "Board") is conducting a review of certain Intelligence Community counterterrorism operations conducted pursuant to Executive Order 12333, as amended (E.O. 12333). In connection with this review, by letter dated 15 December 2015, the PCLOB submitted a document request to the National Security Agency/Central Security Service ("NSA" or "Agency") seeking, among other things:

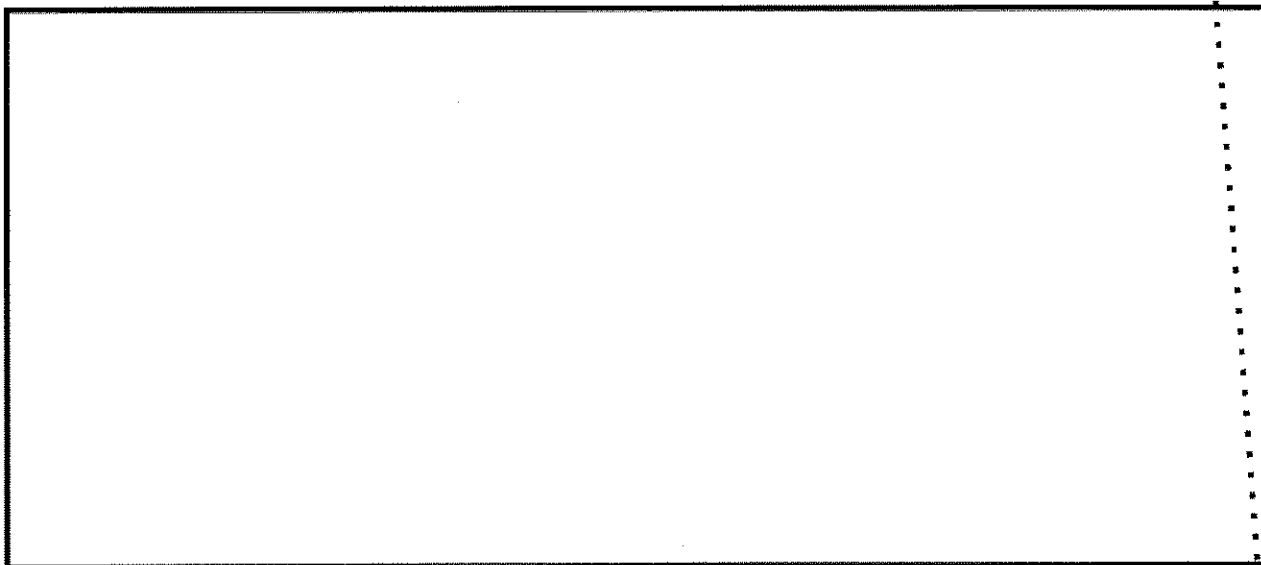
**"Legal analysis by the NSA and the Department of Justice regarding the use of XKEYSCORE's analytic functions and its consistency with statute, executive order, and the Constitution."**

NSA's Office of General Counsel (OGC) prepared this paper in response to the Board's request. This paper is based on OGC's previous internal legal analyses.

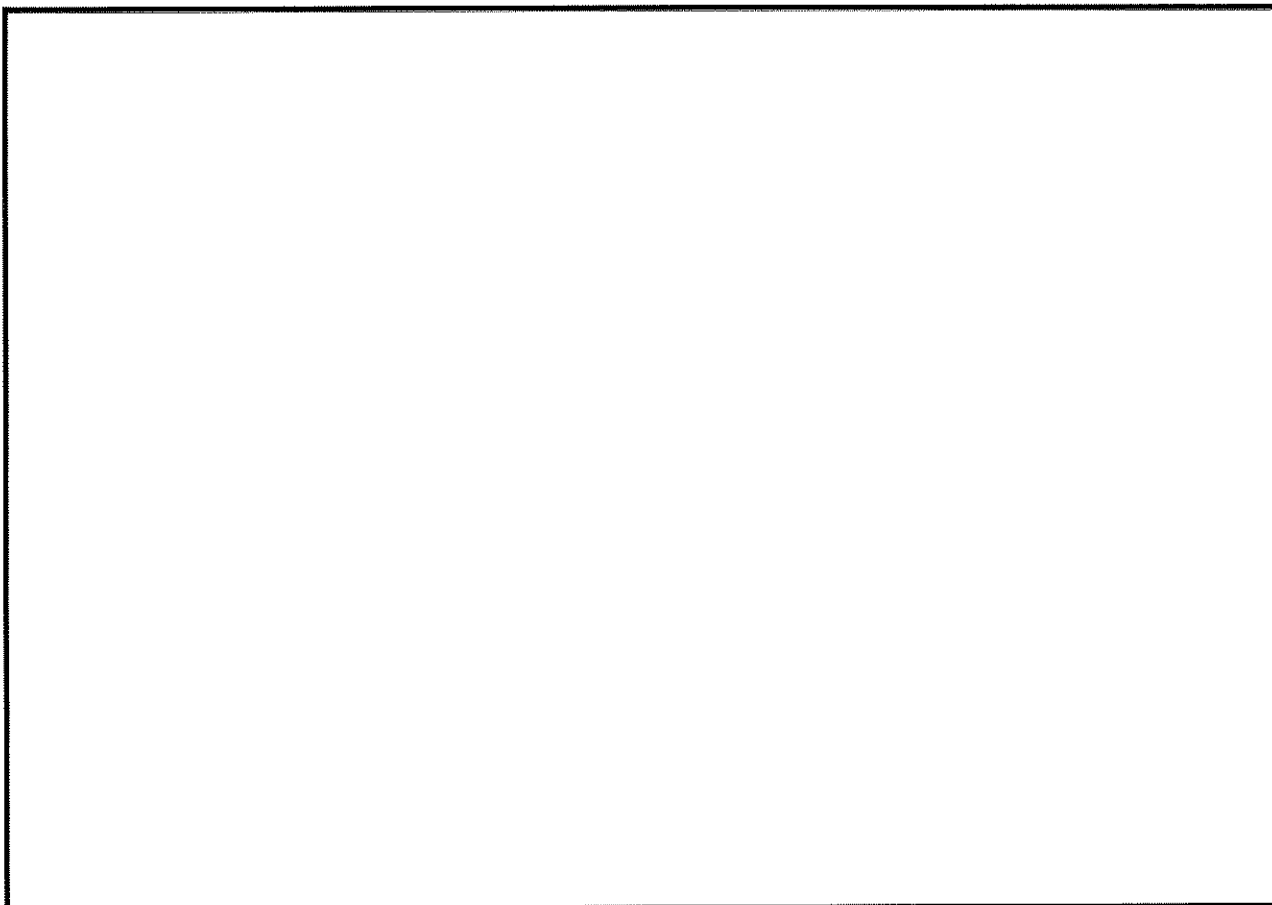
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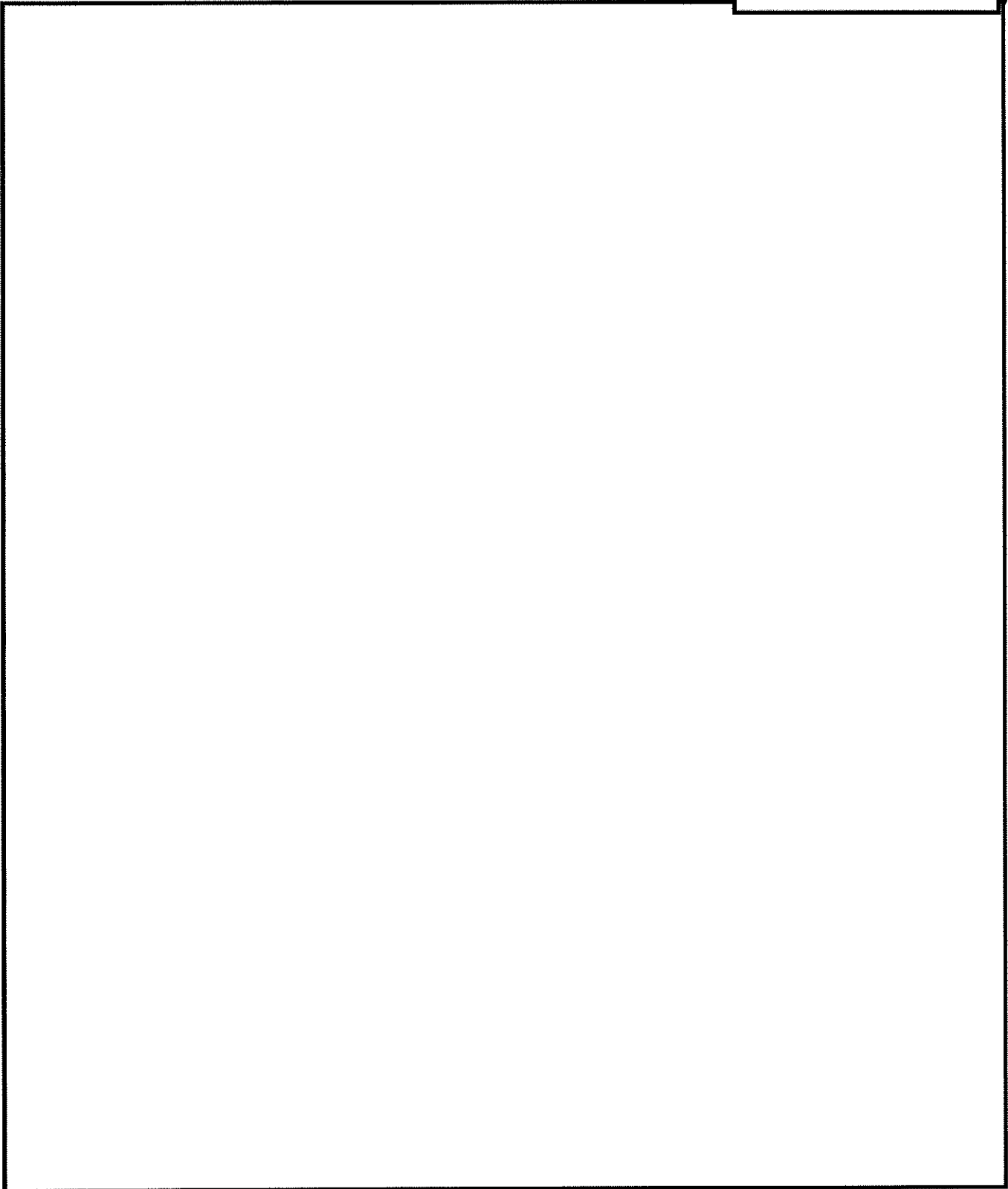
**(U) II. Background**



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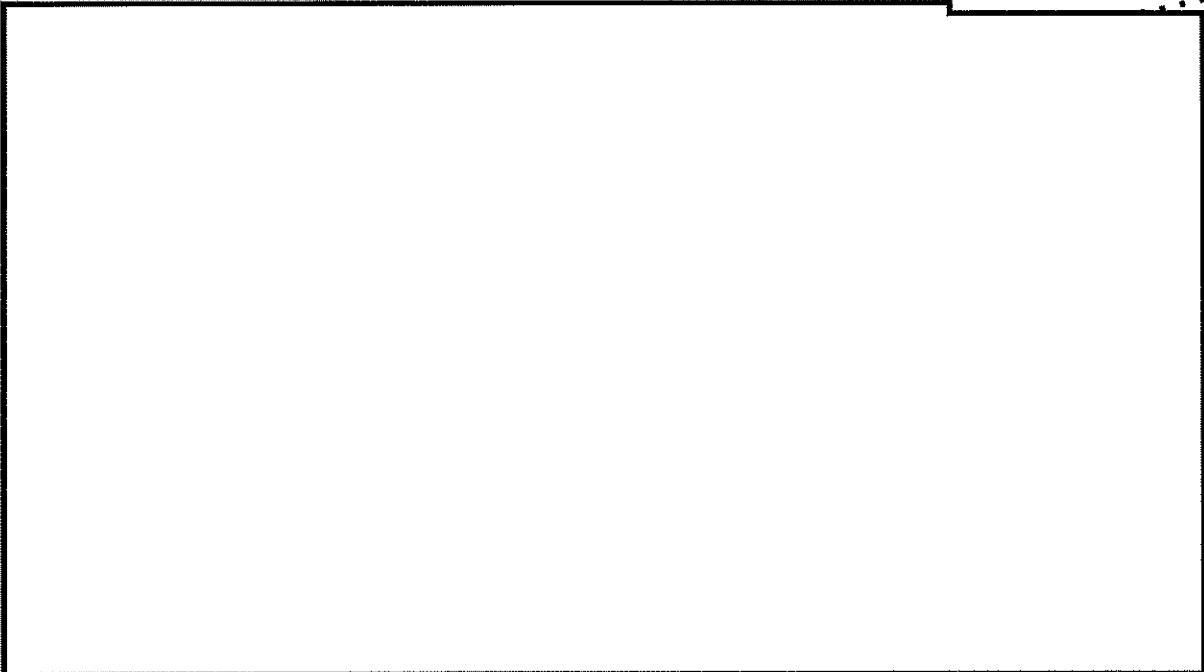
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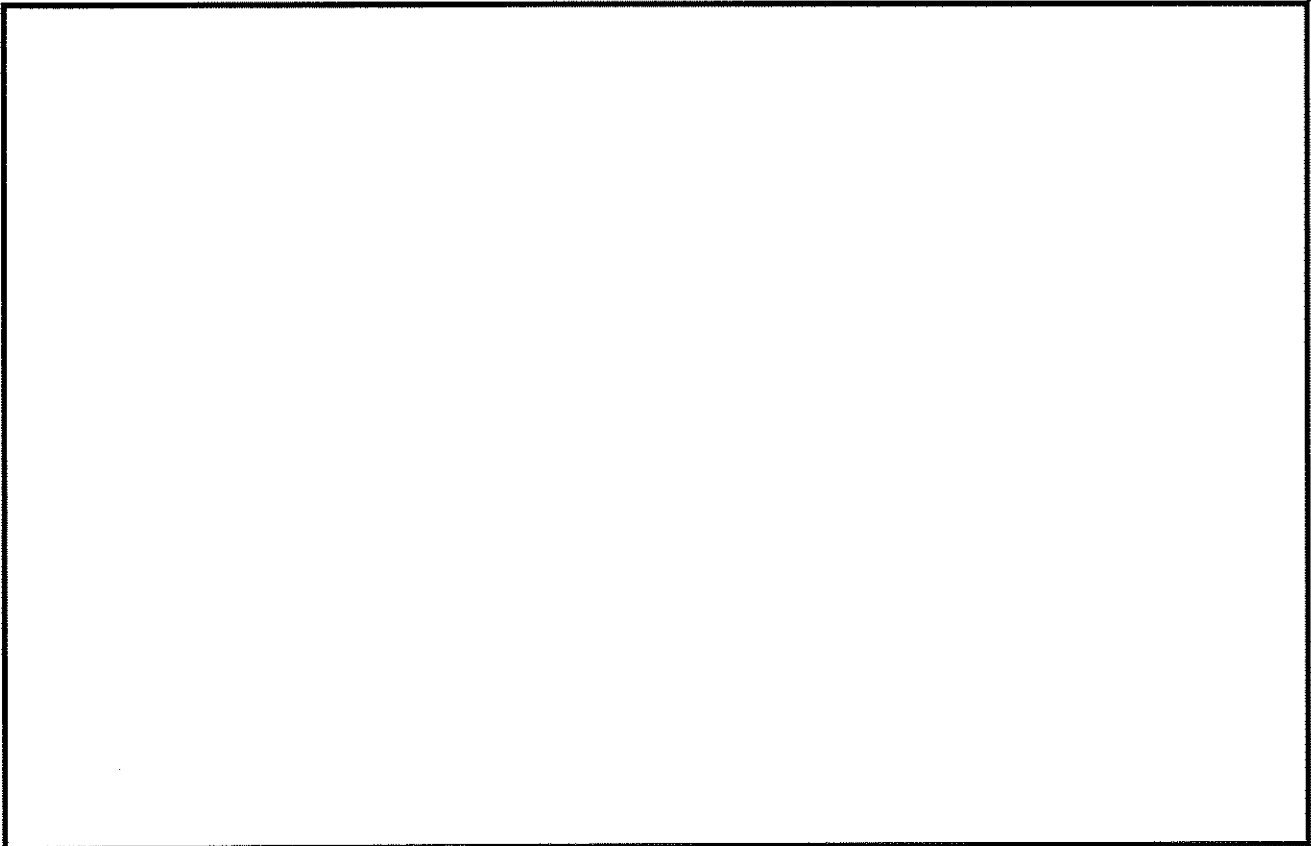
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(U) III. Legal Analysis

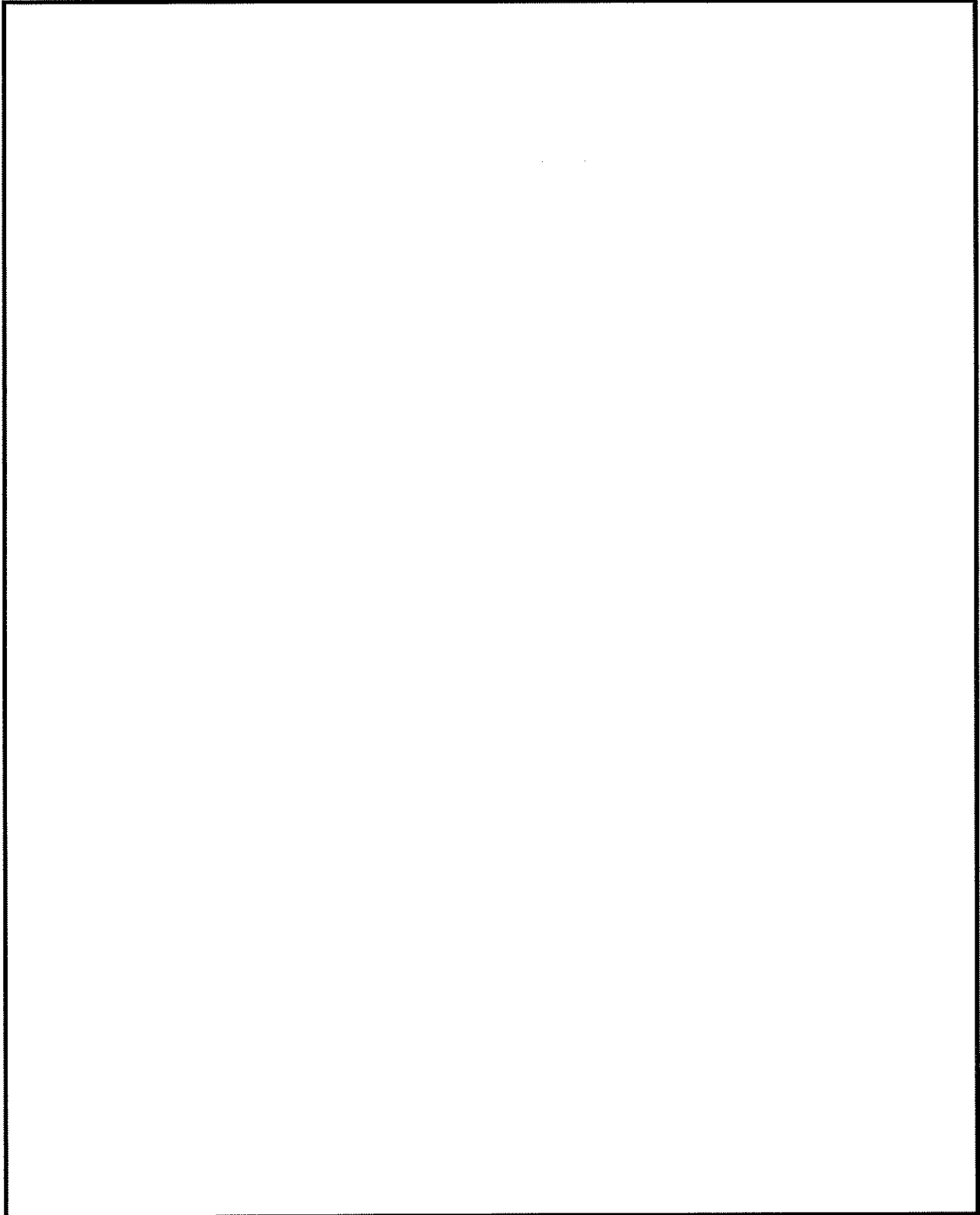


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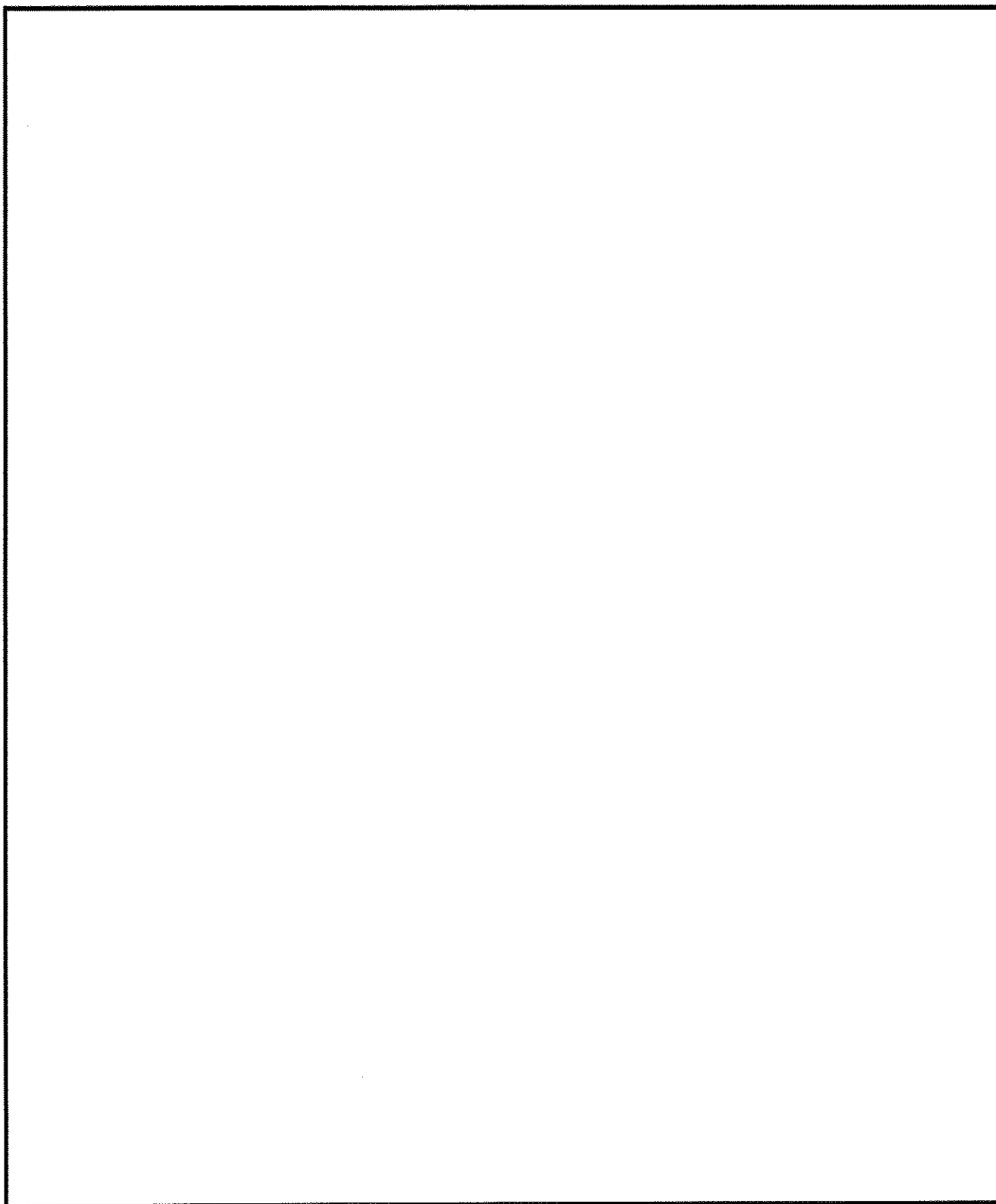
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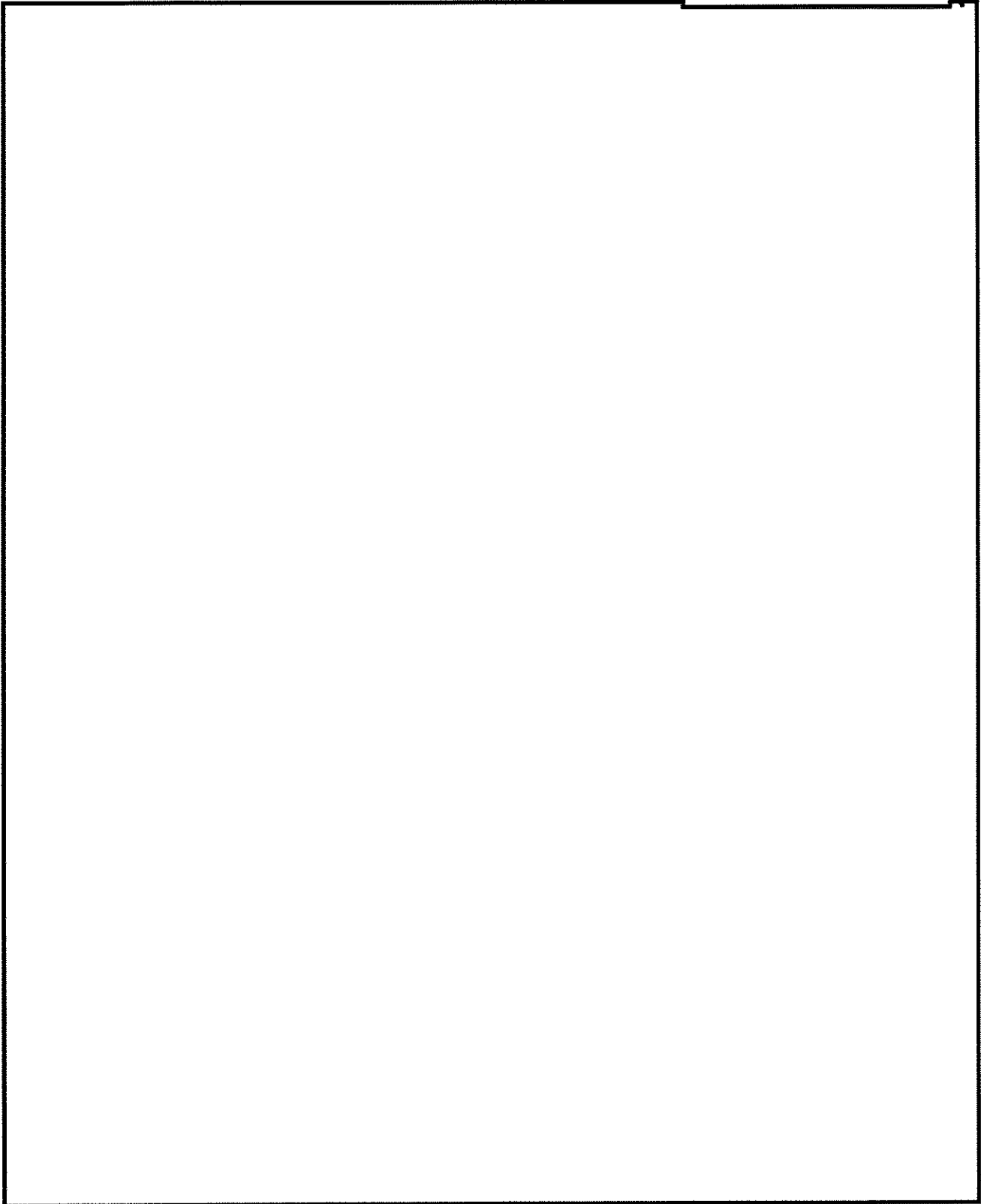
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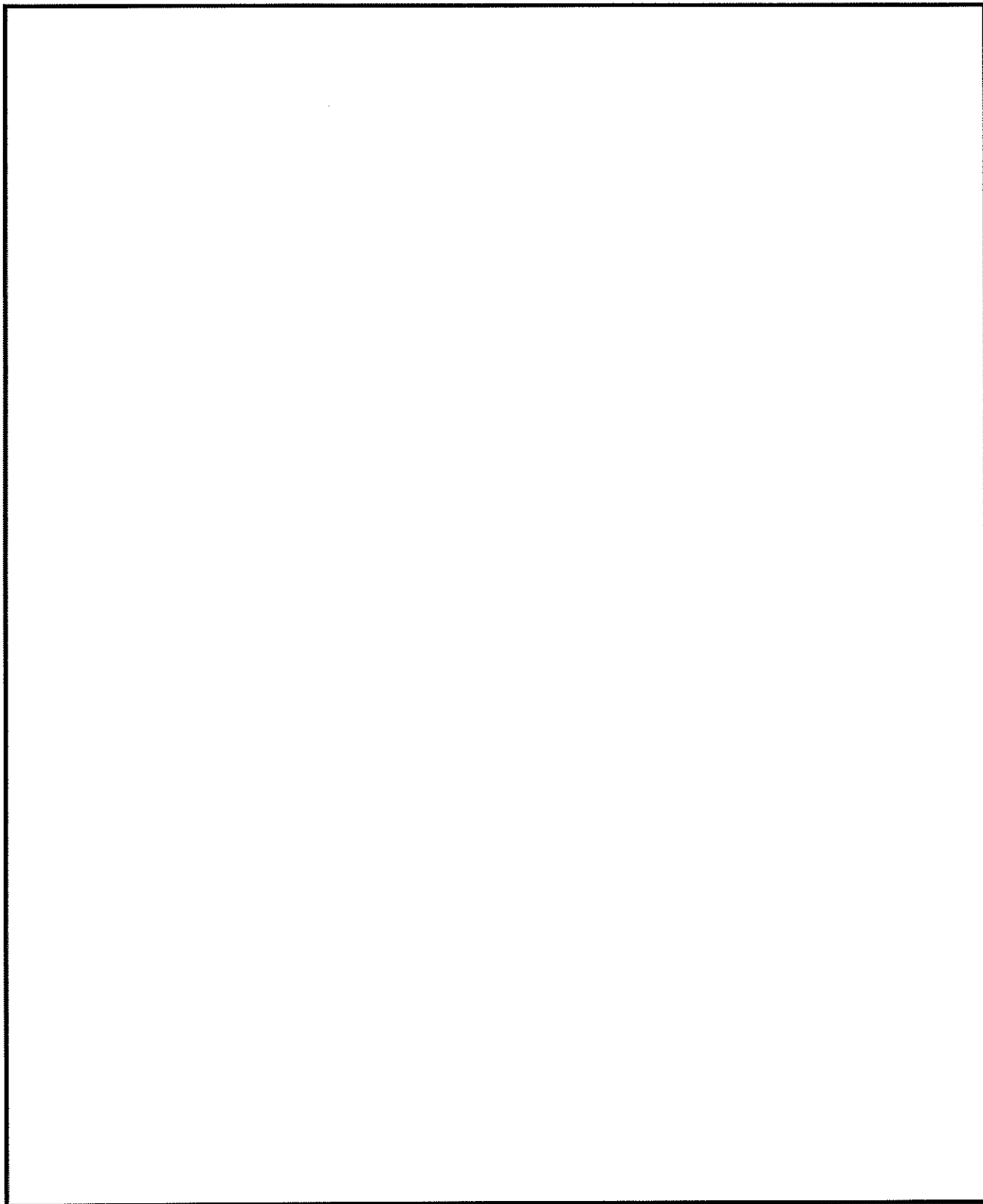
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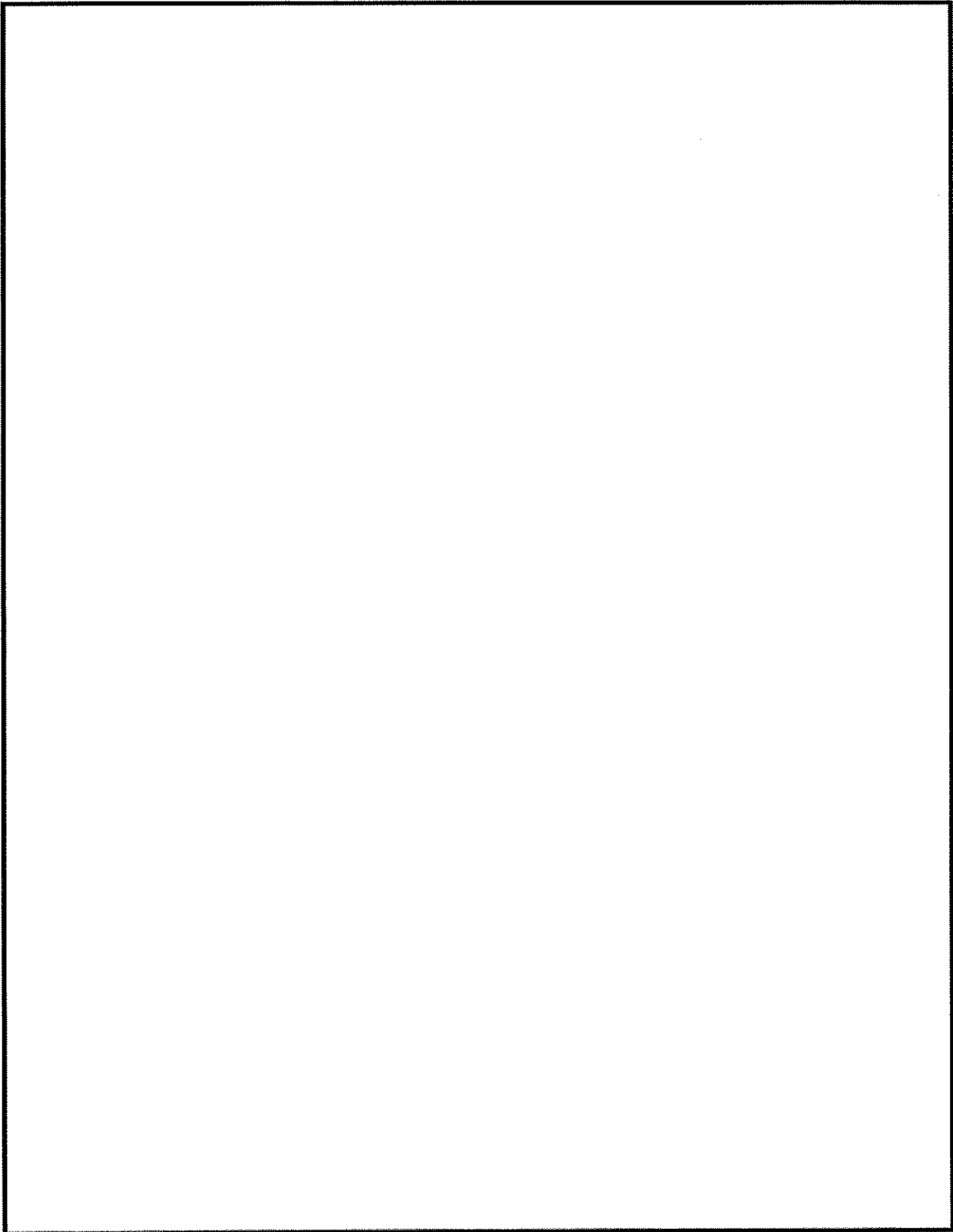
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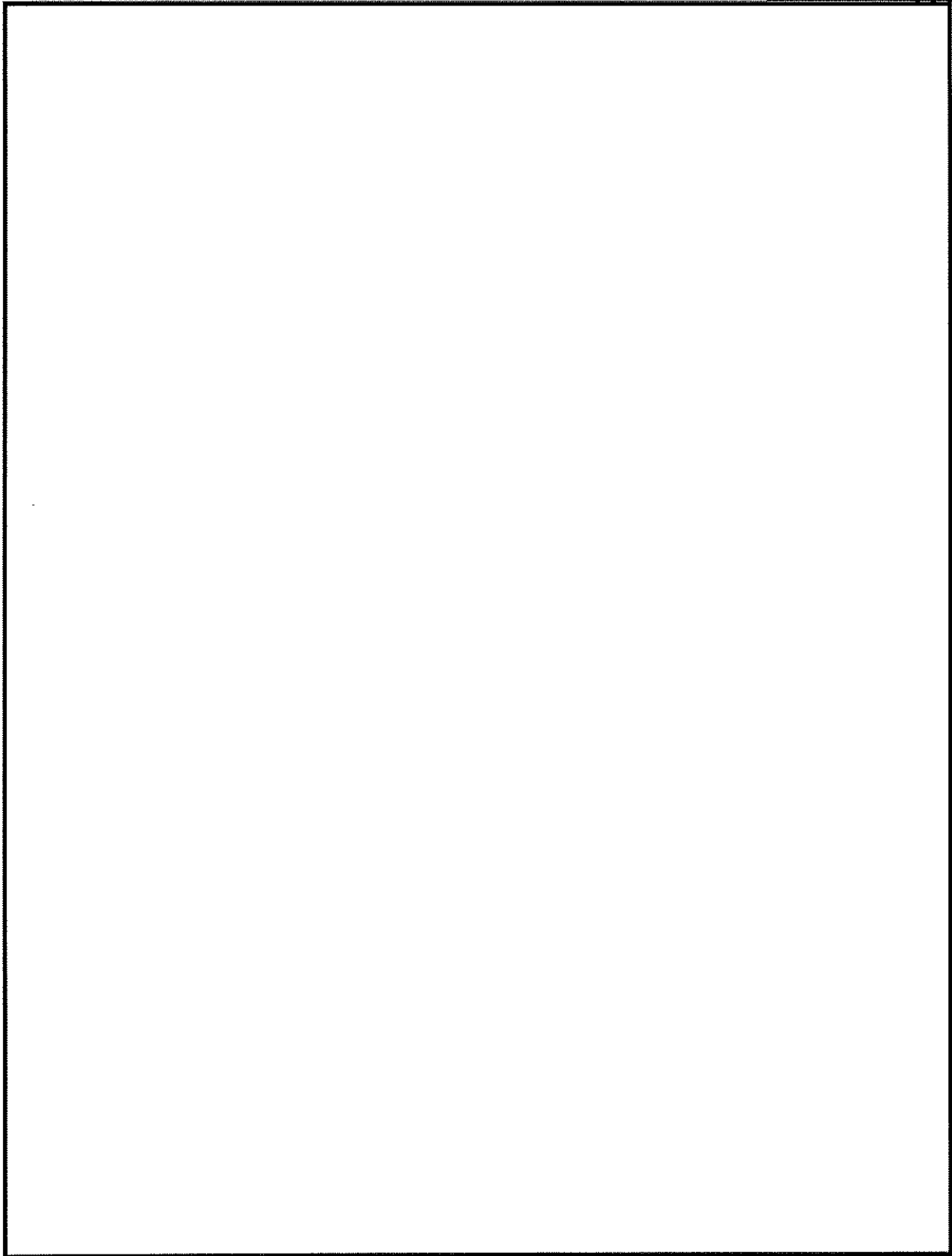


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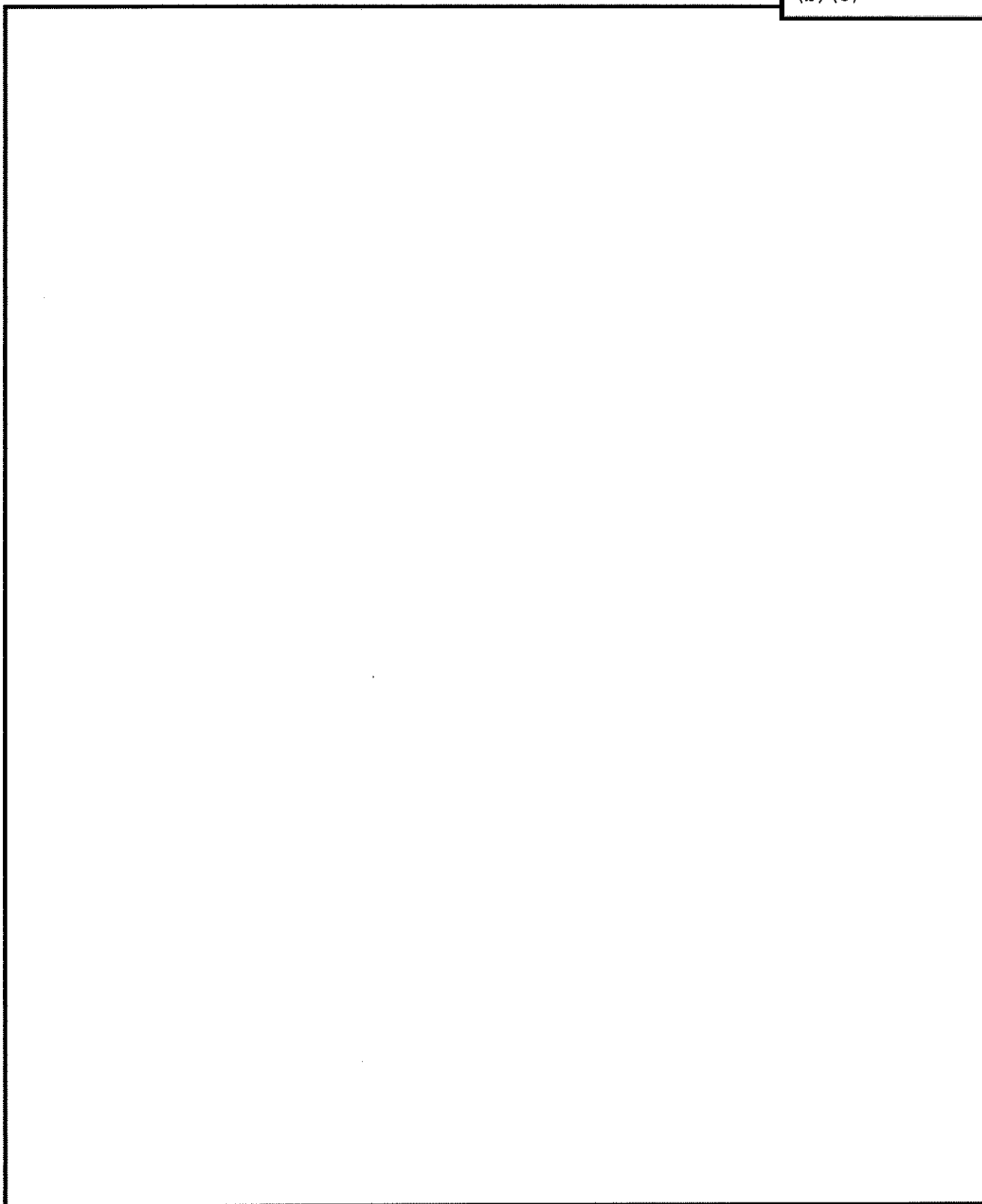
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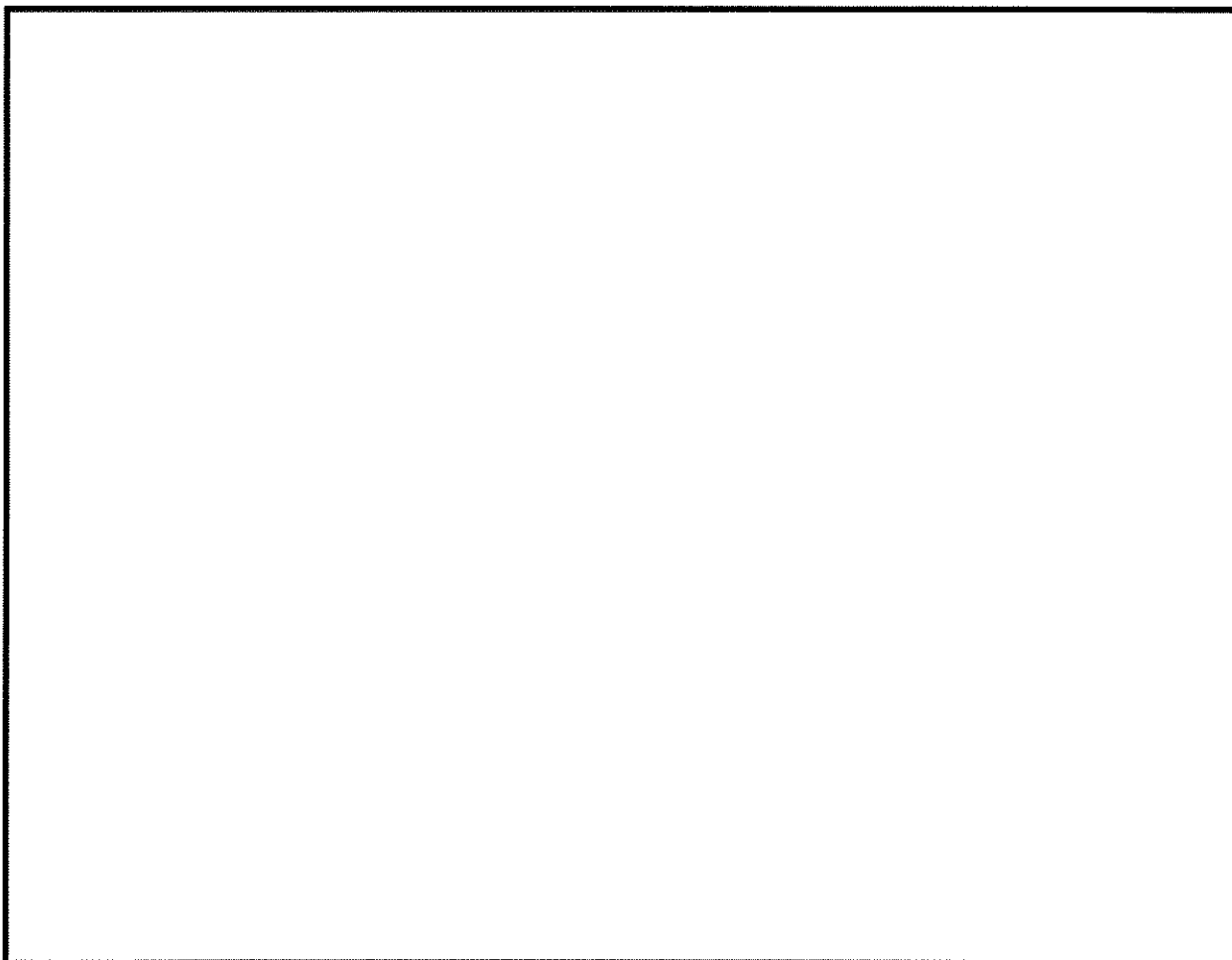


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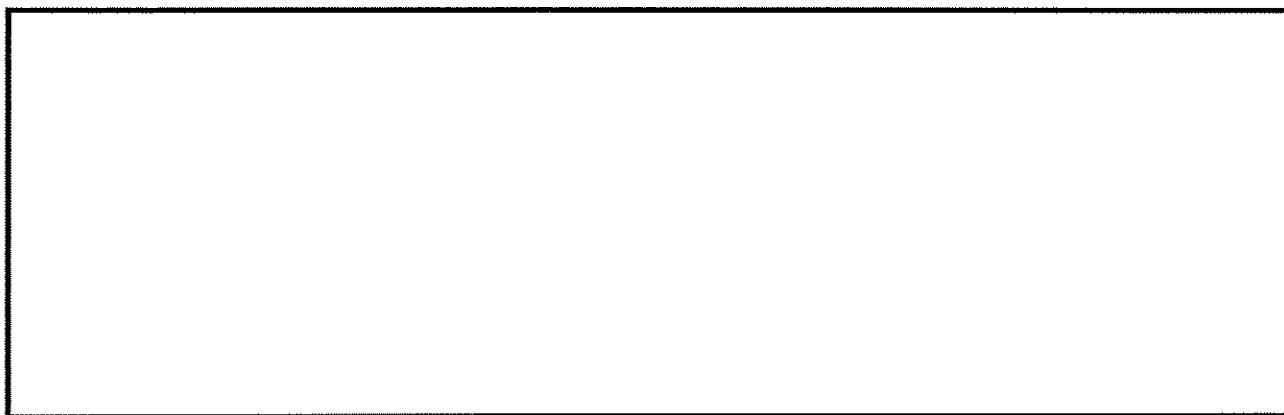


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**(U) V. Conclusion**



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PCLOB Questions received on September 14, 2020 regarding XKEYSCORE Deep Dive.

November 5, 2020

The answers are specific to how NSA uses XKEYSCORE under E.O. 12333

1. ~~(TS//SI//NF)~~ The Board would like a bit more information on collection

a.

i. ~~(TS//SI//NF)~~ NSA Response:

b.

i. ~~(TS//SI//NF)~~ NSA Response:

c.

i. ~~(TS//SI//NF)~~ NSA Response:

2. ~~(TS//SI//NF)~~ The Board would like a bit more information on auditing.

a. What are the protocols that are used to flag items to be reviewed by auditors?

i. (U//FOUO) NSA Response: NSA is not entirely clear what is meant by flagging an item in this context. Every analyst query within XKEYSCORE is sent to the NSA corporate auditing tool for post query review. The queries are provided to the auditors and the auditors are required to evaluate the compliance of the query by the next business day. The auditor annotates the query record as "approved" or "reportable". Reportable queries are investigated as to whether a questionable intelligence activity has occurred. If yes, the incident report is included in

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Classified By:

Derived From: NSA/CSSM 1-52

Dated: 20180110

Declassify On: 20450901

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the NSA Quarterly Report to the DoD Senior Intelligence Oversight Official (SIOO).

- b. How many times have a query been flagged?
- i. ~~(TS//SI//NF)~~ NSA Response: (U//FOUO) During calendar year 2019, [redacted] incident reports were submitted for XKEYSCORE database queries in; [redacted] of those were identified as questionable intelligence activities (QIAs). See answer above.
- c. Has a human auditor ever flagged a query?
- (U//FOUO) NSA Response: To the extent flagging a query is meant to convey that an auditor had a concern with a query, there have been query compliance incidents by analysts in XKEYSCORE. See above figures for incident reports submitted and evaluated.
- d. Can you confirm that there have been no previous incidents in XKEYSCORE?
- (U//FOUO) NSA Response: As noted above, NSA has had incidents in XKEYSCORE. Compliance incidents occur during NSA mission activities, and NSA reports them immediately upon recognition and then compiles a quarterly report to overseers. [redacted]
- [redacted]
- e. Are there any other statistics related to this kind of internal oversight?
- (U//FOUO) NSA Response: The statistics related to the number of possible incidents and QIAs are the statistics NSA maintains and reports to DoD and ODNI. Post-query review is an NSA internal control. NSA has other internal controls to provide assurance of privacy protections during mission operations. These controls include data tagging, data access, query rules, targeting rules, purge, and data age-off.

3. ~~(TS//SI//NF)~~ The Board would like to know a bit more about the deprioritization system. Specifically, the Board wants to know what NSA does to deprioritize the viewing of US person traffic. We explained that you actually see it as a prioritization of foreign intelligence information and not a deprioritization of the viewing of US person traffic.

[redacted] I know we discussed this a bit earlier this year, but even a few more facts will help us on this point.

- a. ~~(S//SI//REL)~~ NSA Response: NSA focuses on positively identifying and promoting traffic likely to contain foreign intelligence [redacted]
- [redacted]

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[REDACTED]

b. (TS//SI//REL USA, FVEY) [REDACTED]

[REDACTED]

a. (TS//SI//REL USA, FVEY) [REDACTED]

[REDACTED]

4. (TS//SI//NF) One Board member is interested in [REDACTED]

[REDACTED]

a. [REDACTED]

(U) NSA Response: It depends on a number of considerations, which are discussed in more detail below.

(TS//SI//REL USA, FVEY) [REDACTED]

[REDACTED]

(TS//SI//REL USA, FVEY) [REDACTED]

[REDACTED]

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(TS//SI//REL USA, FVEY) [REDACTED]

(TS//SI//REL USA, FVEY) [REDACTED]

- b. [REDACTED]  
(U)NSA Response: In many cases. See answer above.

- c. [REDACTED]  
(TS//SI//REL USA, FVEY) NSA Response: [REDACTED]

5. (TS//SI//NF) USP Queries in XK\$ [REDACTED]

- a. Do we know the number of United States person queries (into XKS data) conducted each year since 2016?  
(TS//SI//NF) NSA Response: Analysts query USP [REDACTED] within XKEYSCORE. As part of the query process, a justification including whether it is a USP query or not is required and follows the auditing process noted above. NSA has recently implemented an ability to track if the query is a USP. To that end, between January 2020 and September 2020, NSA identified [REDACTED] USP queries.

- b. We understand that these queries are only allowed for [REDACTED]. Is there a way to determine what the basis of these queries were?  
(TS//SI//NF) NSA Response: Currently, under NSA's Classified Annex procedures, [REDACTED] are the only USP queries permitted in unevaluated EO 12333 SIGINT collection. Each query justification states the reason for the search. NSA would have to manually review all [REDACTED] justifications since January 2020 and categorize them.

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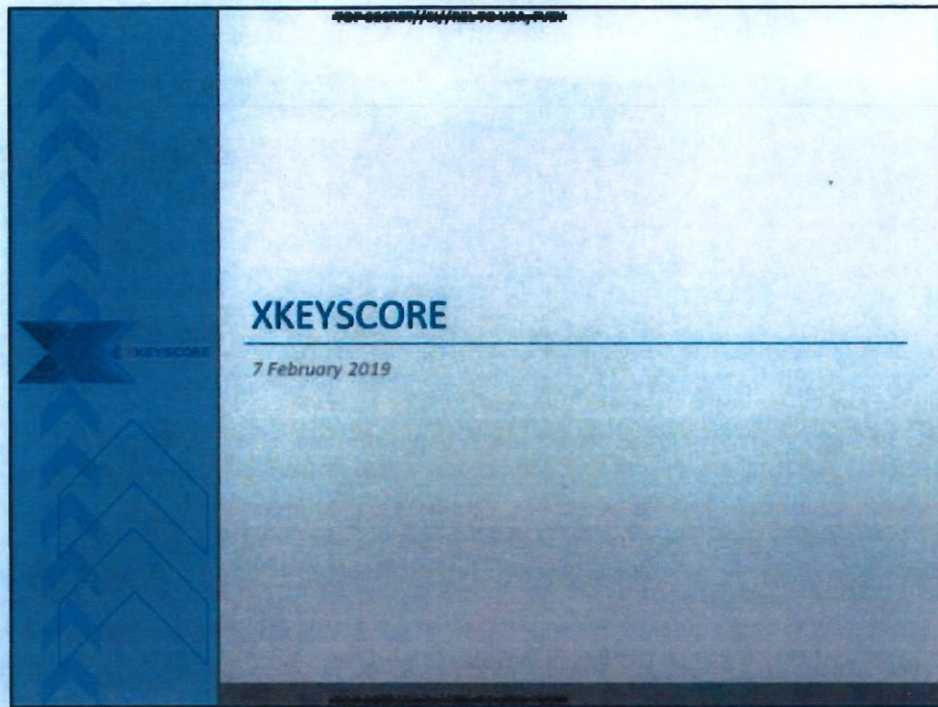
~~TOP SECRET//SI//NOFORN~~6. ~~(TS//SI//NF)~~ Data Processing:

- a. What kind of process is used to determine which data is processed by XKEYSCORE?  
~~(U//FOUO)~~ **NSA Response:** See response above regarding prioritization v. de-prioritization.
- b. Is that an automated system (collection)?  
~~(U//FOUO)~~ **NSA Response:** See response above regarding prioritization v. de-prioritization.
- c. How is the process governed?  
~~(U//FOUO)~~ **NSA Response:** See response above regarding prioritization v. de-prioritization.
- d. Are privacy and civil liberties considered?  
**(U) NSA Response:** NSA is focused on identifying foreign intelligence. During the survey process, the assessment is on identifying foreign intelligence. It is not focused on privacy and civil liberties. Nevertheless, the outcome is that the focus on FI reduces the impact on USP privacy and civil liberties.

7. ~~(S//NF)~~ Is it true that XKEYSCORE training is voluntary (not mandatory)?  
~~(S//NF)~~ **NSA Response:** Yes, XKS-specific training is voluntary, but there is mandatory training for access to any of the SIGINT as has been described previously. While the XKS tool training is not mandatory, the compliance training is compulsory. In fact, if any of the compliance trainings are not up-to-date, all access to XKEYSCORE is lost.

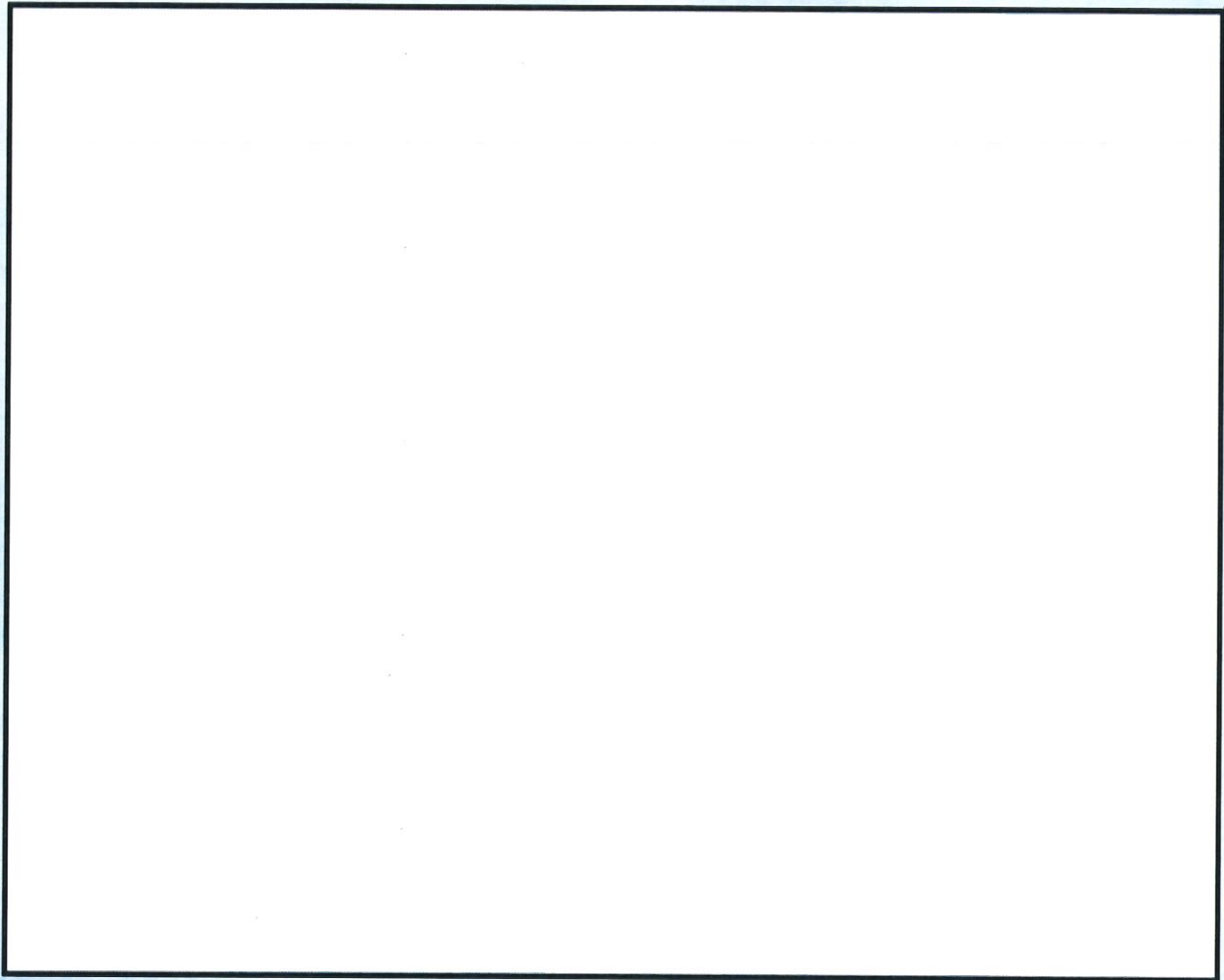
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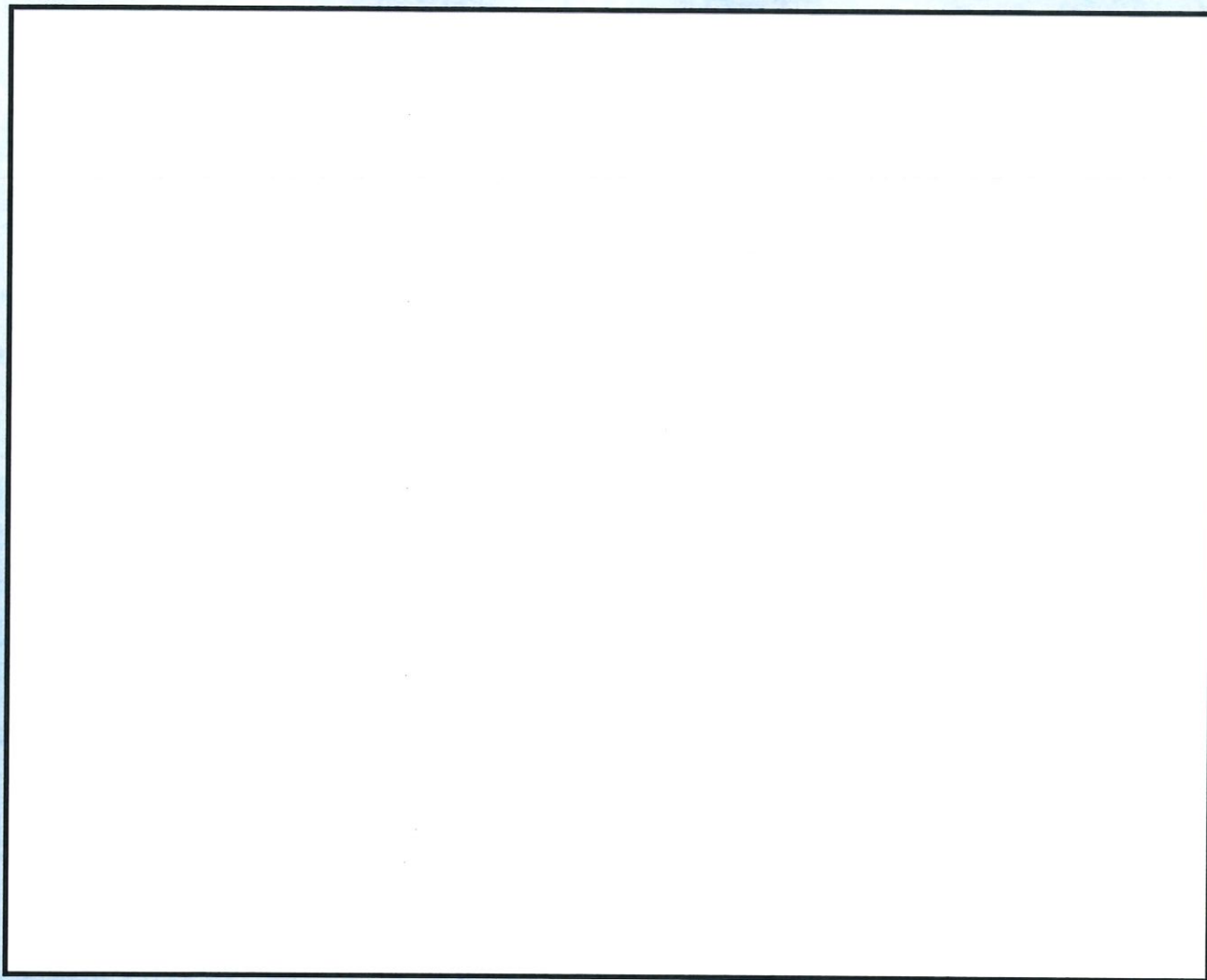


Hi I'm XKEYSCORE











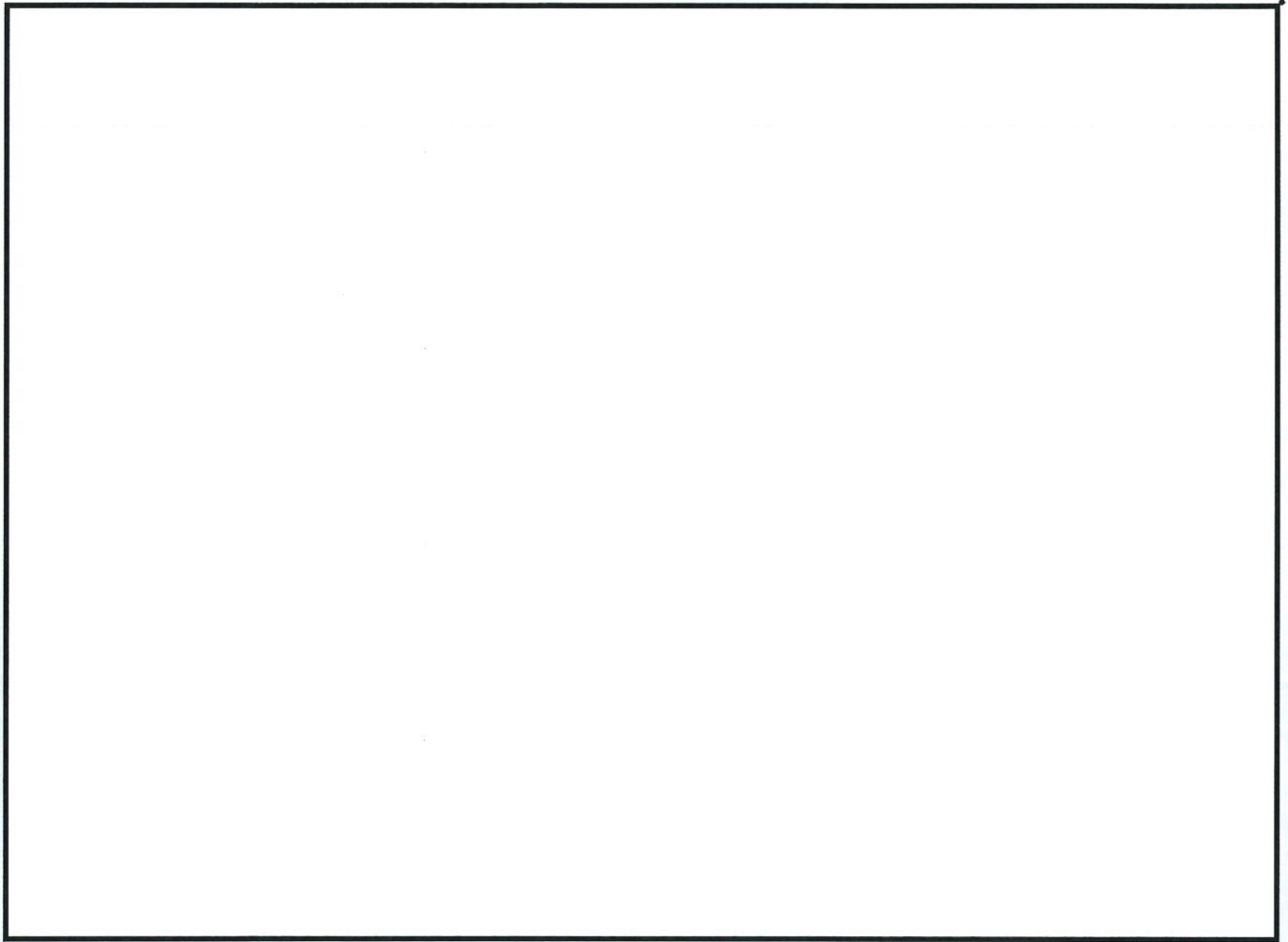


Once we have made that decision, we have to decide which signals are worth processing. It's very much like an old-fashioned manual phone switch. Some signals will get processed and some won't. Only the ones that are determined to have the most foreign intelligence value in accordance with USSID 18 will be processed.

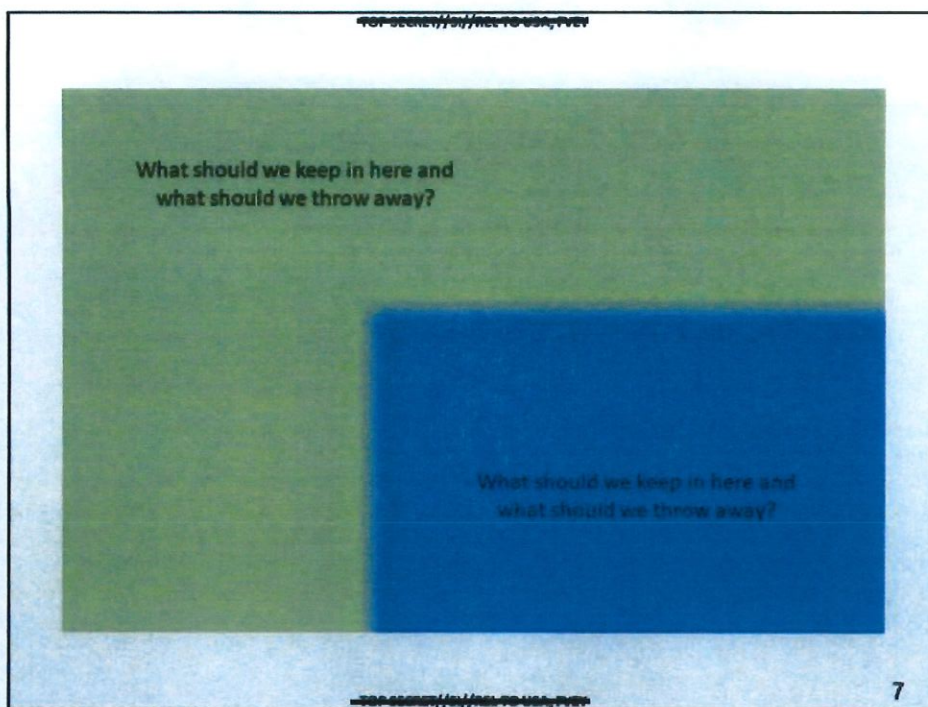




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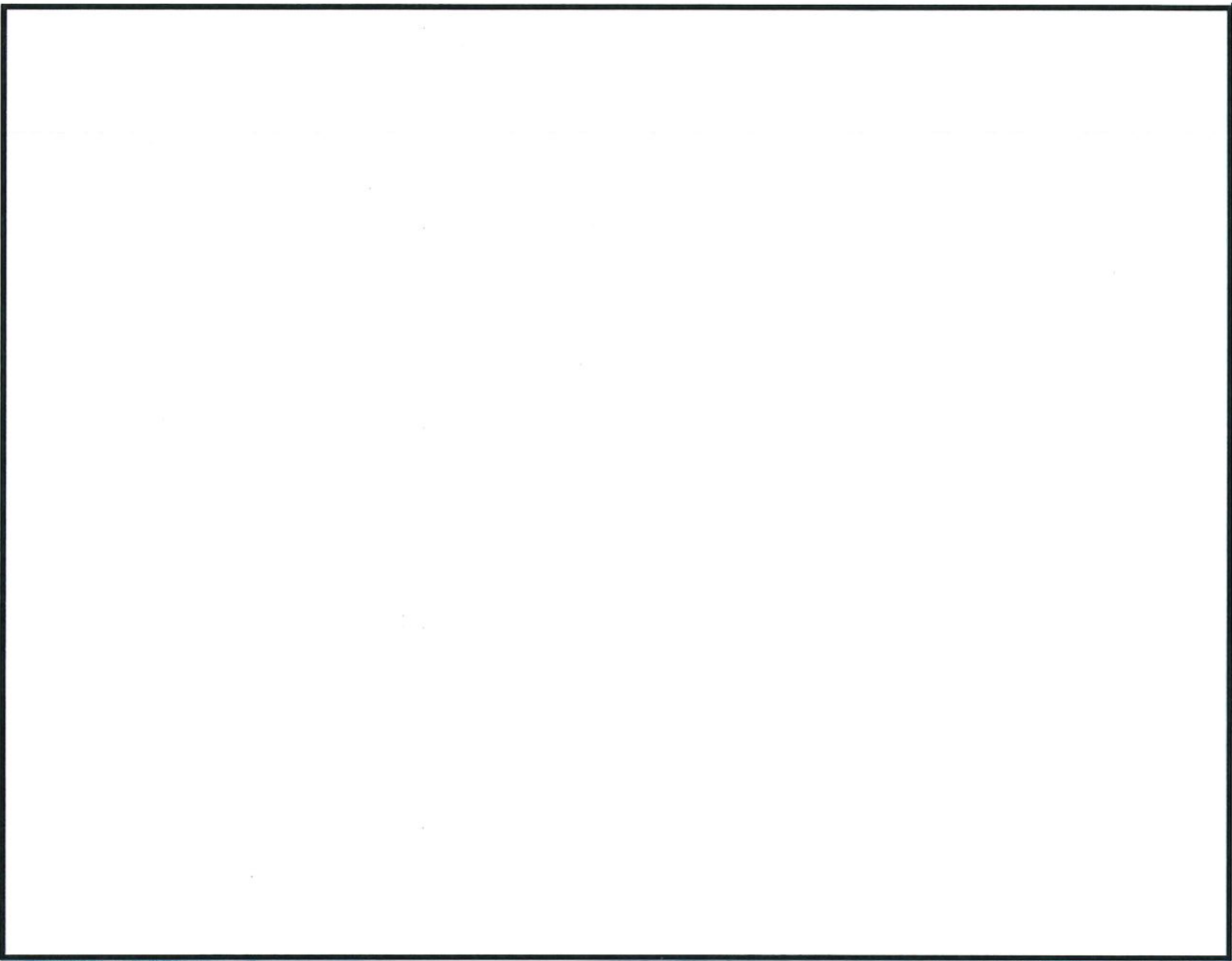


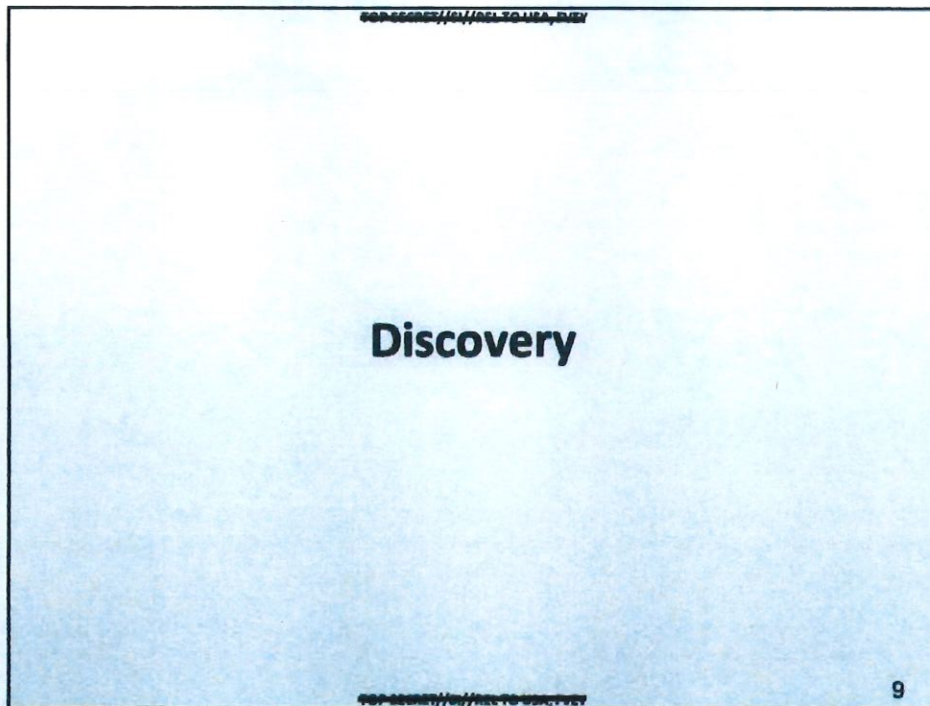




All the data processed by NSA must answer the same fundamental question:  
What should we keep and what should we throw away?

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I would like to point out that we have entered the realm of discovery, a corner of the SIGINT system that hasn't always gotten the attention it deserves, but is vitally important. As we will see, the procedures and safeguards for SIGINT discovery are different from the ones for sustained mission.





Reports that say that something hasn't happened are always interesting to me, because as we know, there are known knowns; there are things we know we know.

We also know there are known unknowns; that is to say we know there are some things we do not know.

But there are also *unknown unknowns*—the ones we don't know we don't know.

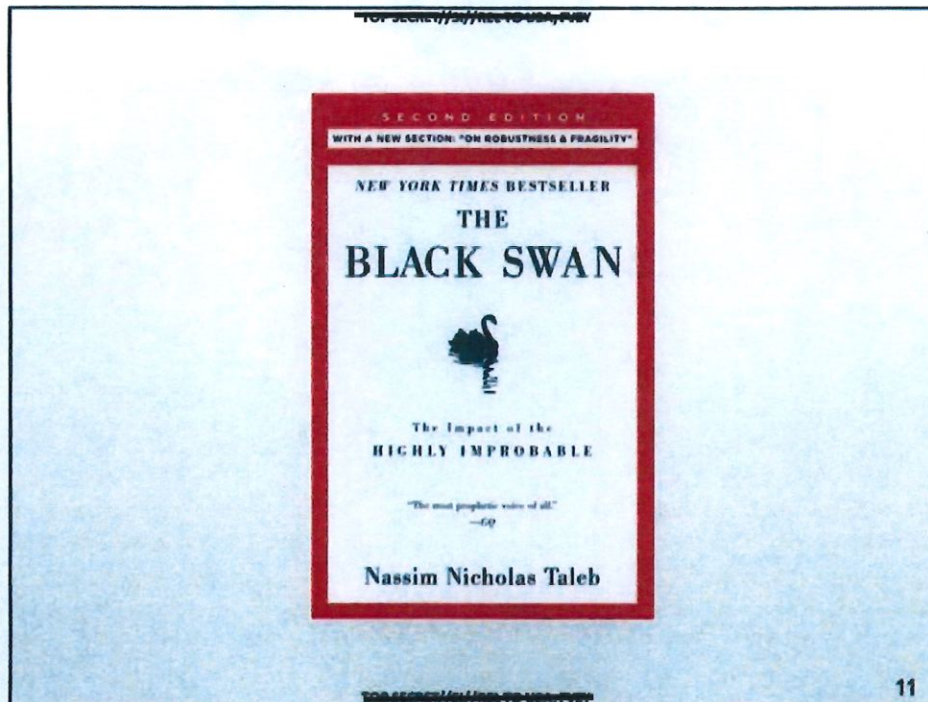
And if one looks throughout the history of our country and other free countries, it is the latter category that tend to be the difficult ones.

—SECDEF Donald Rumsfeld, February 2002

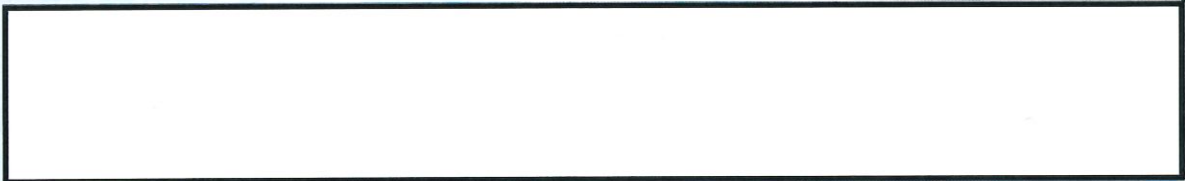
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What is discovery? The best explanation is probably Donald Rumsfeld's famous quote about "unknown unknowns." In terms of SIGINT, discovery means finding new targets. If all you do is concentrate on the targets you already know about, you will soon be out of targets.

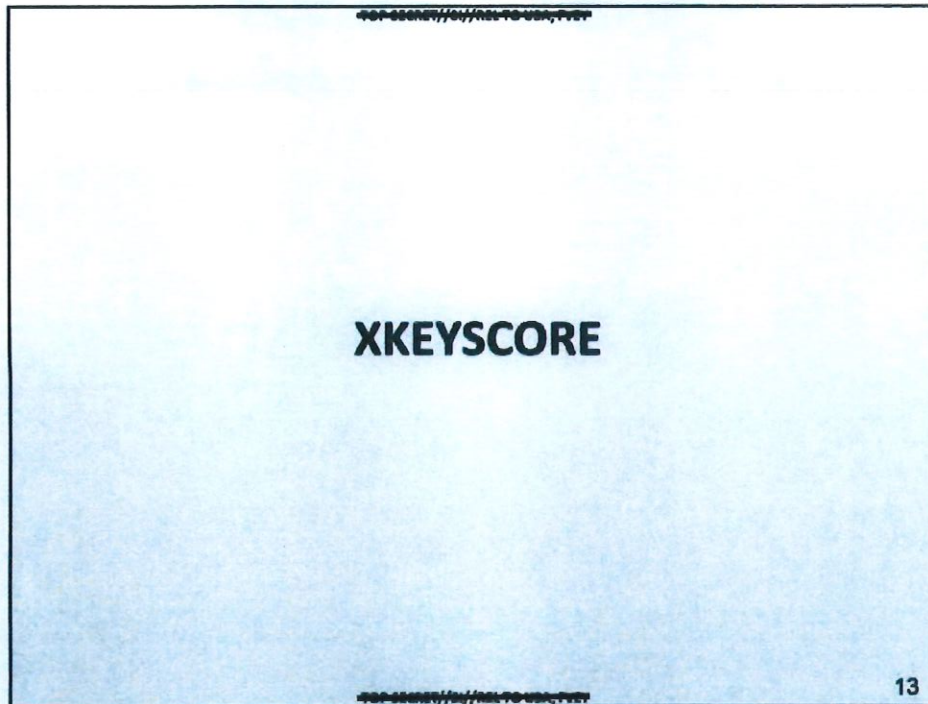




There is a related school of statistical thought that tries to prepare for "black swan" events, which are difficult to predict but possible to prepare for.





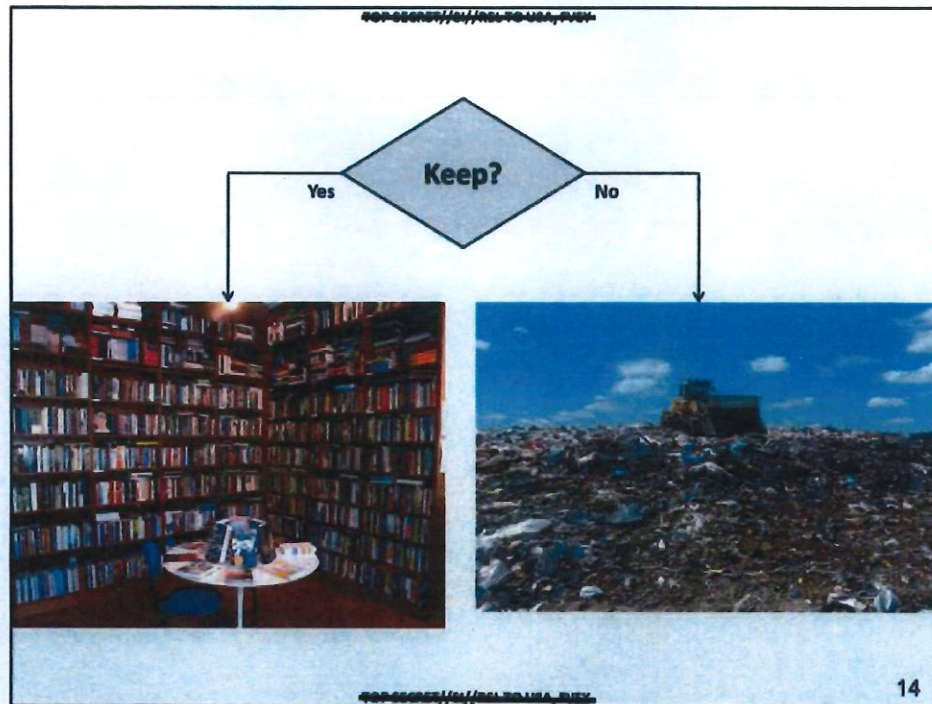


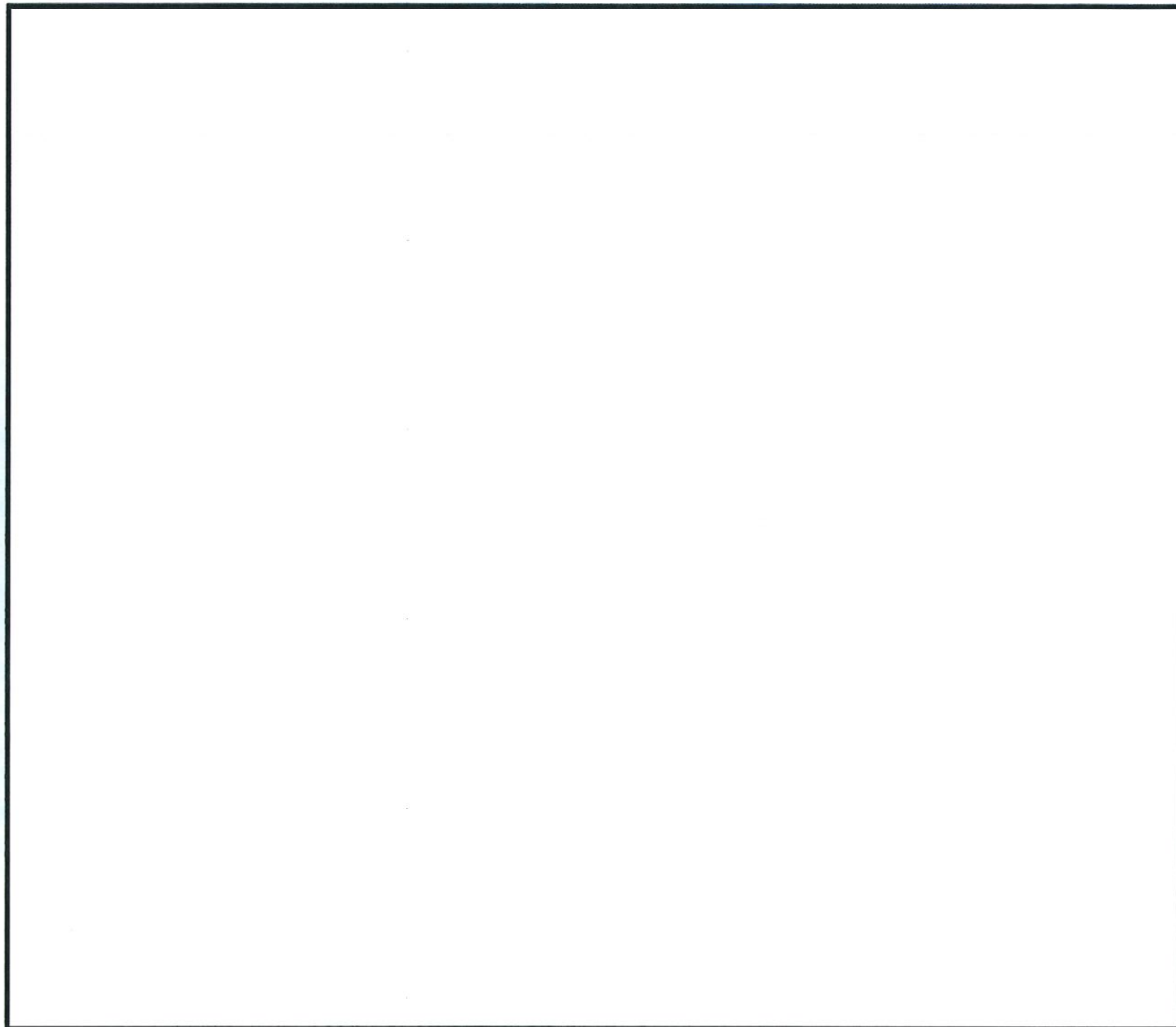
XKEYSCORE [REDACTED]  
tool for discovery.

It is NSA main

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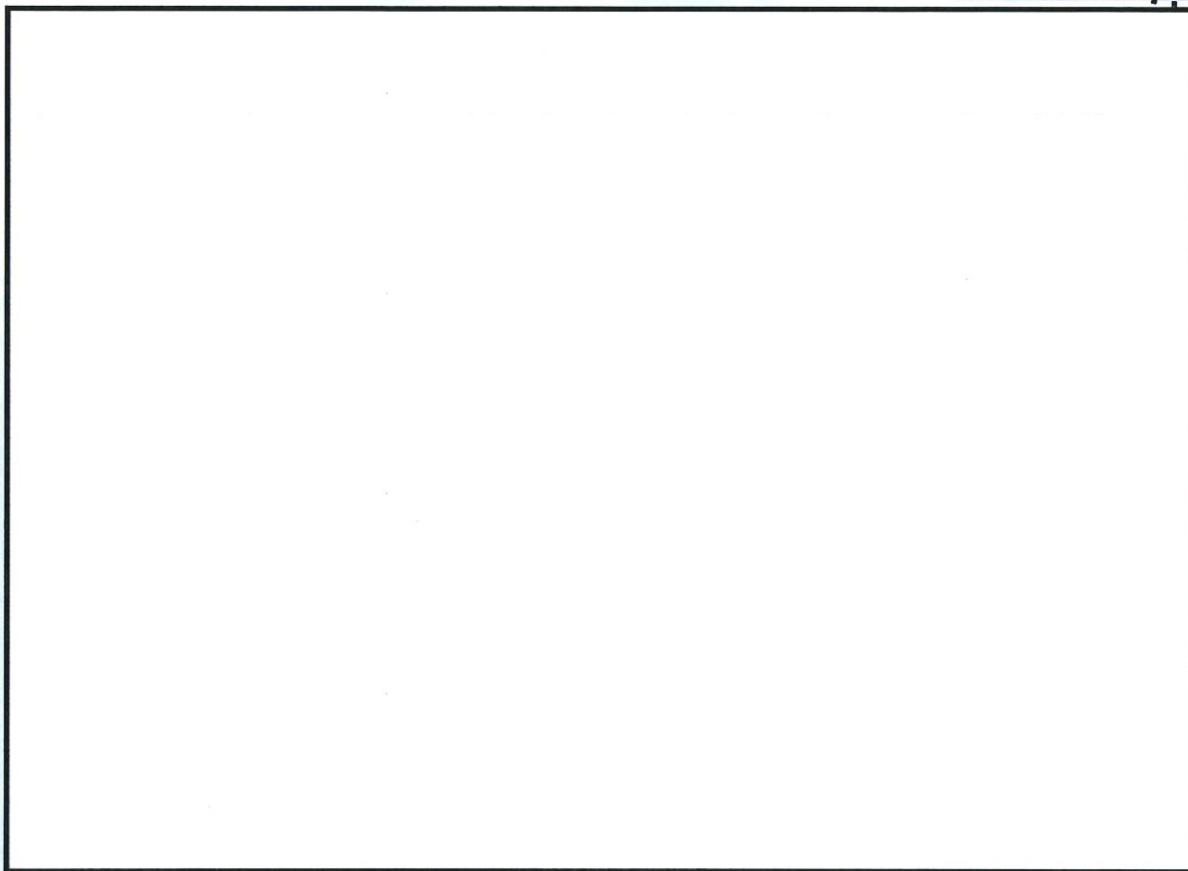


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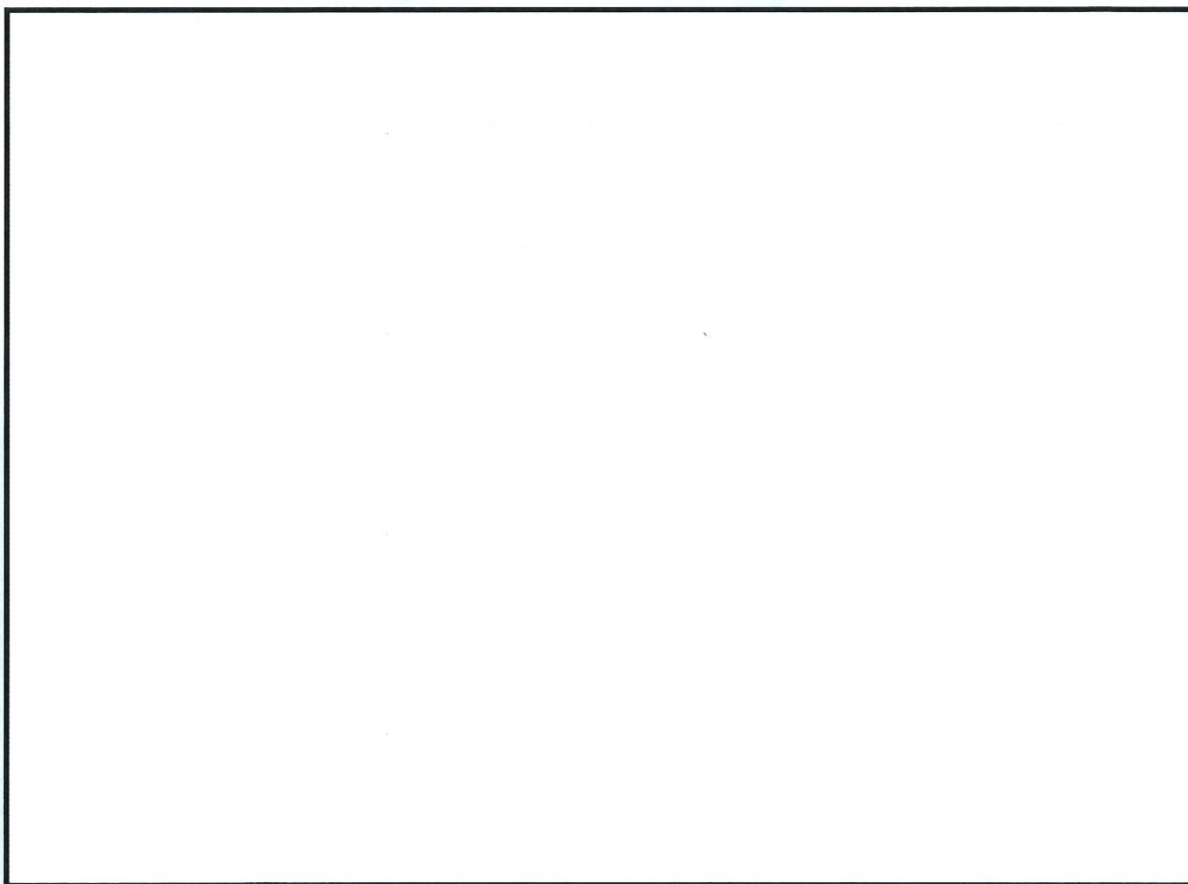




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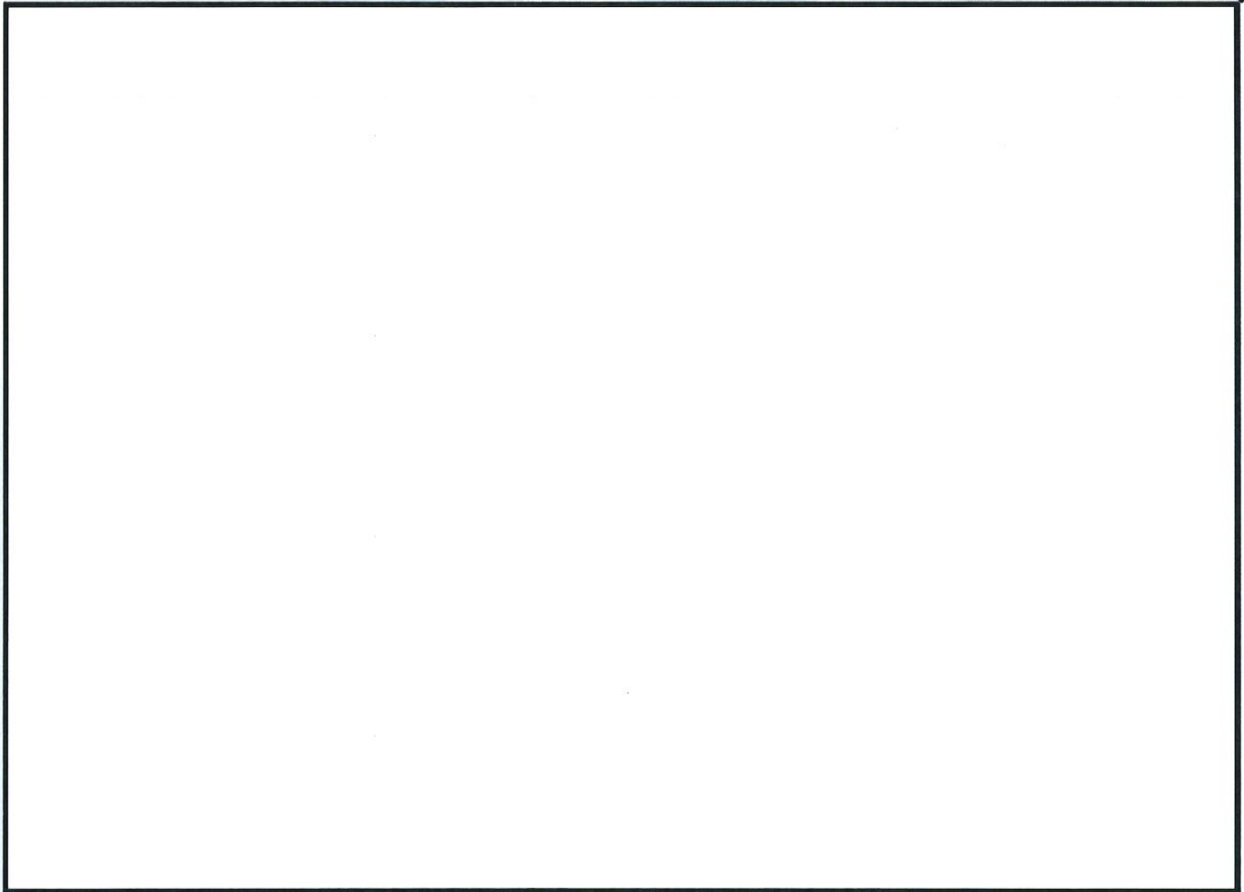


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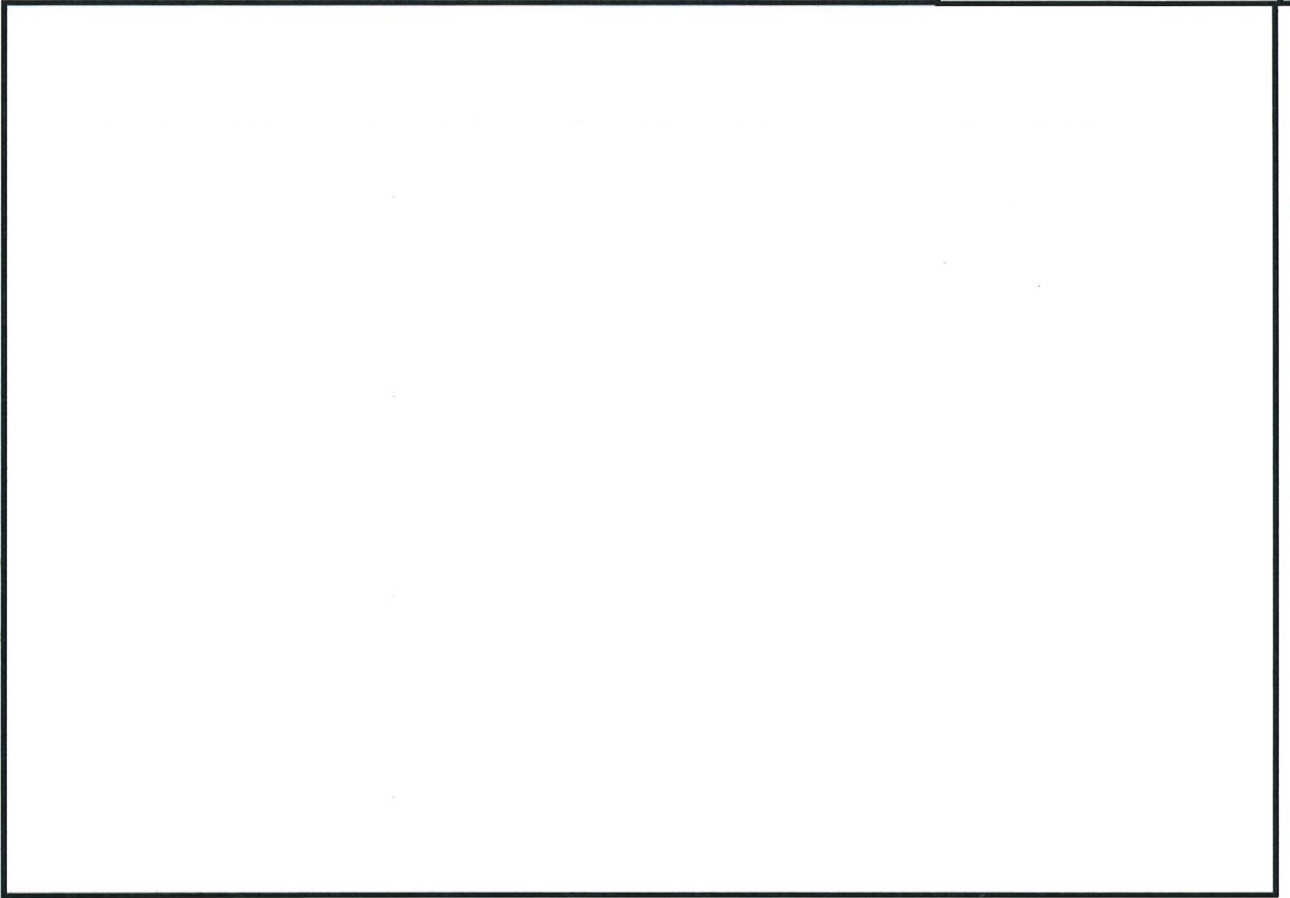




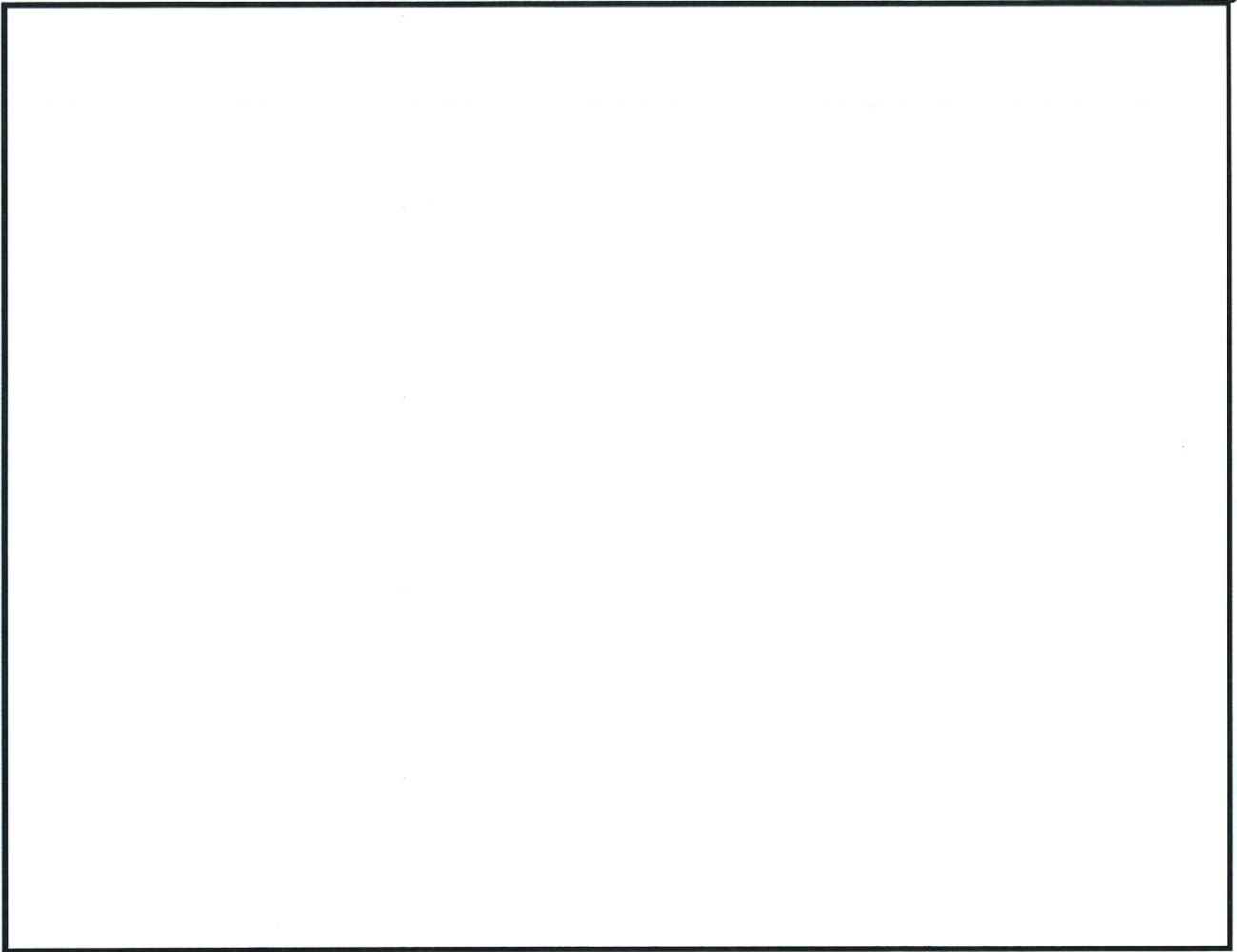
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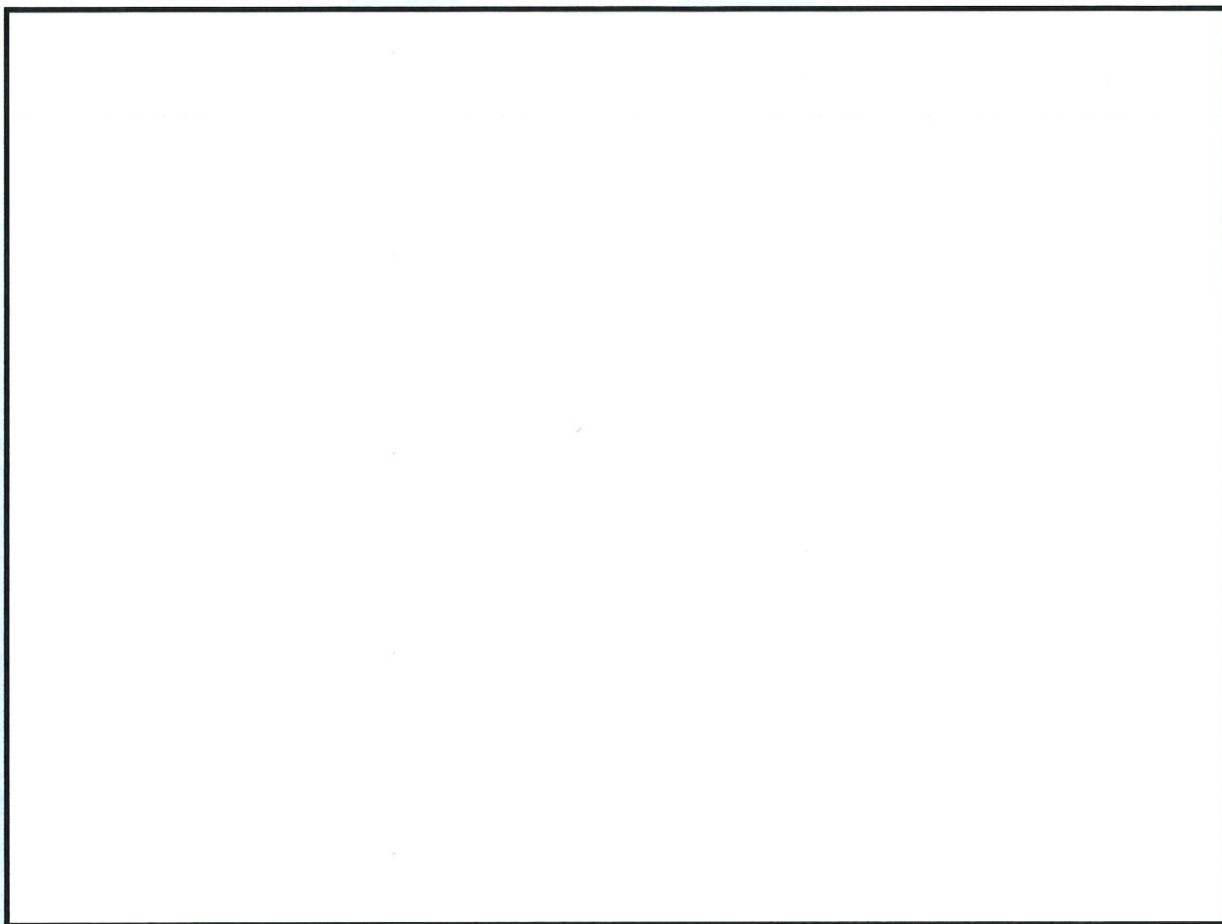
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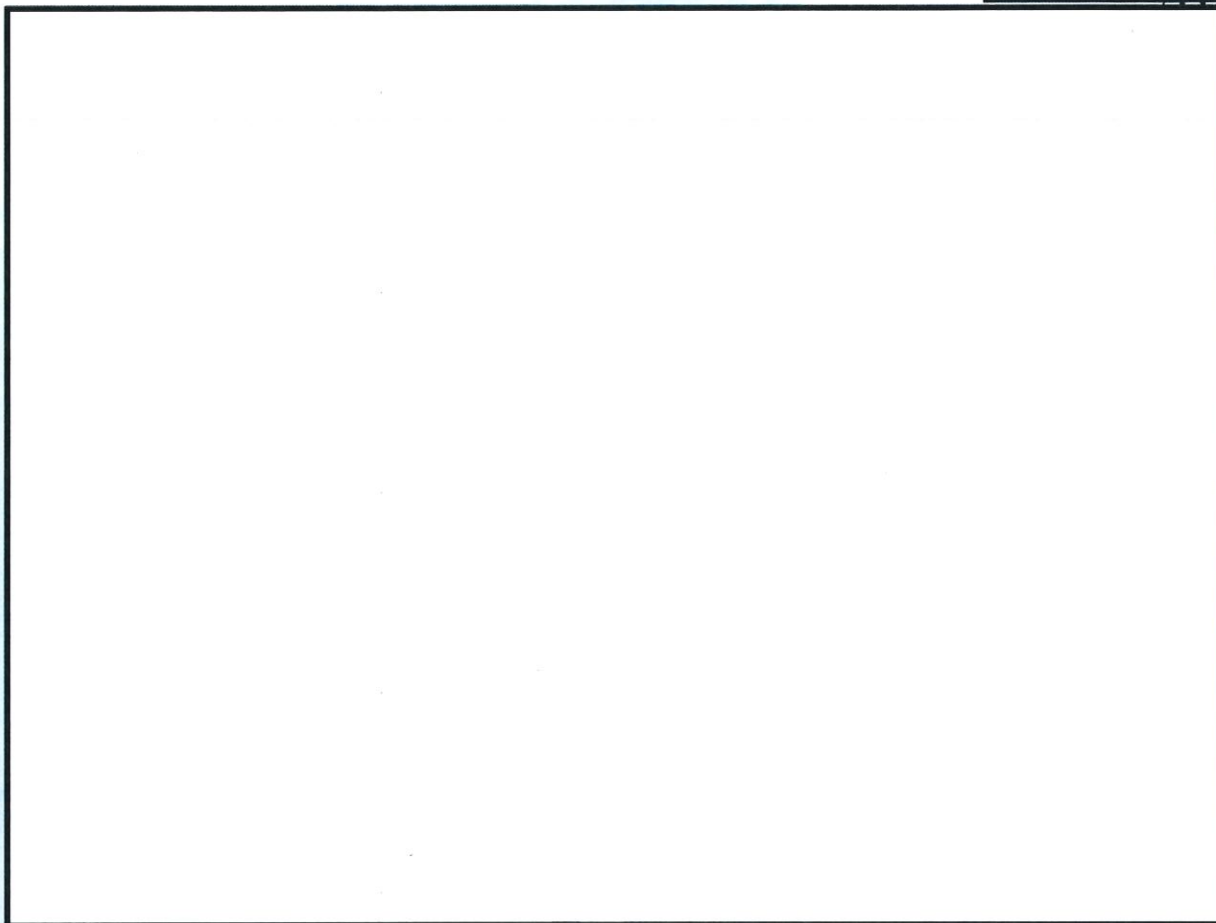
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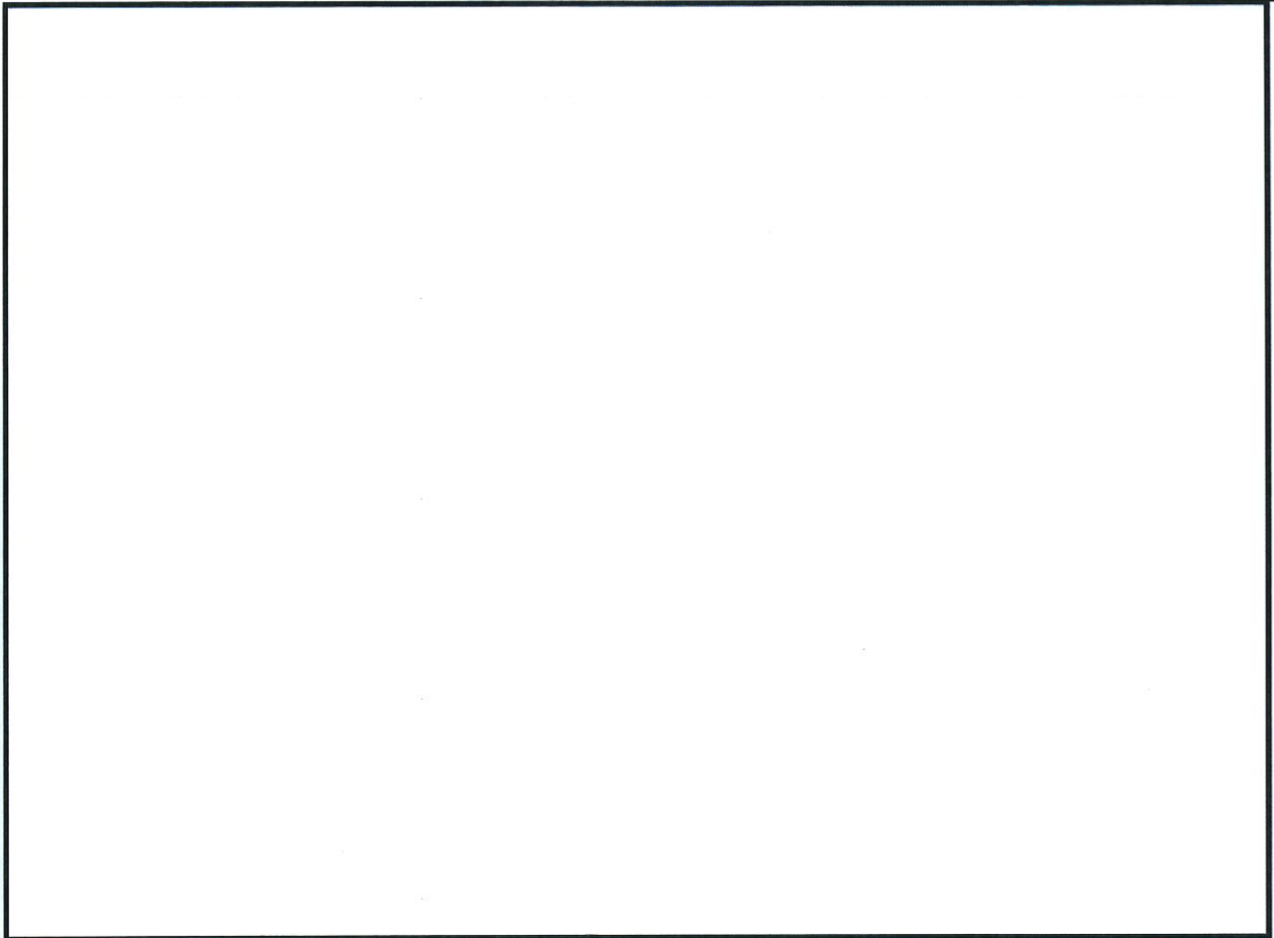


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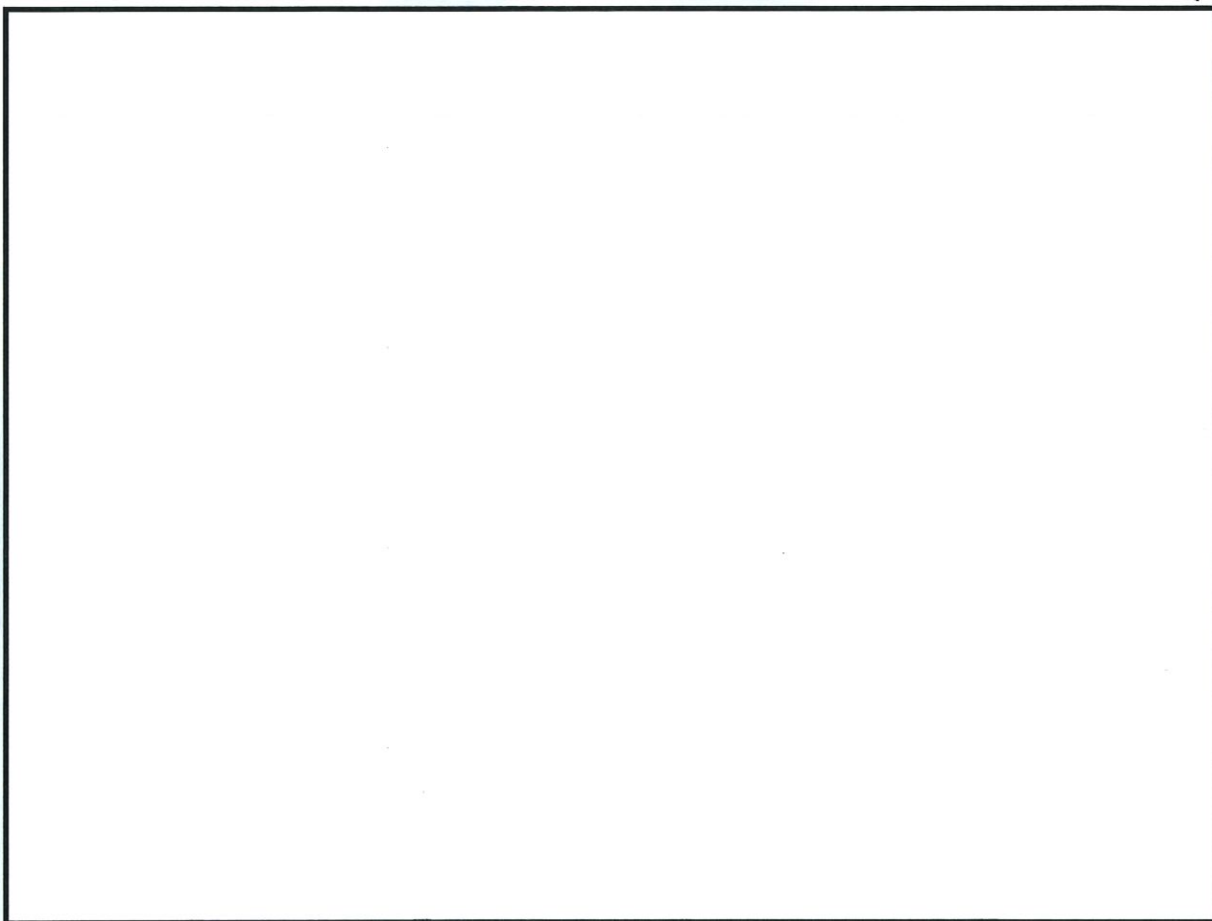


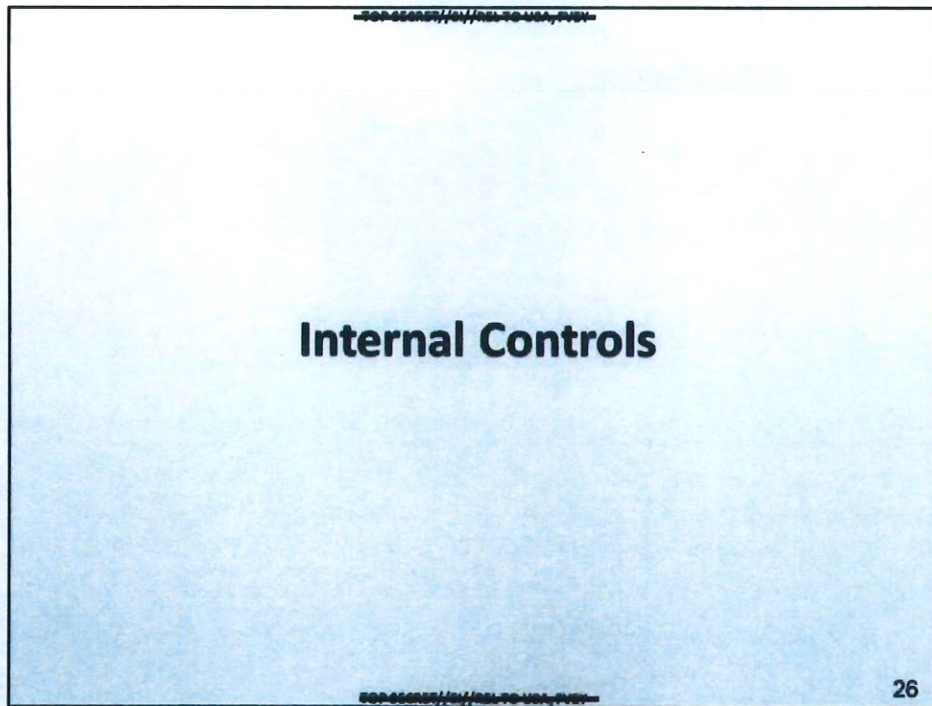


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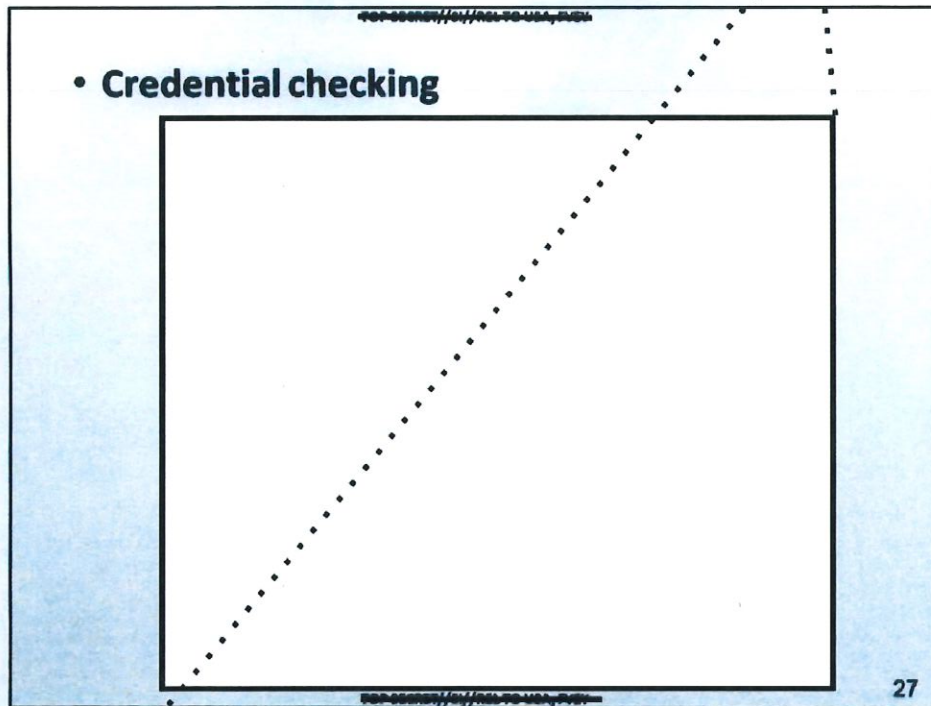
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XKEYSCORE has a number of features designed to ensure compliance with laws, regulations, and policies.

(b) (3) - P.L. 86-36



First off, before a user can even get into the tool, his credentials are checked in



(b) (3) -P.L. 86-36

- Auditor checking

XKS also checks with  that each user has at least two auditors.



(b) (3) - P.L. 86-36

• **Query auditing**

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All queries are logged and made available to for audit. The auditor must review all queries made

(b) (3) - P.L. 86-36

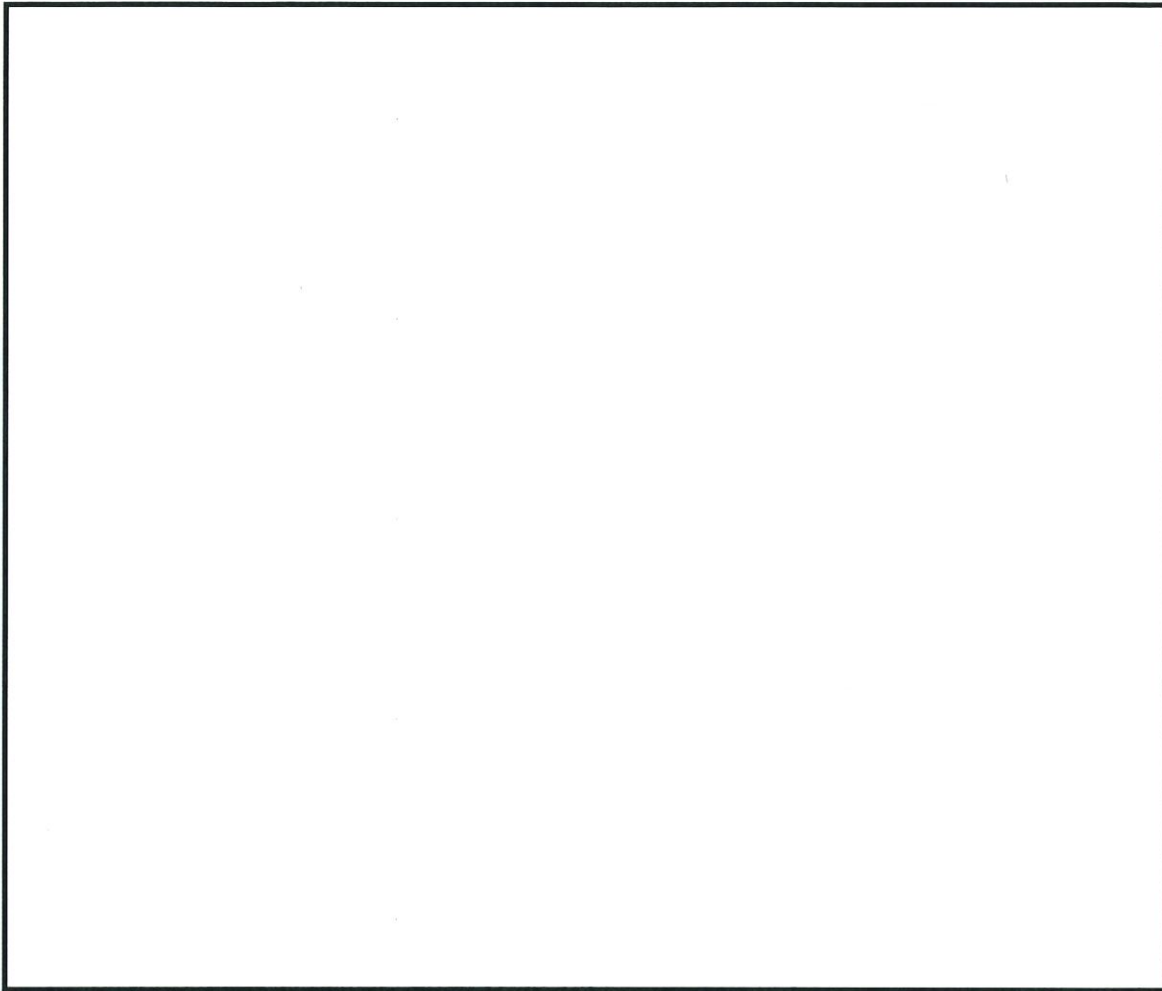
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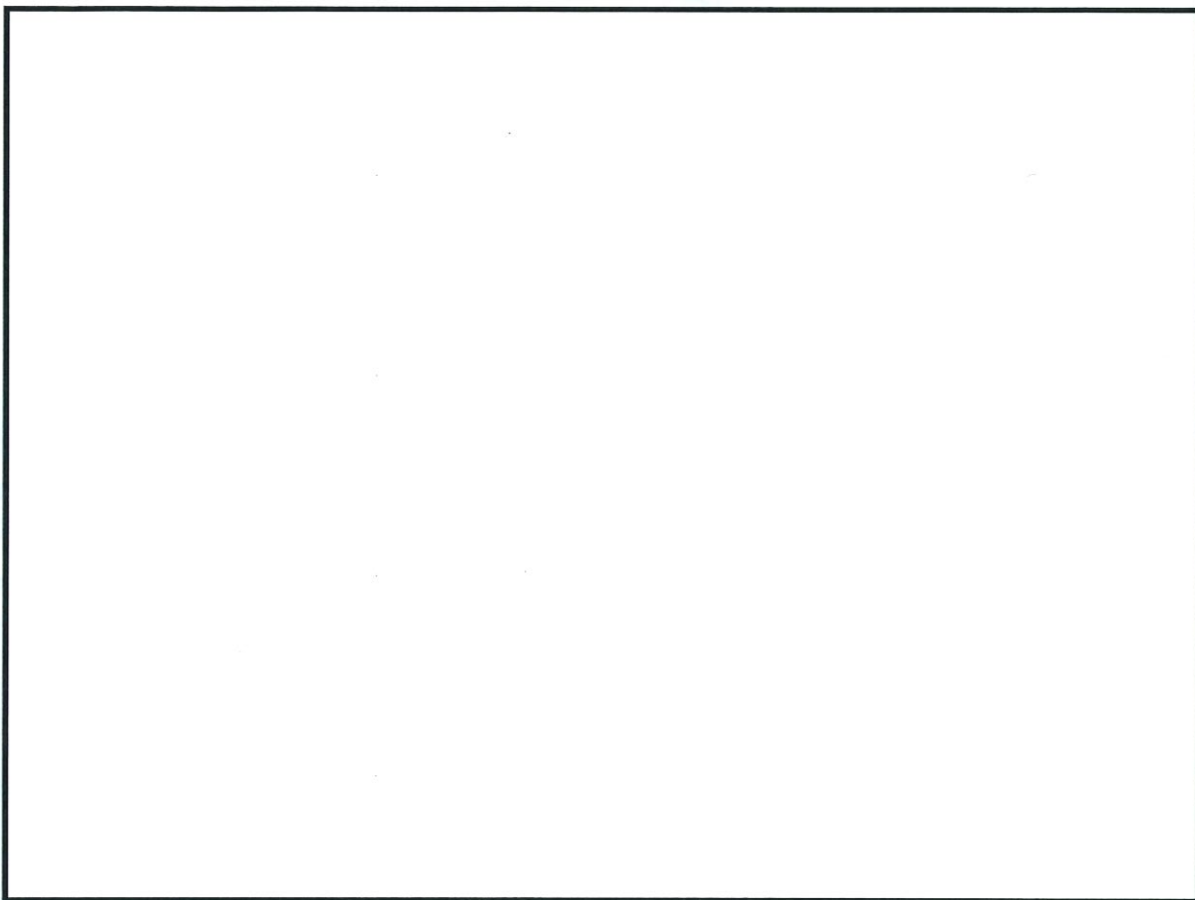
- Foreign intelligence justifications

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Each query must have a justification. These are included in the audit logs.

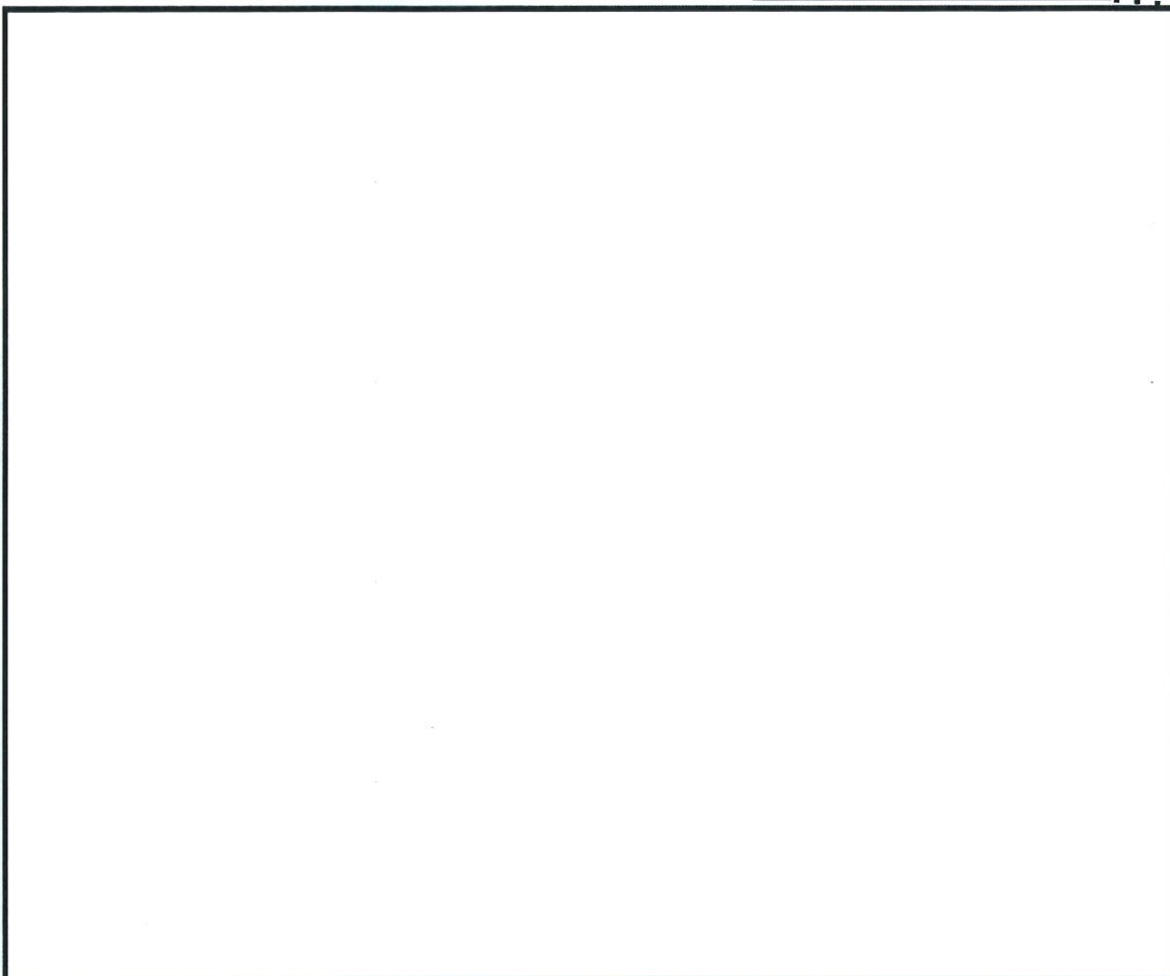
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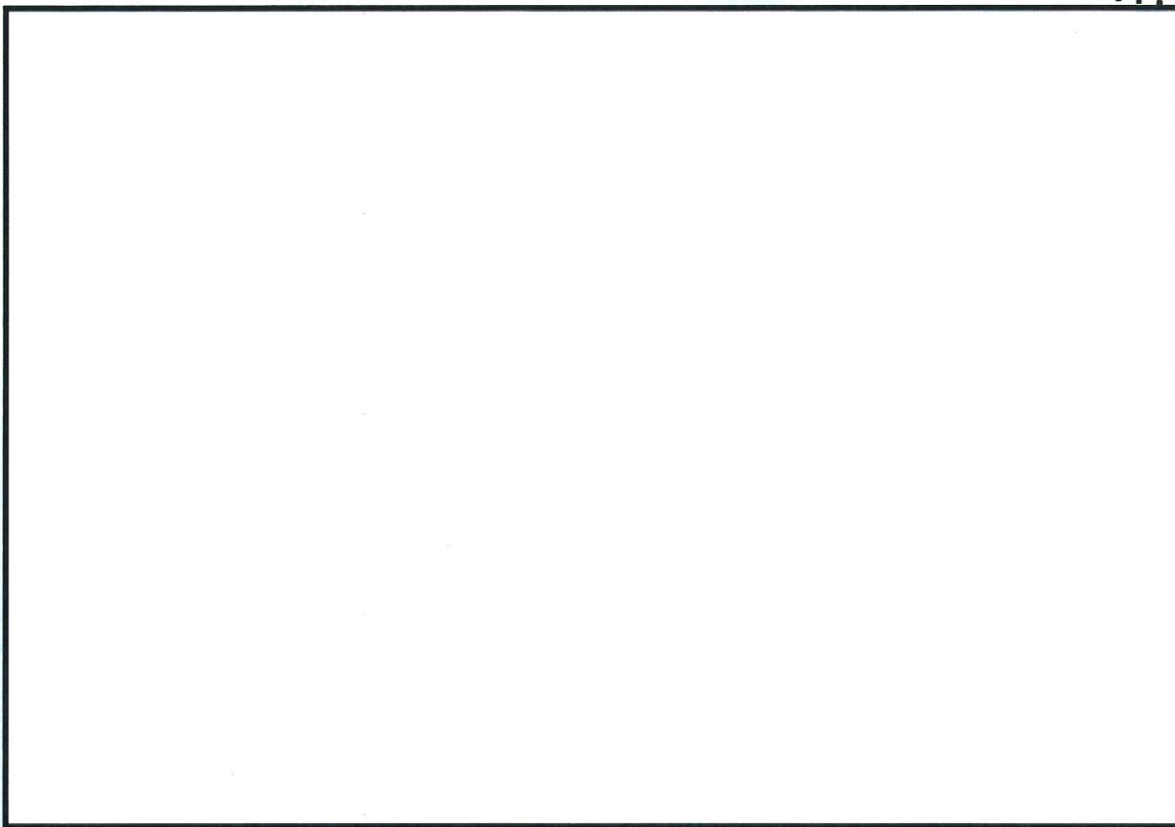


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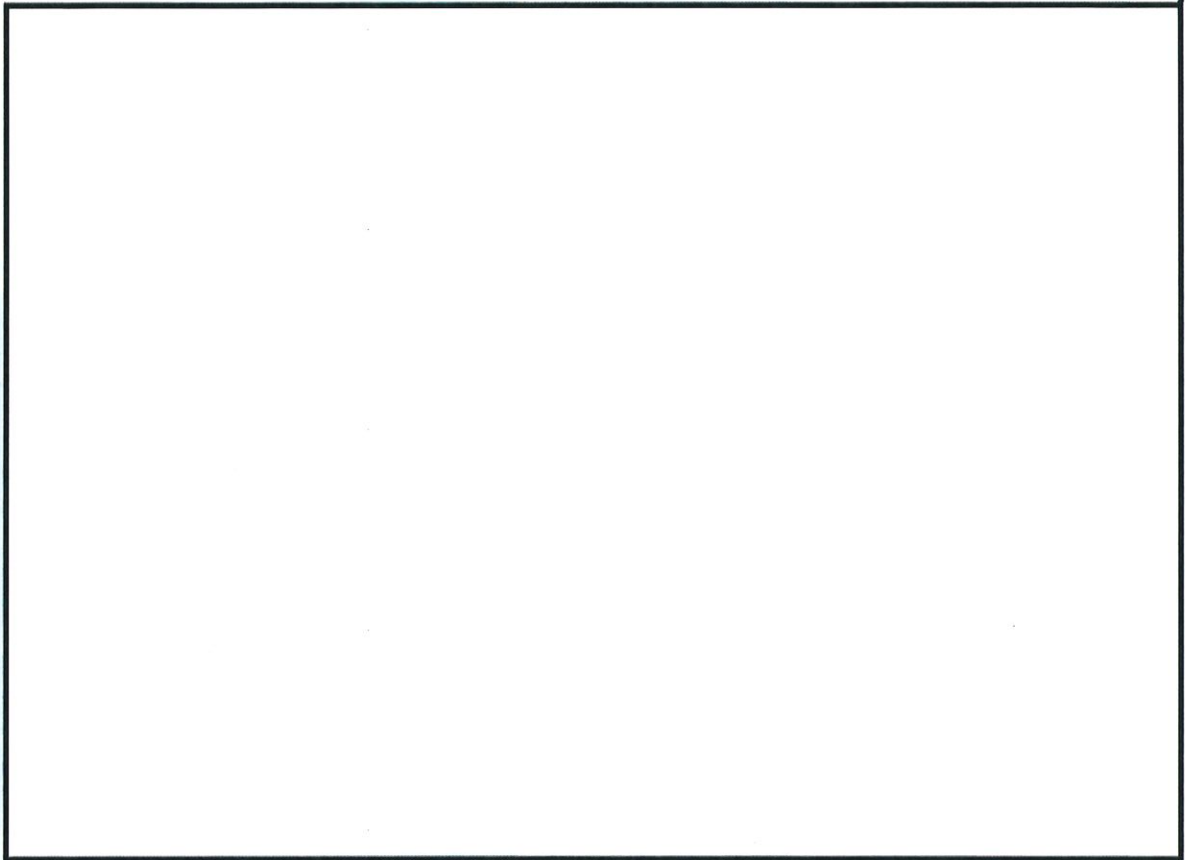




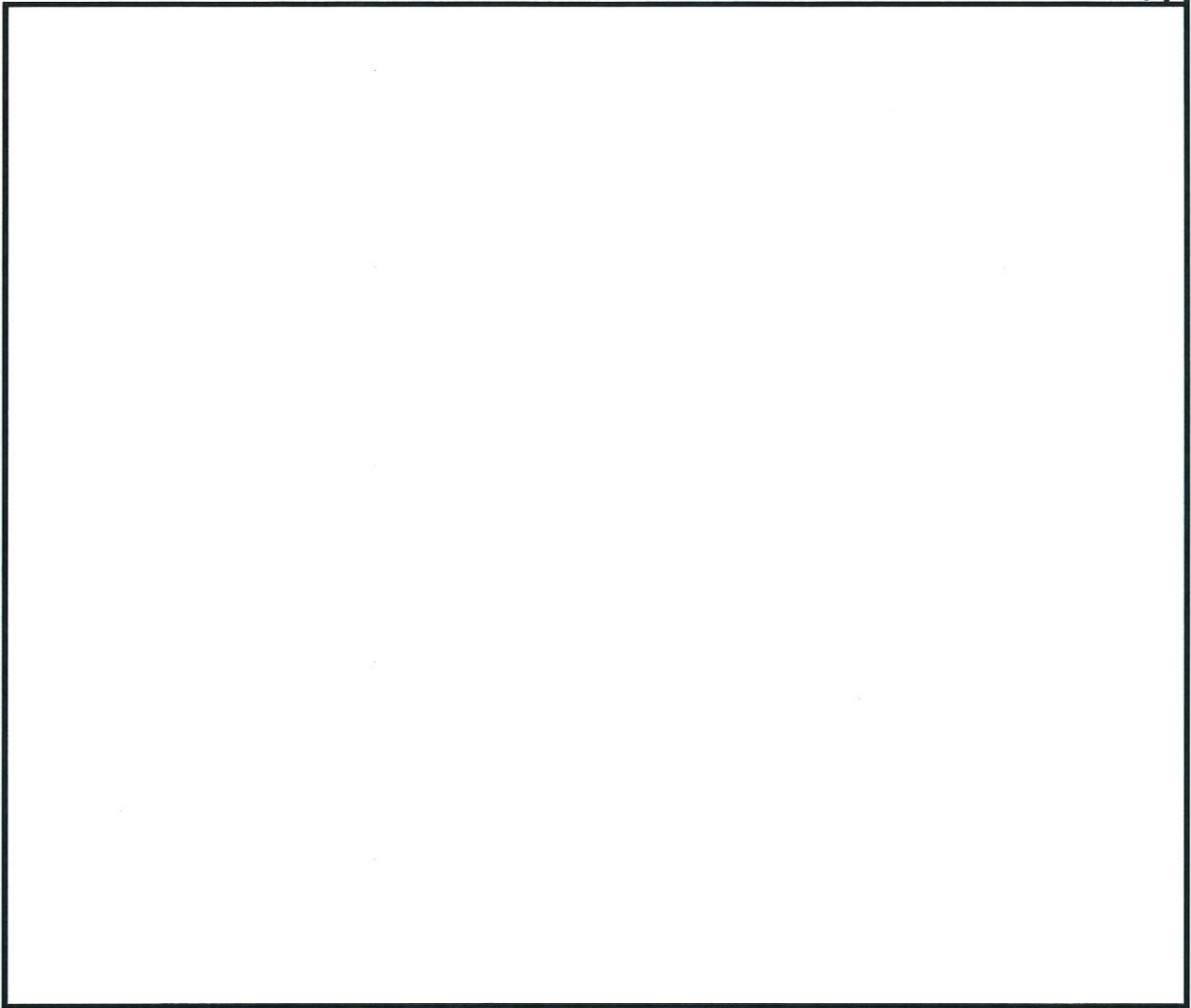
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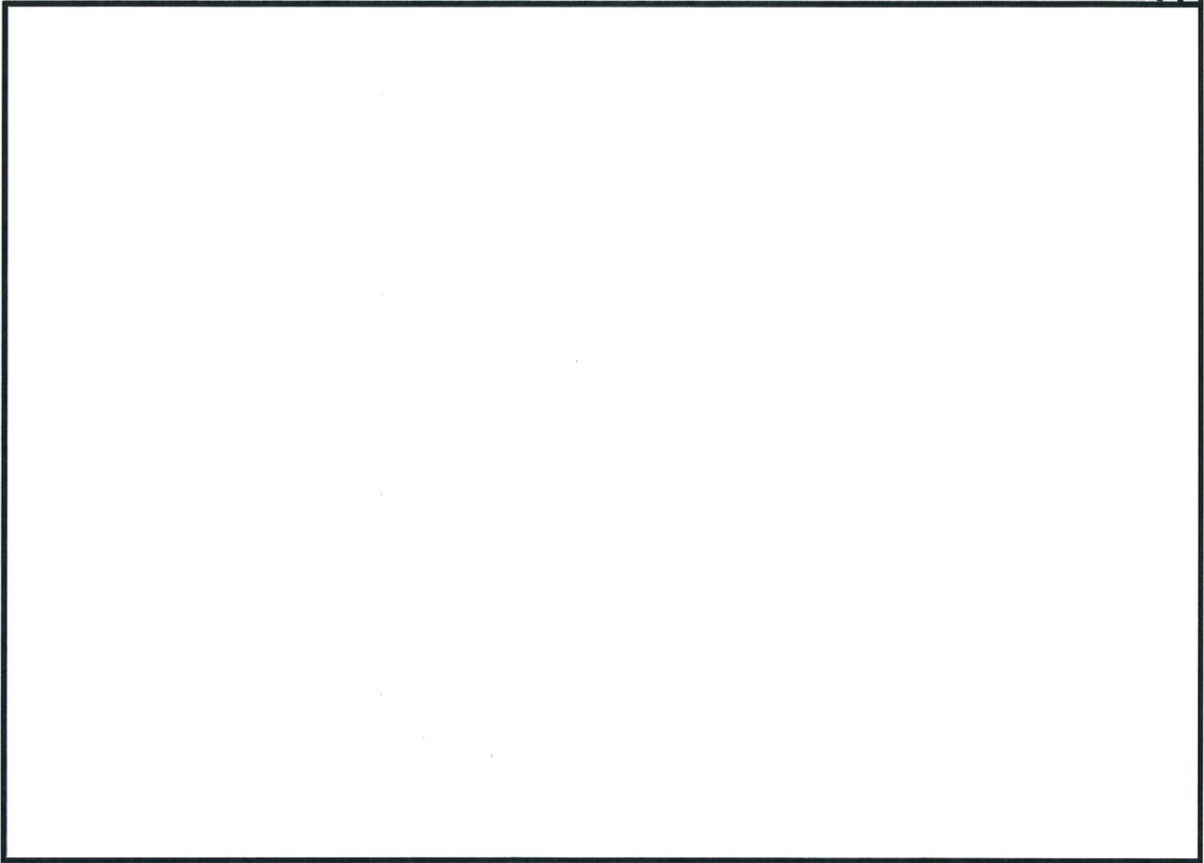
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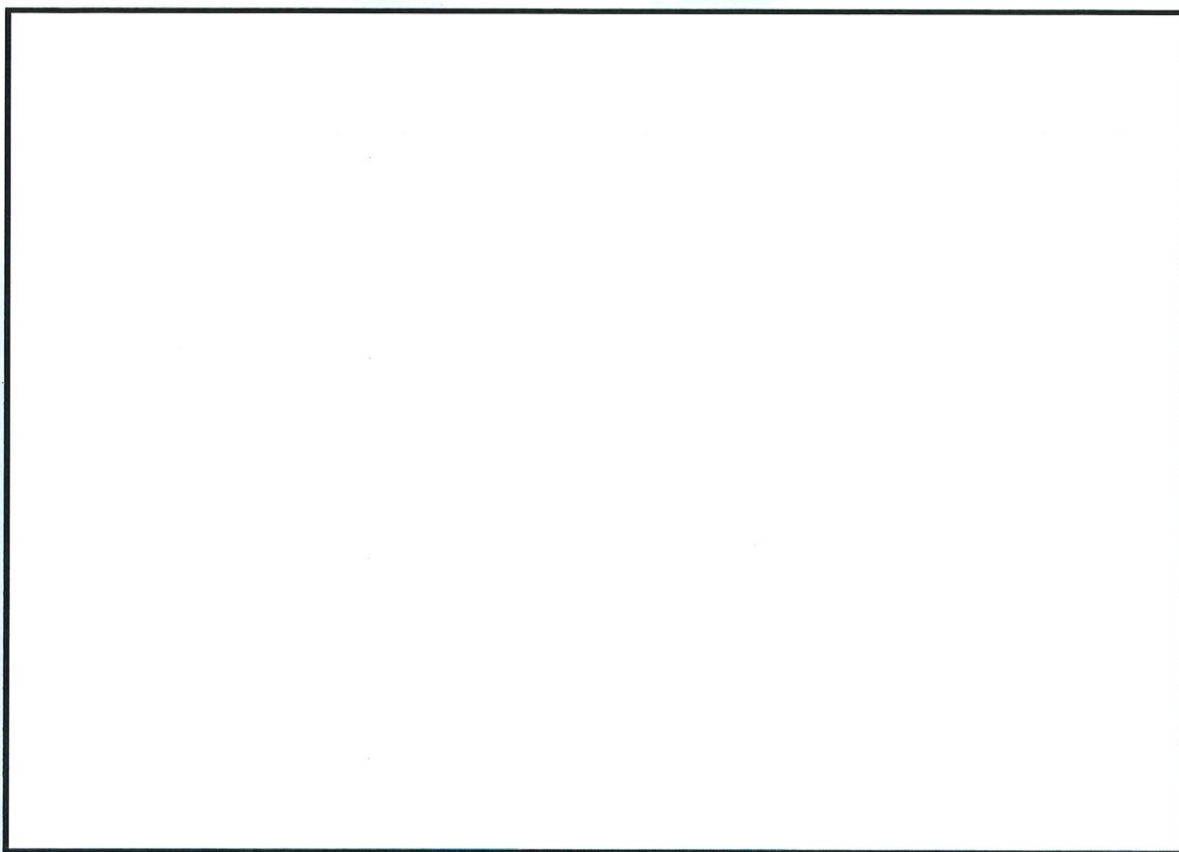
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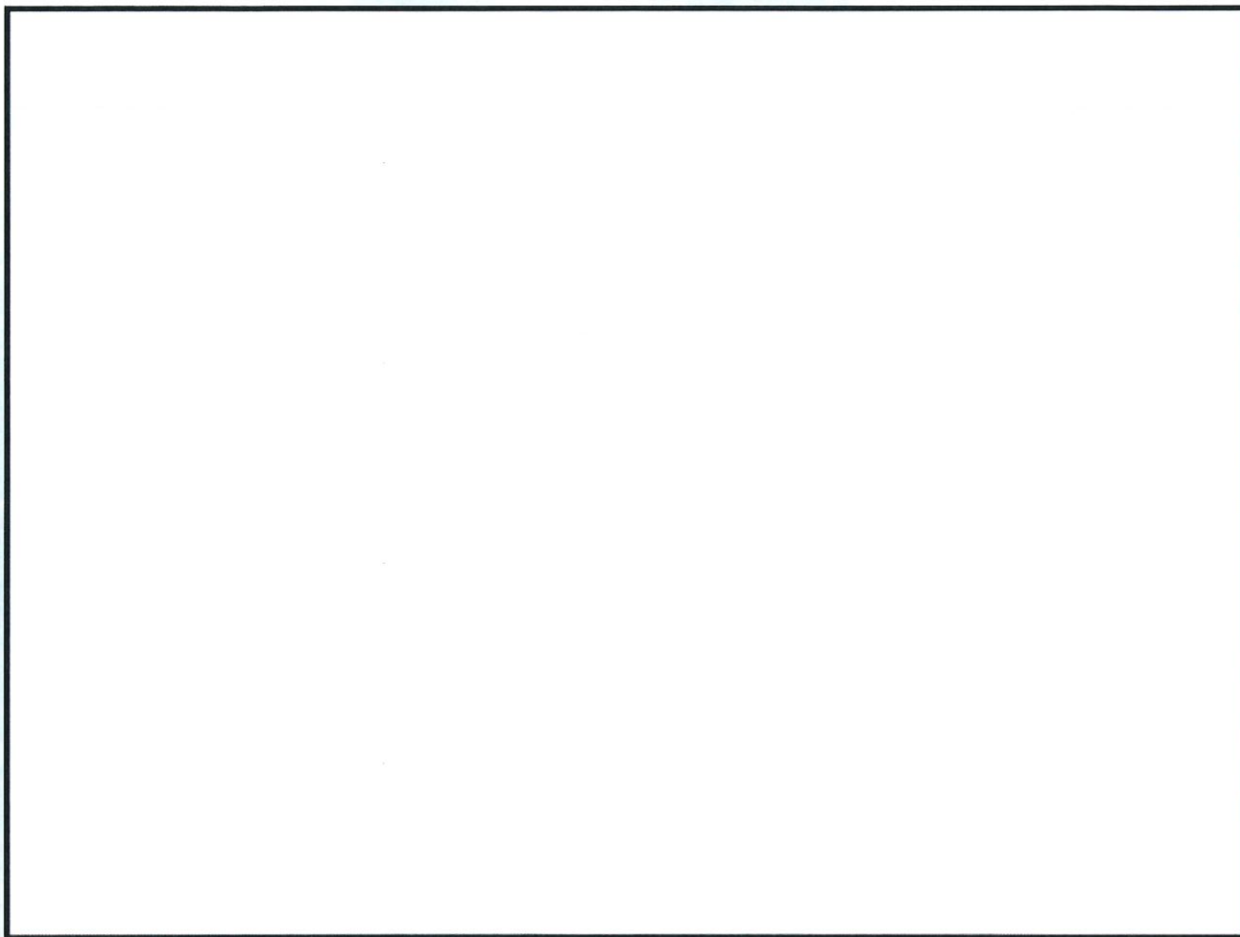
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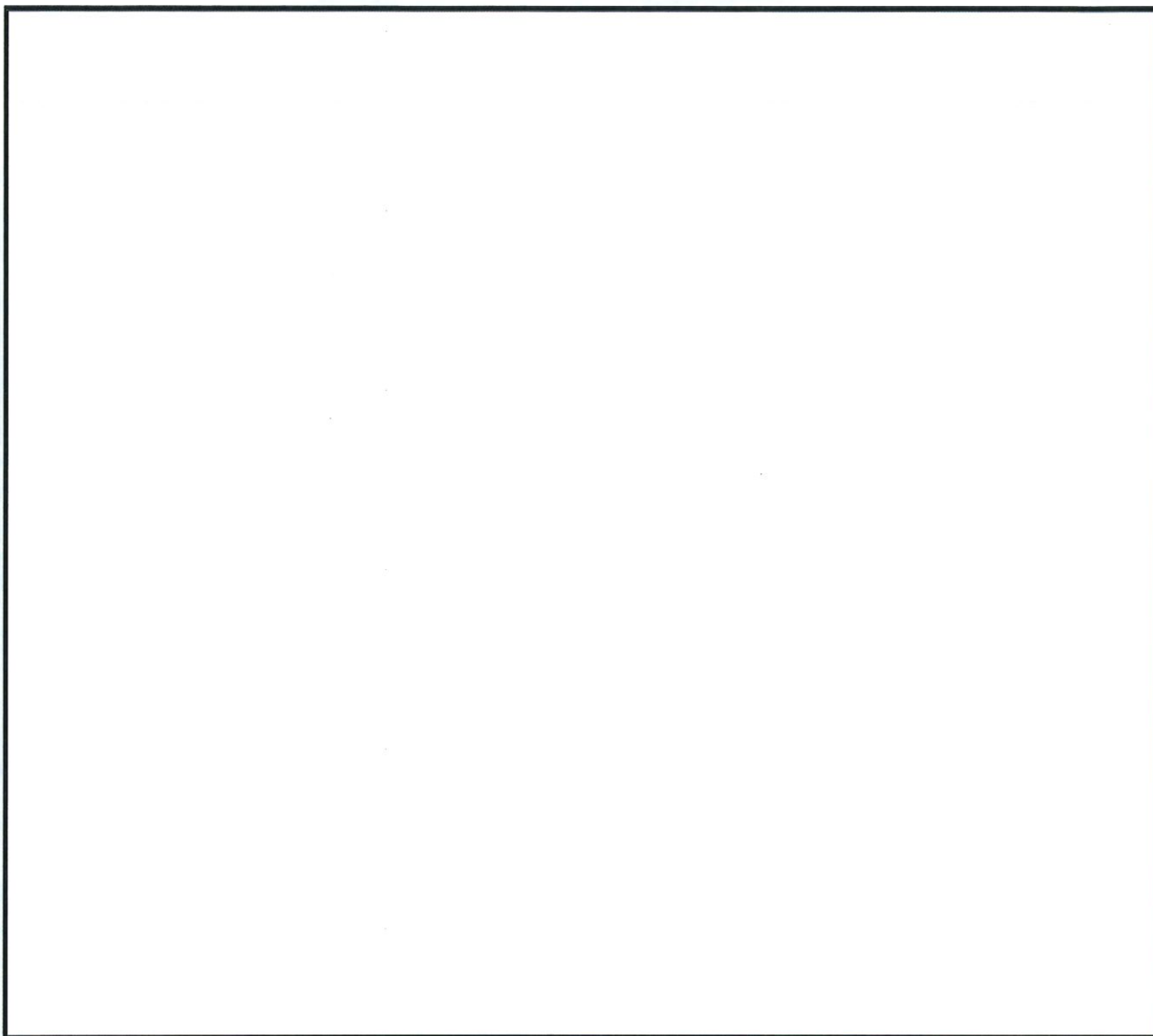


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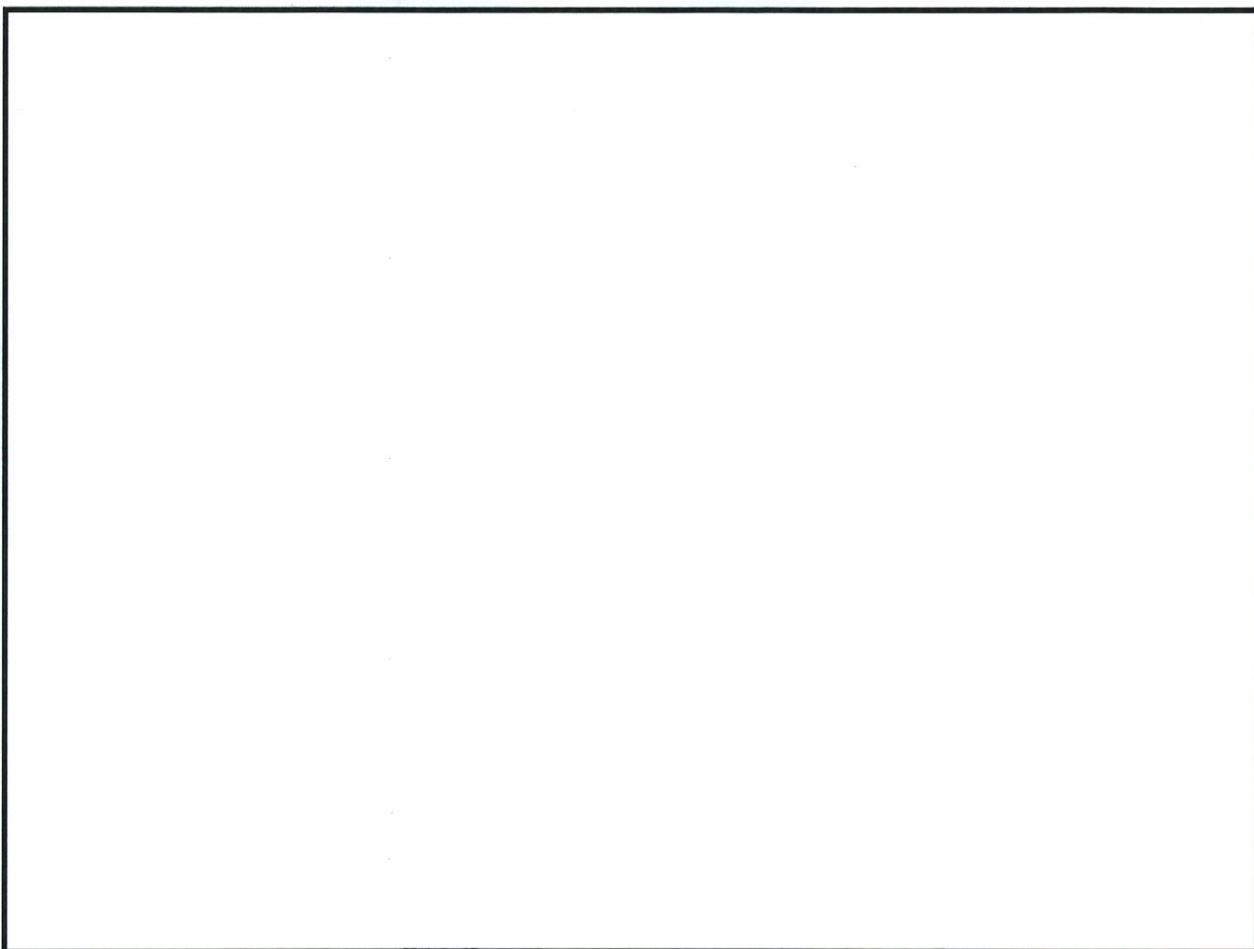


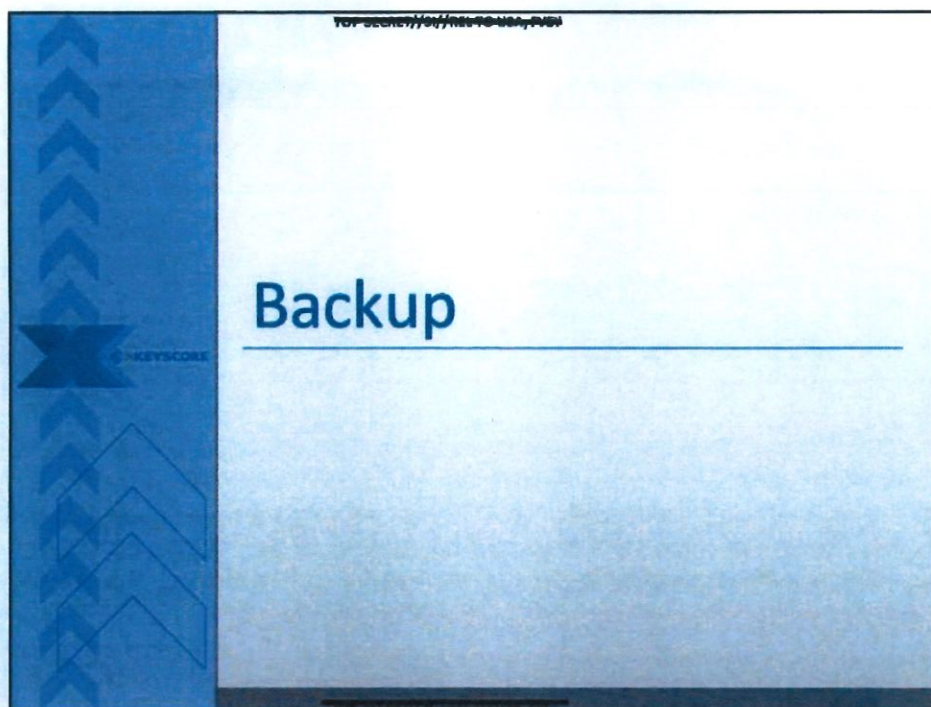
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(b) (1)  
(b) (3) -18 USC 798  
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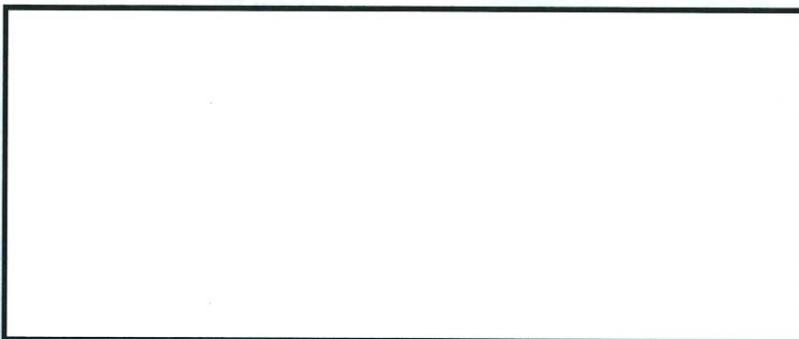




(b) (3) - P.L. 86-36

~~TOP SECRET//SI//REL TO USA, FVEY~~

- **Crosswalk**



~~TOP SECRET//SI//REL TO USA, FVEY~~