

Out of scope



To: "D (Intelligence) Grannis" <[redacted]@ssci.senate.gov>, "Ken Wainstein" <kenneth.wainstein@usdoj.gov>
From: [redacted]
Date: 12/17/2007 09:54PM
cc: [redacted]
Subject: Re: TSP memos

Thanks david. Very helpful.

b2/b6

----- Original Message -----

From: "Grannis, D (Intelligence)" [redacted]@ssci.senate.gov]
Sent: 12/17/2007 07:46 PM EST
To: "Benjamin Powell" [redacted]; <kenneth.wainstein@usdoj.gov>
Cc: [redacted]
Subject: TSP memos

Messrs. Powell and Wainstein -

It may be obsolete now, given that we are postponing action on FISA until January, but the SSCI security director will be faxing to you both tomorrow the long and short version of the TSP memos that Senator Feinstein referenced (and read from) at today's meeting with the AG.

Best,

David

David Grannis

Professional Staff Member

10/17/2008

62/06

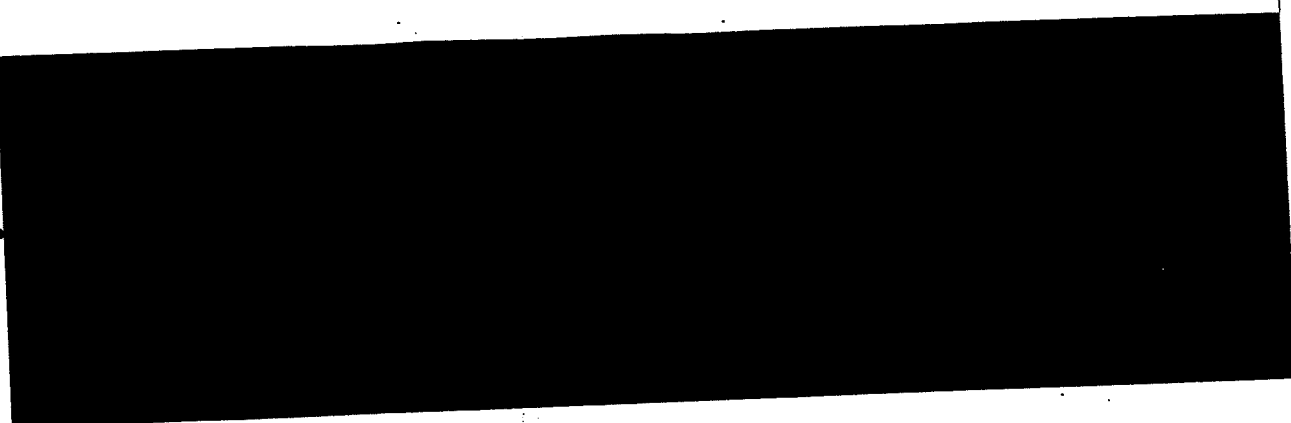
Senate Select Committee on Intelligence

[REDACTED]

[REDACTED]@ssci.senate.gov

Out of Scope

ba/bc



To: "D (Intelligence) Grannis" <[redacted]@ssci.senate.gov>
From: [redacted]
Date: 07/27/2007 01:02AM
Subject: FW:

David- text attached as discussed. Also sent to andy j. And mike D.

Ben

----- Original Message -----

From: "Ben Powell" [redacted]
Sent: 07/27/2007 12:59 AM AST
To: [redacted]

The FISA mod file contains text that does the following:

- 1) Adds one paragraph to the existing statute making clear that FISA does not cover surveillance directed at a person overseas.
- 2) Provides a means of compelling assistance from communications providers.
- 3) Effective date and providing for transition of any currently existing FISA orders. If this is short-term fix with a sunset, would suggest adding the sunset date to this clause.

The additional provision file contains text that addresses a concern raised in past discussions about "reverse targeting". The text provides that the primary purpose of acquiring communications of a non-US person overseas cannot be to acquire the communications of a person in the US (unless a FISA order is obtained of course).

The second concern raised by some has been issues about "mass targeting" and interpretation of the phrase "particular, known" in our full proposal. There is not a need to address this issue in this surgical fix as the existing definitions of electronic surv under FISA remain the same domestically, with only a carve out for activity directed overseas. [And, for the record, we do not agree that our proposal allowed such alleged mass targeting (or reverse targeting), but in any event, no need to address the issue in the attached approach]

I would note the time of night that I am sending up this text -- The FISA technical experts are going to need to think through this text and I would not be surprised if we would have additional adjustments to make to ensure the text accomplishes what I think is our common goal. Obviously, this represents a late night email and not a fully coordinated proposal (or one that has even been seen/approved by DNI), but time is short.

Ben

10/17/2008

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b2/b6



To: "Mike Davidson" <[redacted]@ssci.senate.gov>
From: [redacted]
Date: 05/19/2008 06:26PM
cc: [redacted]
Subject: Re: Title II/FISC/AO

thanks Mike. Will check and get back to you.

-----"Davidson, M (Intelligence)" <[redacted]@ssci.senate.gov> wrote: -----

To: "Ben Powell" [redacted], <Carl.Nichols@usdoj.gov>, "Demers, John (NSD)" <John.Demers@usdoj.gov>, [redacted]
From: "Davidson, M (Intelligence)" <[redacted]@ssci.senate.gov>
Date: 05/19/2008 06:16PM
cc: "Livingston, J (Intelligence)" <[redacted]@ssci.senate.gov>, "DeRosa, Mary (Judiciary-Dem)" <[redacted]@Judiciary-dem.senate.gov>, "Rossi, Nick (Judiciary-Rep)" <[redacted]@judiciary-rep.senate.gov>, "Healey, C (Intelligence)" <[redacted]@ssci.senate.gov>, [redacted] <[redacted]@mail.house.gov>, [redacted] <[redacted]@mail.house.gov>, [redacted] <[redacted]@mail.house.gov>, [redacted] <[redacted]@mail.house.gov>, [redacted] <[redacted]@mail.house.gov>, [redacted] <[redacted]@ao.uscourts.gov>, "Espinel, Zulima (Judiciary-Dem)" <[redacted]@Judiciary-dem.senate.gov>, "Solomon, Matthew (Judiciary-Dem)" <[redacted]@Judiciary-dem.senate.gov>, "Rice, K (Intelligence)" <[redacted]@ssci.senate.gov>
Subject: Title II/FISC/AO

Ben, Carl, and John:

As you probably know, the Administrative Office has been requested to review the proposal to grant exclusive jurisdiction to the FISC to review immunity certifications under section 202 and hear any challenges to the validity or application of section 202.

Lou DeBaca has arranged for the use of 2148 Rayburn (House Judiciary), at 10:30 am tomorrow (Tuesday), to hear back from the AO. Lou is awaiting confirmation from [redacted] of the AO.

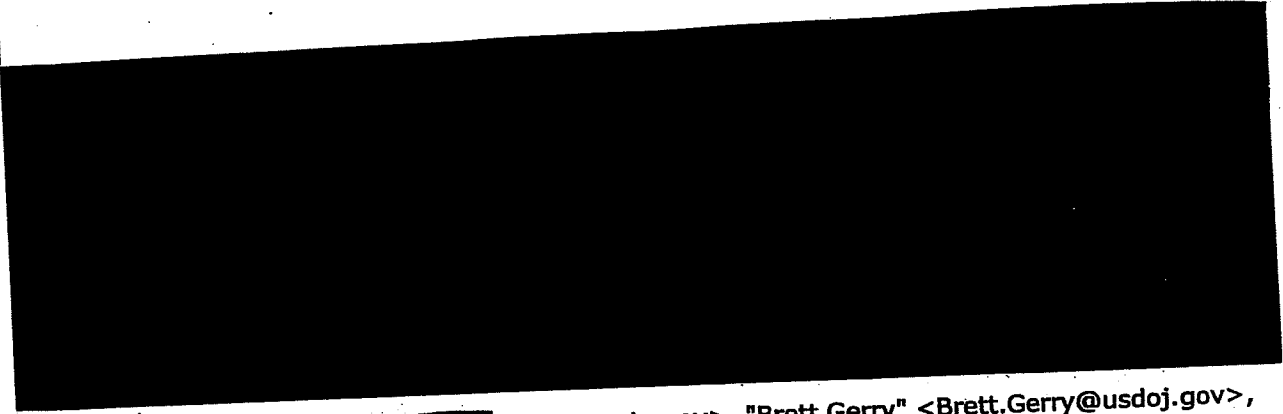
The interest is in getting everyone in the same room: House and Senate Intelligence and Judiciary, both parties, ODNI and DOJ, and the AO.

Hope you can join.

Mike

10/17/2008

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bx/ss



To: "Jack Livingston" <[redacted]@ssci.senate.gov>, "Brett Gerry" <Brett.Gerry@usdoj.gov>, "John Eisenberg" <John.Eisenberg@usdoj.gov>, [redacted], "John Demers" <John.Demers@usdoj.gov>
From: [redacted]
Date: 10/09/2007 11:29AM
Subject: Re: new drafts

Got it.

----- Original Message -----
From: "Livingston, J (Intelligence)" [redacted]@ssci.senate.gov]
Sent: 10/09/2007 10:03 AM AST
To: [redacted]
Subject: RE: new drafts

Please take a stab at a definition if you all can. I think it may be the best solution and/or the best compromise. I would think we should be able to come up with something that is flexible enough to cover new technologies short of telepathy. Thanks.

From: Ben Powell [redacted]
Sent: Monday, October 08, 2007 12:15 PM
To: Davidson, M (Intelligence)
Cc: Brett.Gerry@usdoj.gov; john.eisenberg@usdoj.gov; Livingston, J (Intelligence); Rice, K (Intelligence); Starzak, Alissa (Intelligence); Healey, C (Intelligence); carl.nichols@usdoj.gov
Subject: Re: new drafts

Mike -- If I read it right, I agree that we will need the #1 transition procedure as you suggest and it is important. I want to look more at #2 and #3.

We got together last night and discussed a couple of issues. We are very concerned about creating a new definition of "communications". One concern is that we will miss something and then place a future President/Congress back into a TSP-like world -- and perhaps over a technical issue. For example, suppose there is some new communication tech that people overseas are using and we are able to get great intel from it. But for some reason it doesn't fit the definition

10/17/2008

b/c we didn't get it right. But then there is a fear that modifying it through Congress will be the subject of speculation and people will figure out (probably pretty easily) "oh, they know want to get [insert new tech here -- I don't know, make up something -- combined HDTV, Internet, VOIP, video teleconferencing via laser, quantum remote computing]". Also, we fear creating a new cottage industry at DOJ/OIPR where everything is delayed while everyone checks each new data piece to see if it fits the definition of communication, when the real focus should be the target.

We also worry that we will need to make the definitions so broad, that it will raise the "scary hypotheticals" problem and therefore we will still need to put in explicit limitations (as we would do anyways with the current PAA) such as "Act does not authorize opening mail, searching homes of Americans, etc."

In any event, no need to debate it via email, but just some things we are looking deeply at and will want to sit down and discuss with you/Chris/Jack/Kathleen/Alissa this week.

Davidson, M (Intelligence) wrote:

Sunday multi-tasking -- Redskins and FISA.

(1) The PAA's transition procedures includes:

"The Government also may file new applications, and the court established under section 103(a) of the Foreign Intelligence Surveillance Act ... shall enter orders granting such applications ... as long as the application meets the requirements set forth under the provisions of such Act as in effect on the day before the effective date of this Act."

It could turn out to be a useful, indeed necessary provision, if for example a question arises about the scope or constitutionality of the PAA (or its successor). In place of "as in effect on the day before the effective date of this Act," we could substitute "as in effect on the day before the effective date of the Protect America Act."

(2) The necessity of the "clarification" or "limitation" on the definition of electronic surveillance remains unclear. Why isn't the affirmative grant of collection authority sufficient? In our report how do we complete this sentence: "The redefinition of electronic surveillance is required because _____."

(3) But if we do include it, can we deal with the impact of the redefinition on the various places that the term electronic surveillance appears -- sections 102, 106, 109, 110, 301(5), by limiting the redefinition as follows: "Nothing in the definition of electronic surveillance under section 101(f), as applied to sections 104 and 105, shall be construed ..."

Happy Columbus Day to all.

Mike

Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: Ben Powell [REDACTED]

To: Davidson, M (Intelligence)

Cc: Gerry, Brett (OLP) <Brett.Gerry@usdoj.gov>; john.eisenberg@usdoj.gov

<john.eisenberg@usdoj.gov>; Livingston, J (Intelligence); Rice, K (Intelligence); Starzak, Alissa (Intelligence); Healey, C (Intelligence); carl.nichols@usdoj.gov <carl.nichols@usdoj.gov>

Sent: Fri Oct 05 17:58:54 2007

Subject: Re: new drafts

10/17/2008

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Thanks Mike. We will take a look and we can give you more detail in secure spaces about the current practice. Will have to check on schedule with Brett.

Davidson, M (Intelligence) wrote:

Ben, Brett, and John:

I wanted to flag for your attention a paragraph that we added, in the draft sent earlier today, to the section on Directives – paragraph (2), on page 5, line 2-3.

It provides that each directive shall contain a list of specific targets.

The paragraph reflects a suggestion we received here that it would help allay the driftnet concern if it were clear that directives addressed specific targets.

But, in including it, I realize that we don't know whether the practice now is for directives to include specific selectors, and hence whether a provision such as the one proposed would be consistent with current practice or a departure from it.

When you do send your comments, your observations about this paragraph would be appreciated.

Looking at next week, perhaps we should pick a time for a discussion that will go through every matter that should be discussed, and not end until we have done that.

How about starting Wednesday morning?

Mike

From: Healey, C (Intelligence)
Sent: Friday, October 05, 2007 11:29 AM
To: 'Ben Powell'; Gerry, Brett (OLP); 'john.eisenberg@usdoj.gov'
Cc: Davidson, M (Intelligence); Livingston, J (Intelligence); Rice, K (Intelligence); Starzak, Alissa (Intelligence)

10/17/2008

Subject: new drafts

b2/b6

Christine Healey

Senate Select Committee on Intelligence

[REDACTED]

[REDACTED]@ssci.senate.gov

10/17/2008

5/2/66 Out of Scope



To: "L Tucker" <[REDACTED]@SSCI.Senate.Gov>
 From: [REDACTED]
 Date: 06/06/2008 04:04PM
 cc: "Joel Kaplan" <Joel_D._Kaplan@who.eop.gov>, "Daniel Meyer" <Daniel_P._Meyer@who.eop.gov>, "Harold Kim" <Harold_H._Kim@who.eop.gov>, "Christopher Frech" <Christopher_W._Frech@who.eop.gov>, "John Demers" <John.Demers@usdoj.gov>, [REDACTED]
 Subject: Re: FISA Revised Summary

I am available.
 -----"Tucker, L (Intelligence)" <[REDACTED]@SSCI.Senate.Gov> wrote: -----

To: "Kaplan, Joel" <Joel_D._Kaplan@who.eop.gov>, "Meyer, Daniel P." <Daniel_P._Meyer@who.eop.gov>, <Harold_H._Kim@who.eop.gov>, "Frech, Christopher W." <Christopher_W._Frech@who.eop.gov>, "Demers, John" <John.Demers@usdoj.gov>, [REDACTED]
 From: "Tucker, L (Intelligence)" <[REDACTED]@SSCI.Senate.Gov>
 Date: 06/06/2008 03:45PM
 Subject: FISA Revised Summary of Dem Offer

We went through their language and edited/corrected their summary sheet so we would have a succinct list of all their changes for discussion purposes amongst Republicans (see attached). If we missed something let us know. Hoyer has been trying to reach Bond and they may talk today (but Kit will not be responding to anything in their language in particular at this time). Republican key staff for the following members (Boehner, Blunt, Smith, Hoekstra, McConnell, Bond, Specter) will be on a conference call at 2pm on Monday to discuss (going through the attached summary as a discussion format) and we'd like the Admin to join in (WH-DNI-DOJ). Let me know if you can participate.

Louis Tucker
 Republican Staff Director

Senate Select Committee on Intelligence

202-224-1700

b2/b6

[Redacted]

From: [Redacted]
To: "Mike Davidson" [Redacted]@ssci.senate.gov>
cc: [Redacted]@mail.house.gov>, "Jeremy Bash"
[Redacted]@mail.house.gov>, "Christine Healey"
[Redacted]@ssci.senate.gov>, [Redacted]

Date: Friday, May 09, 2008 08:25AM
Subject: Re: FISA

Checking. Wrapping up an emergency this morning and will get back to you as soon as possible.

-----"Davidson, M (Intelligence)" [Redacted]@ssci.senate.gov> wrote: -----

To: [Redacted]
From: "Davidson, M (Intelligence)" [Redacted]@ssci.senate.gov>
Date: 05/09/2008 08:12AM
cc: [Redacted]@mail.house.gov>, [Redacted]@mail.house.gov>, "Healey, C (Intelligence)" [Redacted]@ssci.senate.gov>
Subject: FISA

Ben,

Following up further on Senator Rockefeller's discussion with the DNI of the importance of our sitting down with you to discuss the couple of House requests that could get us to the finish line, Jeremy, Mariah, Chris and I can do that this afternoon.

Given that it is a very short list, I'm sure that we could cover the necessary ground in an hour. Hoping that this afternoon works for you, what time would be convenient?

Mariah -- would a room be available in the Majority Leader's office?

Mike

Sent from my BlackBerry Wireless Handheld

b2/b4

[Redacted]

From: [Redacted]
To: "Mike Davidson" [Redacted]@ssci.senate.gov>
bcc: [Redacted]

Date: Thursday, March 27, 2008 03:14PM
Subject: Re: FISA

Yes, will try and call this afternoon. out of office in some meetings now.

----- Original Message -----
From: "Davidson, M (Intelligence)" [Redacted]@ssci.senate.gov]
Sent: 03/27/2008 11:08 AM AST
To: [Redacted]
Subject: FISA

Ben,

As I recall, you'll be away next week.

Let's connect by phone today, for an update about when FISA discussions can begin.

Mike

b2/b4

From: "Demers, John" <John.Demers@usdoj.gov>
 To: [redacted]@ssci.senate.gov>, [redacted] "Eisenberg, John"
 cc: <John.Eisenberg@usdoj.gov>, "Nichols, Carl (CIV)" <Carl.Nichols@usdoj.gov>,
 [redacted]@ssci.senate.gov>,
 [redacted]@ssci.senate.gov>,
 [redacted]@Judiciary-dem.senate.gov>,
 [redacted]@judiciary-rep.senate.gov>,
 [redacted]@Judiciary-dem.senate.gov>,
 [redacted]@Judiciary-dem.senate.gov>,
 [redacted]@ssci.senate.gov>,
 [redacted]@ssci.senate.gov>, [redacted]@mail.house.gov>,

Date: Tuesday, April 15, 2008 06:20PM
 Subject: Re: FISA, Monday, April 21, 1 pm

That would work for me.
 Thanks,
 John

----- Original Message -----

From: Davidson, M (Intelligence) [redacted]@ssci.senate.gov>
 To: [redacted] Eisenberg, John; Nichols, Carl (CIV);
 Cc: Demers, John; [redacted]
 Vito Potenza (work) [redacted]
 Livingston, J (Intelligence) [redacted]@ssci.senate.gov>; Rice, K
 (Intelligence) [redacted]@ssci.senate.gov>; DeRosa, Mary (Judiciary-Dem)
 [redacted]@Judiciary-dem.senate.gov>; Rossi, Nick (Judiciary-Rep)
 [redacted]@judiciary-rep.senate.gov>; Espinel, Zulima (Judiciary-Dem)
 (Judiciary-Dem) [redacted]@Judiciary-dem.senate.gov>; Solomon, Matthew
 (Intelligence) [redacted]@ssci.senate.gov>; Starzak, Alissa
 (Intelligence) [redacted]@ssci.senate.gov>; Wyndee Parker
 [redacted]@mail.house.gov>; [redacted]

Sent: Tue Apr 15 17:06:42 2008
 Subject: RE: FISA, Monday, April 21, 1 pm

Monday morning, at 10, in our hearing room, SH-219, works for Wyndee and for us.

From: [redacted]
 Sent: Tuesday, April 15, 2008 4:51 PM
 To: Davidson, M (Intelligence) [redacted] John Eisenberg; Carl
 Cc: Ben Powell; John Demers; [redacted]

b2/b6

Nichols; Vito Potenza (work); [redacted]
Livingston, J (Intelligence); Rice, K (Intelligence); DeRosa, Mary
(Judiciary-Dem); Rossi, Nick (Judiciary-Rep); Espinel, Zulima
(Judiciary-Dem); Solomon, Matthew (Judiciary-Dem); Healey, C
(Intelligence); Starzak, Alissa (Intelligence); Wyndee Parker;

Subject: Re: FISA, Monday, April 21, 1 pm

Mike -- I can't make Monday afternoon between 12-5. I can make a meeting before noon and I am flexible on Tuesday. But unfortunately, I am not able to change my current plans for Monday afternoon.

-----"Davidson, M (Intelligence)" [redacted]@ssci.senate.gov> wrote:

To: [redacted] "Demers, John (NSD)"
<John.Demers@usdoj.gov>,
"Eisenberg, John" <John.Eisenberg@usdoj.gov>,
<Carl.Nichols@usdoj.gov>, "Potenza, Vito"
[redacted]@ssci.senate.gov>, "Rice,
"Livingston, J (Intelligence)"
K (Intelligence)" [redacted]@ssci.senate.gov>, "DeRosa, Mary
(Judiciary-Dem)" [redacted]@Judiciary-dem.senate.gov>, "Rossi, Nick
(Judiciary-Rep)" [redacted]@Judiciary-rep.senate.gov>, "Espinel,
Zulima (Judiciary-Dem)" [redacted]@Judiciary-dem.senate.gov>,
"Solomon, Matthew (Judiciary-Dem)"
[redacted]@Judiciary-dem.senate.gov>
From: "Davidson, M (Intelligence)" [redacted]@ssci.senate.gov>
Date: 04/15/2008 04:15PM
cc: "Healey, C (Intelligence)" [redacted]@ssci.senate.gov>, "Starzak,
Alissa (Intelligence)" [redacted]@ssci.senate.gov>,
[redacted]@mail.house.gov>
Subject: FISA, Monday, April 21, 1 pm

Ben, John D., [redacted], Jack, Kathleen, Mary, Nick, Zulima, and Matt:

Further to our discussion this past Friday, HPSCI has offered to host the initial bipartisan, bicameral, ODNI/DOJ/NSA discussion on the Senate amendment, the House amendment, and all ideas that may advance our common goal of producing a FISA bill that will pass both Houses and gain the President's signature.

Wyndee will send out invitations on the House side. Invitations to Senator Reid's and Senator McConnell's staff will also be sent.

b2/b6

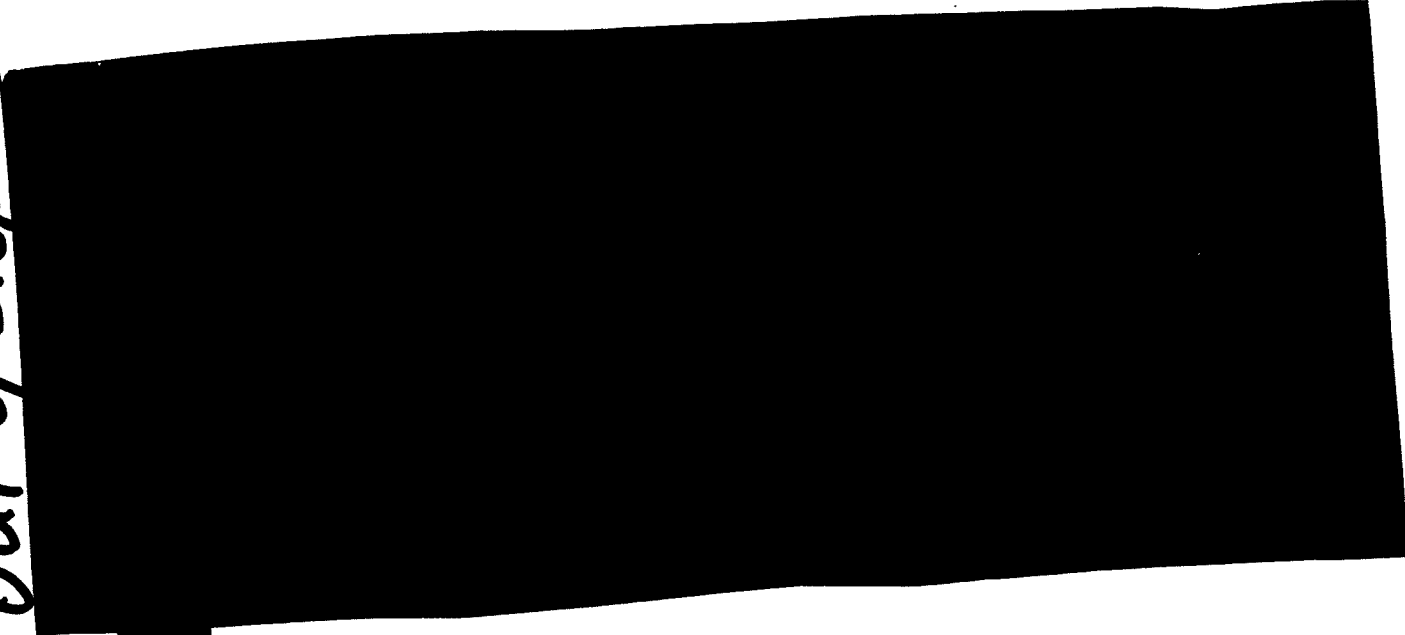
Would Monday, April 21, 1 pm, H-405, work for all?

It would also be good if we penciled in a second time next week, perhaps Friday afternoon, for a continuation of the Monday discussion, so that by the end of the week we all had a fairly good idea of how close or far we are.

Mike

Out of Scope

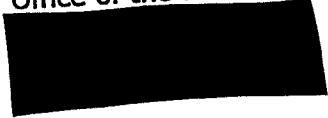
b2/b6



From: [redacted]
Sent: Tuesday, January 15, 2008 10:16 AM
To: "Marcel Lettre"
Cc: [redacted]@reid.senate.gov
Subject: RE: FISA Next Steps

Marcel: Ben and I will see you at 1230 today.

Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence



-----"Lettre, Marcel (Reid)" [redacted]@reid.senate.gov> wrote: -----

To: [redacted]
From: "Lettre, Marcel (Reid)" [redacted]@reid.senate.gov>
Date: 01/11/2008 06:35PM
cc: "Weich, Ron (Reid)" [redacted]@reid.senate.gov>
Subject: RE: FISA Next Steps

Kathy - we can do 12:30 here in S-221 of the Capitol. Thanks and see you then. Marcel

From: [redacted]
Sent: Friday, January 11, 2008 6:28 PM
To: Lettre, Marcel (Reid)
Cc: Weich, Ron (Reid)
Subject: RE: FISA Next Steps

Marcel: Yes, we'd like to come over early next week--can we make it later or earlier on Tuesday; anytime from 1230-2:30 or starting at 5 pm. Would either of those work for you both?

62/66

Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence

[Redacted]

-----"Lettre, Marcel (Reid)" [Redacted]@reid.senate.gov> wrote: -----

To: [Redacted]
From: "Lettre, Marcel (Reid)" [Redacted]@reid.senate.gov>
Date: 01/11/2008 04:47PM
cc: "Weich, Ron (Reid)" [Redacted]@reid.senate.gov>
Subject: RE: FISA Next Steps

Kathy:

Would you (and Ben and any others if you see it as useful) be available to meet early next week with me and Ron to discuss FISA as we gear up for a return to the floor? Tuesday at 4 is a good time for us.

Have a good weekend,

Marcel

From: [Redacted]
Sent: Friday, December 28, 2007 9:44 AM
To: Lettre, Marcel (Reid)
Subject: FISA Next Steps

Hi Marcel: Hope you are getting some downtime now. I wanted to give you our perspective on the current FISA status:

- We are disappointed that the Senate did not complete the FISA bill week before last;
- We feel strongly that the Senate needs to take it back up upon its return. It appears to us that the debate and votes need to occur, the remaining outstanding issues are not ones that we see being addressed via joint language; they are pretty fundamental differences, but there are only a few of them
- We are always happy to meet with staff, but we really need some certainty in our intell operations and the longer this debate goes on, the greater the likelihood that our partner's support wanes potentially resulting in a critical loss of intelligence capability.
- We will get the appropriate Exec Branch folks together to address Leader Reid's letter to the DNI and we'll get back to you on that in January.

Enjoy the New Years holiday Marcel and we'll talk soon.

Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence

[Redacted]

----- Original Message -----
From: "Lettre, Marcel (Reid)" [Redacted]@reid.senate.gov]
Sent: 12/21/2007 01:33 PM EST
To: [Redacted]

Kathy -

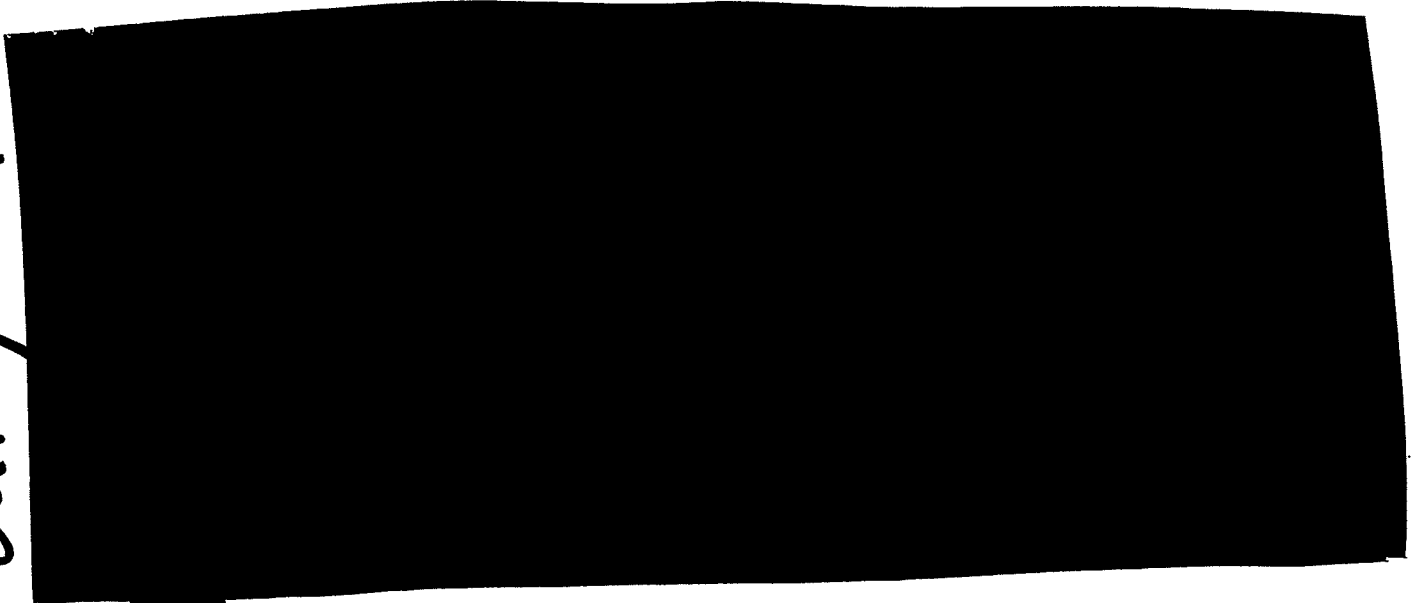
Understand you're out thru the 2nd (good - me too I hope!). Wanted just to check in as we do head into the

holidays to see where you think things stand on your end re: FISA. Staff will be back at work here in early January to keep assessing options about how best to move forward. Think it will make sense to reengage with you and others from ODNI at that time to continue the discussion. Keep in touch in the meantime if you have any updates. Sen Reid is still very much considering the option of an extension of the PAA to allow additional time for thorough deliberation/negotiation on the bill. And can I also assume that there will at some appropriate point be a response to his letter request to expand doc access to other Senators?

Thanks and talk soon,

Marcel

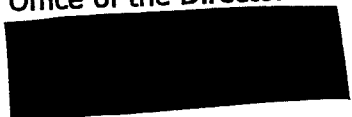
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b2/b6



From: [redacted]
Sent: Friday, November 23, 2007 4:21 PM
To: "Kotlar, Kim"
Cc: [redacted]
Subject: How is 2:30 pm, Thursday, Nov 29?

Kim: Does the time work for you? What room should we come to? Thanks very much.

Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence



-----"Kotlar, Kim" <[redacted]@mail.house.gov> wrote: -----

To: [redacted]
From: "Kotlar, Kim" <[redacted]@mail.house.gov>
Date: 11/23/2007 01:52PM
Subject: Re: Your Call about FISA

Yes anytime after 1030. Tk, kim

Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: [redacted]
To: Kotlar, Kim
Cc: [redacted]

Sent: Fri Nov 23 12:52:21 2007
Subject: Re: Your Call about FISA

Kim: Our plan would be to have one of our counsels, [redacted] and a DoJ counsel come talk to

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you at the unclassified level. Can we set that for Thursday, Nov 29--what time is good for you?
They can come to your office space. Thanks much Kim.

Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence

[Redacted]

-----"Kotlar, Kim" [Redacted]@mail.house.gov> wrote: -----

To: [Redacted]
From: "Kotlar, Kim" [Redacted]@mail.house.gov>
Date: 11/21/2007 05:09PM
Subject: Re: Your Call about FISA

Thank you! Wednesday at your convenience would be great!
Kim

Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: [Redacted]
To: Kotlar, Kim
Cc: [Redacted]

Sent: Wed Nov 21 16:06:44 2007
Subject: Re: Your Call about FISA

Hi Kim: I talked with our Counsels and NSA counsel about the step-by-step/diagram of the RESTORE Act and how NSA would implement such an Act. The counsels said they would prefer to meet with you or talk to you on the phone about the impact of the RESTORE Act on NSA operations. I have attached a few additional papers for you that we have prepared that further express our concerns with the Bill. What is your availability mid-late next week to meet with the counsel staff to discuss this? We are tied up Mon and Tues on the Senate FISA Bill which will go to the floor the first week of Dec, but we are free from Weds on. Let me know what works for you. Thanks very much Kim and have a great holiday.

Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence

[Redacted]

----- [Redacted] wrote: -----

ba/b6

To: [REDACTED]@mail.house.gov
From: [REDACTED]
Date: 11/20/2007 08:22AM
cc: [REDACTED]
Subject: Your Call about FISA

Hi Kim: [REDACTED] asked me to call/email about your questions and Rep. Thornberry's questions regarding the recently House-passed FISA legislation. You are correct that if the House-passed Bill were enacted, it would severely undermine our intelligence efforts. I have attached the Administration's Statement of Policy (SAP) for your background. We would be happy to provide you and/or Rep. Thornberry additional information. Let me know what you need. Many thanks.

Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence
[REDACTED]

ba/b6

From: [redacted]
To: "Mike Davidson" [redacted]@ssci.senate.gov>

Date: Tuesday, April 15, 2008 06:19PM
Subject: RE: FISA, Monday, April 21, 1 pm

thanks, works for me. but must be back at office by noon.
-----"Davidson, M (Intelligence)" [redacted]@ssci.senate.gov> wrote: -----

To: [redacted]
From: "Davidson, M (Intelligence)" [redacted]@ssci.senate.gov>
Date: 04/15/2008 05:06PM
cc: "John Demers" <John.Demers@usdoj.gov>, [redacted]
[redacted], "John Eisenberg" <John.Eisenberg@usdoj.gov>, "Carl
Nichols" <Carl.Nichols@usdoj.gov>, "Vito Potenza (work)" [redacted]
"Livingston,
J (Intelligence)" [redacted]@ssci.senate.gov>, "Rice, K (Intelligence)"
[redacted]@ssci.senate.gov>, "DeRosa, Mary (Judiciary-Dem)"
[redacted]@Judiciary-dem.senate.gov>, "Rossi, Nick (Judiciary-Rep)"
[redacted]@judiciary-rep.senate.gov>, "Espinel, Zulima (Judiciary-Dem)"
[redacted]@Judiciary-dem.senate.gov>, "Solomon, Matthew (Judiciary-Dem)"
[redacted]@Judiciary-dem.senate.gov>, "Healey, C (Intelligence)"
[redacted]@ssci.senate.gov>, "Starzak, Alissa (Intelligence)"
[redacted]@ssci.senate.gov>, "Wyndee Parker" [redacted]@mail.house.gov>,"

Subject: RE: FISA, Monday, April 21, 1 pm

Monday morning, at 10, in our hearing room, SH-219, works for Wyndee and for us.

From: [redacted]
Sent: Tuesday, April 15, 2008 4:51 PM
To: Davidson, M (Intelligence)
Cc: Ben Powell; John Demers; [redacted] John Eisenberg; Carl Nichols; Vito Potenza (work); [redacted]
[redacted] Livingston, J (Intelligence); Rice, K (Intelligence); DeRosa, Mary
(Judiciary-Dem); Rossi, Nick (Judiciary-Rep); Espinel, Zulima (Judiciary-Dem); Solomon, Matthew
(Judiciary-Dem); Healey, C (Intelligence); Starzak, Alissa (Intelligence); Wyndee Parker; [redacted]
Subject: Re: FISA, Monday, April 21, 1 pm

Mike -- I can't make Monday afternoon between 12-5. I can make a meeting before noon and I am flexible on Tuesday. But unfortunately, I am not able to change my current plans for Monday afternoon.

Ben

b2/b6

-----"Davidson, M (Intelligence)" [redacted]@ssci.senate.gov> wrote: -----
 To: "Ben Powell" [redacted], "Demers, John (NSD)" <John.Demers@usdoj.gov>, "Eisenberg, John" <John.Eisenberg@usdoj.gov>, <Carl.Nichols@usdoj.gov>, "Potenza, Vito" [redacted], "Livingston, J (Intelligence)" [redacted]@ssci.senate.gov>, "Rice, K (Intelligence)" [redacted]@ssci.senate.gov>, "DeRosa, Mary (Judiciary-Dem)" [redacted]@Judiciary-dem.senate.gov>, "Rossi, Nick (Judiciary-Rep)" [redacted]@judiciary-rep.senate.gov>, "Espinel, Zulima (Judiciary-Dem)" [redacted]@Judiciary-dem.senate.gov>, "Solomon, Matthew (Judiciary-Dem)" [redacted]@Judiciary-dem.senate.gov>
 From: "Davidson, M (Intelligence)" [redacted]@ssci.senate.gov>
 Date: 04/15/2008 04:15PM
 cc: "Healey, C (Intelligence)" [redacted]@ssci.senate.gov>, "Starzak, Alissa (Intelligence)" [redacted]@ssci.senate.gov>, [redacted]@mail.house.gov>
 Subject: FISA, Monday, April 21, 1 pm

Ben, John D., [redacted], Jack, Kathleen, Mary, Nick, Zulima, and Matt:

Further to our discussion this past Friday, HPSCI has offered to host the initial bipartisan, bicameral, ODNI/DOJ/NSA discussion on the Senate amendment, the House amendment, and all ideas that may advance our common goal of producing a FISA bill that will pass both Houses and gain the President's signature.

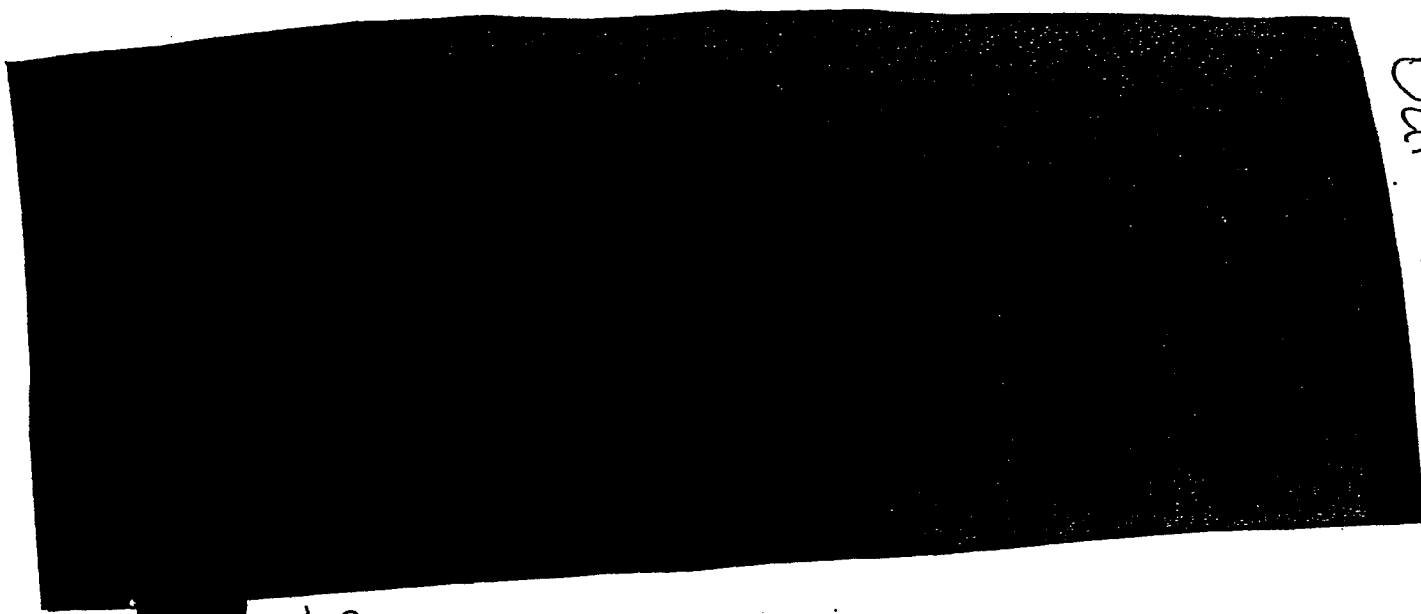
Wyndee will send out invitations on the House side. Invitations to Senator Reid's and Senator McConnell's staff will also be sent.

Would Monday, April 21, 1 pm, H-405, work for all?

It would also be good if we penciled in a second time next week, perhaps Friday afternoon, for a continuation of the Monday discussion, so that by the end of the week we all had a fairly good idea of how close or far we are.

Mike

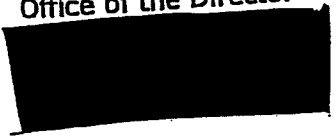
Out of Scope



From: [redacted] ^{b2}
Sent: Wednesday, April 02, 2008 10:56 AM
To: [redacted]@mail.house.gov
Cc: [redacted]@mail.house.gov; [redacted] ^{b6}
Subject: RE: Briefing on telecom cooperation-We can do it

Perfect--4:30 for about an hour. I will get back to you on th attendees on our side and I will get back with HPSCI ref classification level.

Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence



-----"Eddings, Richard" <[redacted]@mail.house.gov> wrote: -----

To: "Diffell, Brian" ^{b2} [redacted]@mail.house.gov>, [redacted] ^{b2}
From: "Eddings, Richard" ^{b6} [redacted]@mail.house.gov>
Date: 04/02/2008 09:39AM
cc: [redacted] ^{b2}
Subject: RE: Briefing on telecom cooperation-We can do it

We can do 4:30 if that will work for the DNI... I have H-405 reserved and they have asked for a "level"

-----Original Message-----

From: Diffell, Brian
Sent: Tuesday, April 01, 2008 7:53 PM
To: [redacted] ^{b2}
Cc: Eddings, Richard; [redacted]
Subject: Re: Briefing on telecom cooperation-We can do it

I'll let richard handle the specific scheduling. We really appreciate the dni's willingness to come up and do this..

----- Original Message -----

From: [redacted] b2
To: Diffell, Brian
Cc: Eddings, Richard; [redacted] b2/b6
Sent: Tue Apr 01 19:40:21 2008
Subject: RE: Briefing on telecom cooperation-We can do it

Brian: we can do it. The DNI wants to come do it himself. Is there any chance we could start earlier than 5 pm--the DNI will be up appearing at a Hearing from 1:30 until 3:30; any chance we could do it at 4 pm or even 4:30 pm? We need a SCIFed room for the meeting. The DNI may ask the NSA Director and CIA Director to join him. I will keep you posted.

Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence

[redacted] b2

-----"Diffell, Brian" <[redacted]@mail.house.gov> wrote: -----

To: [redacted] b2
From: "Diffell, Brian" <[redacted]@mail.house.gov> b6
Date: 04/01/2008 06:38PM
cc: "Eddings, Richard" <[redacted]@mail.house.gov>, [redacted] b2/b6

Subject: RE: Briefing on telecom cooperation

Sooner the better. I'll let Richard propose another time if necessary.

From: [redacted] b2
Sent: Tuesday, April 01, 2008 6:20 PM
To: Diffell, Brian
Cc: Eddings, Richard; [redacted] b6
Subject: Re: Briefing on telecom cooperation

Brian: I am checking--it may not be possible this quickly, but I will get back to you tomorrow. Can we look at dates/times for next week also?

Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence

[redacted] b2

-----"Diffell, Brian" [REDACTED]@mail.house.gov> wrote:

To: [REDACTED]
From: "Diffell, Brian" [REDACTED]@mail.house.gov
Date: 04/01/2008 12:45PM
cc: "Eddings, Richard" [REDACTED]@mail.house.gov
Subject: Briefing on telecom cooperation.

Kathleen - Per our discussion last week, Mr Blunt's calendar is free this Thursday at 5pm. Sorry for the quick turnaround, do you think you could have your guys come up and talk to him for an hour about the practical implications of not granting this liability protection on both FISA and non-FISA related cooperation?

Brian C. Diffell
Senior Policy Advisor
Office of the Republican Whip
[REDACTED]

b2/b6

[Redacted]

From: "Davidson, M (Intelligence)" [Redacted]@ssci.senate.gov>
To: <Carl.Nichols@usdoj.gov>
cc: "Ben Powell" [Redacted], "Demers, John (NSD)" <John.Demers@usdoj.gov>, "Eisenberg, John" <John.Eisenberg@usdoj.gov>, "Livingston, J (Intelligence)" [Redacted]@ssci.senate.gov>, "Healey, C (Intelligence)" [Redacted]@ssci.senate.gov>, "Rice, K (Intelligence)" [Redacted]@ssci.senate.gov>, "Starzak, Alissa (Intelligence)" [Redacted]@ssci.senate.gov>, "DeRosa, Mary (Judiciary-Dem)" [Redacted]@Judiciary-dem.senate.gov>, "Rossi, Nick (Judiciary-Rep)" [Redacted]@Judiciary-rep.senate.gov>, "Espinell, Zulima (Judiciary-Dem)" [Redacted]@Judiciary-dem.senate.gov>, "Solomon, Matthew (Judiciary-Dem)" [Redacted]@Judiciary-dem.senate.gov>, "Potenza, Vito" [Redacted]"

Date: Wednesday, April 16, 2008 05:06PM
Subject: FISA, Title II

History: This message has been forwarded.

Carl:

On Friday, during our second Senate-side meeting with ODNI/DOJ, I mentioned that we had been looking at several ideas that might help advance the discussion about Title II. In the course of that, I said that it would be very helpful for us, and we hope others, if we could have a third Senate/ODNI/DOJ discussion, this time devoted to Title II, preparatory to House/Senate/ODNI/DOJ discussions beginning next week (recognizing that Title II might not be reached in the first of those meetings). Obviously, we should do that at a time that works for you.

Enclosed are two drafts for consideration. As with the material we distributed after the House vote, they are not Rockefeller drafts (and certainly not drafts of any other Member), but rather an effort by Chris, Alissa, and me to help advance the discussion by offering some text for discussion. In preparing them, we've worked on two premises. The goal should continue to be an effective immunity statute, but also, some change will be necessary to achieve agreement with the House. It will also be desirable to build additional support in the Senate; indeed, building that additional support in the Senate may help in the House.

One draft, let's call it Draft A, contains, as we have described it among us, several modest changes that respond to questions by others or questions of our own about process, without changing any standard to be applied by the court other than, possibly, the standard for judicial review of the Attorney General's certification.

The other, which we can call Draft B, contains more extensive changes. This draft retains the basic immunity framework, but takes the further step of adapting with limitations Sen. Feinstein's qualified immunity amendment. It includes the changes in Draft A.

Both restructure Title II of the FISA Amendments Act by including everything in the key operative section of the new Title VIII of FISA, rather than separating the exclusively-retrospective provisions of Title II into a separate section 202 that is outside of the new Title VIII. It is the restructuring that makes it look, perhaps somewhat misleadingly, that a lot has been struck.

We have a recollection that at some point in our discussions leading up to the original Senate bill you had suggested combining the retrospective and forward looking parts of Title II in one place. At the time, we thought there was a benefit in separating them, thinking it would be easier for Members to understand. In fact, the separation may have contributed to some confusion (although there is some indication that there is a growing understanding on the House side of what the two parts seek to achieve.) Beyond that, there is a good chance in the application of Title II to the pending cases that authority under both section 202 and section 802 will be invoked. That could be because of what you have noted, that allegations go up to the

b2/b6

present (and therefore beyond January 2007), but also to the extent that prior-to-January 2007 immunity relief may also be grounded on court orders or explicit 2511 certifications. If in practice, these authorities are likely to be used in an integrated way, then it may be preferable as a drafting matter to set them forth together.

In putting the retrospective and generally (but not universally) forward looking provisions together, we have described the latter in section 802(a) as "general requirements," and the former in section 802(a) as an "additional limitation."

Now for the non-organizational suggestions:

In the provision on judicial review of the Attorney General's certifications, House colleagues have raised the question whether the "abuse of discretion" standard is the best choice. One part of that is whether the remainder of the phrase in 5 USC 706(2)(A), "abuse of discretion, or otherwise not in accordance with law," should be included. The other part of the question, in the circumstances of this matter, is whether the better language, drawing from 5 USC 706(2)(E), would be "unsupported by substantial evidence" in place of "abuse of discretion." Of course, the "unsupported by substantial evidence" test is keyed in the APA to cases subject to administrative hearings. Nevertheless, it appears that it would provide some greater confidence in the House that the review would not be cursory.

We added a provision, in the judicial review subsection, that in reviewing certifications the court may examine the court order, certification, written request, or directive that underlies the AG's certification. Although we've understood this to be everyone's present understanding, the House has expressed concern about whether the court would know it had that authority. The added provision would make that clear.

In the provision on what may be disclosed in the public order, we've added that the court may describe the legal standards that govern the order. This too might have been generally understood to be the case. Being explicit would help reassure that the court would not be entering a secret ruling on legal standards. In connection with that, we added a provision that the court may ask any party to submit arguments on issues of law.

We added a provision on interlocutory appeals to make sure appeals from the implementation of the immunity title could proceed even in the absence of a final order on all matters in the case. The basic purpose of the immunity title is to provide a basis for terminating matters expeditiously. Waiting for the disposition of any other matter in the case would defeat that objective.

Finally, we added a congressional reporting provision to provide for oversight of the implementation of the Title.

As mentioned, all of the above changes are also in Draft B. To those, Draft B adds alternative legal tests to be applied by the court to the Attorney General's certification that a provider received a written directive, or series of them, stating that the activity for which the provider's assistance had been requested was authorized by the President and determined to be lawful.

The first of the alternative legal tests is that the written request, or series of them, "substantially satisfies" the certification requirement of 18 USC 2511. The concept of substantial satisfaction is to provide a means, based on the Attorney General's certification and the underlying correspondence from the Government to the provider, for determining that the underlying communications are not disqualified from satisfying the essential requirements of a 2511 certification even if they do not comply with the technical requirements of 2511. For example, the court could determine that this provision would require dismissal if the correspondence had not been signed by the Attorney General but rather represented what the Attorney General had said in a signed document that the author of the letter had seen.

The second of the alternative legal tests is that a reasonable person in the position of the provider would not have known, in the totality of the circumstances between 2001 and 2007, that compliance with the requests for assistance was unlawful.

The articulation of this test is drawn from a recent Supreme Court qualified immunity/Fourth Amendment case, *Saucier v. Katz*, 533 US 194, 202 (2001) ("The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted."); see also *Goldstein v. City of Long Branch*, 481 F.3d 1170, 1173 (9th Cir. 2007), cert. granted (April 14, 2008).

b2/b6



Next, Draft B adds a requirement that to be eligible for relief under this qualified immunity test the provider declare, under penalty of perjury, that it had acted pursuant to the request with the reasonable belief that the request was lawful, and sets forth the basis for that belief. However, to avoid the circumstance in which the defendant in the action is setting forth facts upon which the court is to make factual findings, without hearing from the plaintiff on those facts, the requirement for the provider-declaration has a limited purpose. The provider must make the declaration in order to be eligible for relief.

The principle is that no provider should obtain this relief unless it is prepared to state, subject to the penalty of perjury, that it reasonably relied on the Government's representations. But the court, beyond checking to determine that the provider has made that representation, is to look only at the Government's certification and the documents underlying the certification to determine, on the basis of them and the law as it stood at the time, whether the immunity test has been met. In that way, the court will not be adjudicating a factual dispute between the plaintiffs and the provider on the basis of facts furnished by the provider.

Let's be in touch, tomorrow if possible, about when would be a good time to talk, and please also be in touch with either Alissa or me with any questions.

Mike

Attachments:
Redline of modest changes FISA immunity provision -- Redline of revised FISA immunity provision (2) --4-15-0

Out of Scope

62/66

-----Original Message-----

From: Starzak, Alissa (Intelligence)
Sent: Sunday, December 16, 2007 11:44 AM
To: Starzak, Alissa (Intelligence); Livingston, J (Intelligence); [redacted]; Rice, K (Intelligence); [redacted]; 'John.Eisenberg@usdoj.gov'; 'john.demers@usdoj.gov'; [redacted]; 'Brett.Gerry@usdoj.gov'
Cc: Healey, C (Intelligence); Davidson, M (Intelligence)
Subject: Re: FISA

[2 Attachments]

John, we just got your emails on the changes to Jack's draft. We'd appreciate your comments on the sections of the attached amendment that are different than Jack's version. (We can incorporate any of the formatting changes from your earlier emails.)

Thanks --
Alissa

----- Original Message -----

From: Starzak, Alissa (Intelligence)
To: Livingston, J (Intelligence); 'Ben Powell' [redacted]; Rice, K (Intelligence); [redacted]; 'John Eisenberg' <John.Eisenberg@usdoj.gov>; 'john.demers@usdoj.gov' <john.demers@usdoj.gov>; [redacted]; 'Gerry, Brett (OLP)' <Brett.Gerry@usdoj.gov>
Cc: Healey, C (Intelligence); Davidson, M (Intelligence)
Sent: Fri Dec 14 16:24:29 2007
Subject: RE: FISA

To speed things up a bit (we're still waiting to get drafts back from legislative counsel), I thought it might be helpful to forward some of the ideas we've had for particular Rockefeller amendments. The word document that is attached does not distinguish between items we will be including in the discussion draft and those that will be prepared as separate amendments - it's just possible amendment ideas that deal with things other than the 2.5 issue. The leg counsel drafts include the exclusivity amendment that was circulated previously, and an amendment on an IG review.

Thanks -
Alissa

b2/b6

From: Livingston, J (Intelligence)
Sent: Friday, December 14, 2007 11:39 AM
To: Davidson, M (Intelligence); 'Ben Powell'; [redacted]; 'John Eisenberg';
'john.demers@usdoj.gov'; [redacted]; 'Gerry, Brett (OLP)'
Cc: Healey, C (Intelligence); Rice, K (Intelligence); Starzak, Alissa (Intelligence)
Subject: RE: FISA

I just want to emphasize Mike's comment that Senator Bond has not agreed to a managers' amendment that would include anything beyond the deletion approach to the NSA reporting issue and a 2.5 fix that is acceptable to the IC, Democrats and Republicans. Specifically, Senator Bond has not agreed to any change in the current exclusive means language, a reduction in the sunset from 6 to 4 years, or the other provisions referenced by Mike in the below e-mail.

We've also asked Legislative Counsel to put together a discussion draft of a possible managers' amendment (that significantly beefs up the 2.5 application and order process for acquisitions conducted in the U.S. and reorganizes Title VII). Our draft, as earlier drafts, includes the names of Senators Rockefeller and Bond, but that is merely aspirational. Senator Rockefeller has not agreed to the version I've been sending around, nor has he agreed to the version that I'll send out when Legislative Counsel sends it to me.

I share Mike's hope that we can make the overall managers' amendment an attractive vehicle, but the issues of exclusive means and sunset are still very heavy lifts. Frankly, it's my understanding that our approach to 2.5 is still a heavy lift for the IC.

Also, I would like to second Mike's thanks on everyone's help, past, present, and future.

Jack

From: Davidson, M (Intelligence)
Sent: Friday, December 14, 2007 10:30 AM
To: 'Ben Powell'; [redacted]; John Eisenberg; 'john.demers@usdoj.gov'; Greer, John; Gerry, Brett (OLP)
Cc: Livingston, J (Intelligence); Healey, C (Intelligence); Rice, K (Intelligence); Starzak, Alissa (Intelligence)
Subject: FISA

Dear All:

(As I started to write this, Ben called. We shared thoughts about the next couple of days. I thought I should continue the note, and send it out, just so that what follows is available to everyone.)

In light of the plan to move to proceed to FISA, with a cloture vote on a motion to

proceed on Monday morning, followed by floor proceedings on the bill - including amendments, all matters relating to a possible managers amendment obviously need to be settled very soon.

Last night, we asked Legislative Counsel to prepare a discussion draft that puts together several things: (1) the draft that Jack had been developing on Americans overseas (with changes up to yesterday afternoon; Jack had received some further DOJ comments which he had not yet dealt with), some changes to that draft that we would recommend (Jack had already taken onboard ideas from a conversation Wednesday); (2) the exclusivity provision that we had previously circulated (John D. has the most recent e-copy, as of Sunday); (3) a change in the sunset to four years; (4) a suggestion on the reporting provision of concern to NSA; and (5) one or two other provisions for which Judiciary had proposed an amendment (e.g., on stays) for which some language accommodation might be possible, e.g., providing that the Court of Review decide, within 30 days of an appeal, whether all or parts of a correction order should be implemented pending appeal.

In this discussion draft, we're putting no names, recognizing to begin with that Senator Bond has not said that he is prepared to include anything beyond Americans overseas and something that addresses the NSA reporting issue. (And Senators Leahy and Specter will be reaching their own conclusions.)

There are other matters, of course, that I recognize are not presently candidates for a managers amendment - e.g., assessing compliance on minimization procedures, and IG review of the TSP. Those have been or are being drafted as separate amendments.

As I shared with Ben, there are members who believe very strongly that the collection inside the US against US persons outside the US should be done by a simple cross-reference to Title I, with a short list of any exceptions. There is I believe a great deal of merit in Jack's approach, and we've been mutually working to ensure that it contains all the key elements of a Title I procedure. But that may be an issue. My hope, for various reasons, is that we can also work to make the overall managers amendment an attractive vehicle by including provisions that, I truly believe, are going to be there in the end - e.g., exclusivity, the four-year sunset.

Ben described his hope that the interagency team will have a chance to comment on our proposed managers amendment. Definitely. When we get it back from Legislative Counsel, we'll probably do one scrub of it here, but I hope by early afternoon to distribute to all for the interagency review. We'll also send any separately drafted amendments (e.g., IG review, compliance assessment).

Thanks for everyone's help - past, present, and future.

Mike

b2/b6

[Redacted]

From: "Pelofsky, Eric \ (Intelligence\)" <[Redacted]@ssci.senate.gov>
To: "Davidson, M \ (Intelligence\)" <[Redacted]@ssci.senate.gov>,
"Livingston, J \ (Intelligence\)" <[Redacted]@ssci.senate.gov>,
"Starzak, Alissa \ (Intelligence\)" <[Redacted]@ssci.senate.gov>,
"Healey, C \ (Intelligence\)" <[Redacted]@ssci.senate.gov>,
"Rice, K \ (Intelligence\)" <[Redacted]@ssci.senate.gov>,
<John.Demers@usdoj.gov>, [Redacted]

Date: Wednesday, February 06, 2008 06:02PM
Subject: Re: Sen. Whitehouse Proposal on Minimization

History: This message has been forwarded.

Mike,

Have you heard from anything from DOJ or DNI today on this? If not, I will reach out.

thanks,
Eric

----- Original Message -----

From: Davidson, M (Intelligence)
To: 'Ben Powell' <[Redacted]@ssci.senate.gov>; Livingston, J (Intelligence); Starzak, Alissa (Intelligence); Healey, C (Intelligence); Rice, K (Intelligence); Demers, John (NSD) <John.Demers@usdoj.gov>; [Redacted] <[Redacted]@ssci.senate.gov>; Pelofsky, Eric (Intelligence)
Sent: Tue Feb 05 18:32:22 2008
Subject: RE: Sen. Whitehouse Proposal on Minimization

Senator Whitehouse gave me a second copy. The text that you set forth below matches exactly.

For starters, the best place might be at the end of section 703, as a new section 703(I).

"Bill" could then be changed to "section," and as Ben notes, "Foreign Intelligence Surveillance Court" substituted for "FISA Court".

To conform to usage elsewhere in the Act, "agencies" could be changed to "elements of the Intelligence Community".

The provision would then read:

"Section 703(I). Nothing in this section shall be considered to reduce or contravene the inherent authority of the Foreign Intelligence Surveillance Court to determine, or enforce, compliance with its orders, rules and approved procedures by elements of the Intelligence Community acting pursuant thereto."

Out of Scope

b2/bc

I don't think this gets us where we want to be. I am concerned about giving the court the ability to enforce compliance. Isn't that the same as allowing it to assess compliance, and fashion remedies as in current amendment? FYI: according to our count, we are pretty confident at being able to prevail. Of course, I also predicted that Notre Dame would have a winning season . . .

-----Original Message-----

From: Ben Powell [redacted]
Sent: Tuesday, February 05, 2008 6:13 PM
To: Davidson, M (Intelligence); Livingston, J (Intelligence); Starzak, Alissa (Intelligence); Healey, C (Intelligence); Rice, K (Intelligence); Demers, John (NSD); [redacted] Pelofsky, Eric (Intelligence)
Subject: Sen. Whitehouse Proposal on Minimization

Sen. Whitehouse has provided a draft proposal to reflect his concerns about court power to review minimization while also reflecting the concerns we have expressed. The text is as follows:

"Nothing in this bill shall be considered to reduce or contravene the inherent authority of the FISA Court to determine, or enforce, compliance with its orders, rules and approved procedures by agencies acting pursuant thereto."

I have committed to the Senator to review and provide him with feedback as soon as possible.

[As a pure technical matter, assume we will suggest changing "bill" to the ("section" or "Act" or etc.) and "FISA Court" to "Foreign Intelligence Surveillance Court". I wanted to make sure though that I sent the text exactly as provided by Sen. Whitehouse.]

[REDACTED]

b2/b6

From: "Davidson, M (Intelligence)" [REDACTED]@ssci.senate.gov>
To: "Livingston, J (Intelligence)" [REDACTED]@ssci.senate.gov>, <John.Demers@usdoj.gov>, <John.Eisenberg@usdoj.gov>, <Carl.Nichols@usdoj.gov>, <[REDACTED]>, "Rice, K (Intelligence)" [REDACTED]@ssci.senate.gov>, "DeRosa, Mary (Judiciary-Dem)" [REDACTED]@Judiciary-dem.senate.gov>, "Rossi, Nick (Judiciary-Rep)" [REDACTED]@Judiciary-dem.senate.gov>, "Espinel, Zulima (Judiciary-Dem)" [REDACTED]@Judiciary-dem.senate.gov>, "Solomon, Matthew (Judiciary-Dem)" [REDACTED]@Judiciary-dem.senate.gov>
cc: "Healey, C (Intelligence)" [REDACTED]@ssci.senate.gov>, "Starzak, Alissa (Intelligence)" [REDACTED]@ssci.senate.gov>

Date: Tuesday, March 18, 2008 10:55AM
Subject: Re: On the return of H.R. 3773 to the Senate

Jack,

One premise of your note is that we have talked too much ("ad nauseum" in the statement of the official position). But it is just the reverse. There is only one proof in this pudding. Until we have produced a law, we will not have talked enough.

A second premise is that there is no occasion to talk until the House acts on the Senate bill. It has. There is nothing pending in the House. The bill has been sent back to us with a House amendment. The ball is in our court.

There are two things the Senate can now do. It can insist on its amendment and request a conference. Or it can work to fashion an amendment to send back to the House that has a reasonable chance of becoming law. Neither will be an easy route. But both are possible. In contrast, waiting for the House to act on something that isn't before it will get us nowhere.

A note about what we sent over on Friday --

It is comprised, in our view, of modest, practical suggestions for resolving Title I differences with the House while providing the DNI and AG with necessary tools, including speed of action. But no hubris here. We're eager to sit down, with text in front of all and pencils in hand. We're also eager to receive other modest, practical ideas, from all quarters, including importantly ones that you may offer.

Mike

Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: Livingston, J (Intelligence)
To: Davidson, M (Intelligence); 'Ben Powell' [REDACTED]; 'Demers, John (NSD)'

b2/b6

[Redacted]

<John.Demers@usdoj.gov>; 'Eisenberg, John' <John.Eisenberg@usdoj.gov>;
'Carl.Nichols@usdoj.gov' <Carl.Nichols@usdoj.gov>; 'Potenza, Vito' [Redacted]

[Redacted] Rice, K (Intelligence); DeRosa, Mary (Judiciary-Dem); Rossi, Nick
(Judiciary-Rep); Espinel, Zulima (Judiciary-Dem); Solomon, Matthew (Judiciary-Dem)

Cc: Healey, C (Intelligence); Starzak, Alissa (Intelligence)
Sent: Mon Mar 17 17:34:00 2008
Subject: RE: On the return of H.R. 3773 to the Senate

Mike,

The following is the official Bond position on your e-mail on Friday. "While Friday was good theater, the result leaves us in the exact same position as before. We had a strong bipartisan, DNI/DOJ supported FISA bill that the President would have signed into law and that the House didn't vote on even though it was supported by a majority in the House. And, we still have a strictly partisan House-passed bill that doesn't work, is not supported by the DNI/DOJ and would be vetoed by the President. They are not in the same ballpark for a conference and the House needs to act on the bipartisan, workable, Senate bill before further discussions over provisions that we have discussed ad nauseum to date, is warranted."

From my perspective, your current draft includes too many of the House's partisan provisions—provisions that are unacceptable to the Senate minority and, I assume, to the Intelligence Community. Unless you can scale your current draft back to a couple of "modest changes," Senator Bond sees little merit in having further staff discussions. Thanks.

Jack

From: Davidson, M (Intelligence)
Sent: Friday, March 14, 2008 5:43 PM
To: 'Ben Powell'; Demers, John (NSD); 'Eisenberg, John'; Carl.Nichols@usdoj.gov; Potenza, Vito; Greer, John; [Redacted] Chris; Livingston, J (Intelligence); Rice, K (Intelligence); DeRosa, Mary (Judiciary-Dem); Rossi, Nick (Judiciary-Rep); Espinel, Zulima (Judiciary-Dem); Solomon, Matthew (Judiciary-Dem)
Cc: Healey, C (Intelligence); Starzak, Alissa (Intelligence)
Subject: On the return of H.R. 3773 to the Senate

Dear ODNI/DOJ/NSA and Senate Intelligence and Judiciary colleagues:

Given the possibility, as is now occurring, that the FISA bill would come back to the Senate, over the last day or so Chris, Alissa, and I have prepared a draft for discussion. It is not a formal Rockefeller draft, but something that we hope advances the discussion, together with

ba/bb

ideas that all of you might put on the table. It will, of course, be important to begin a discussion that also includes House colleagues, and we will share this with them. Still, it will be good to get our mutual bearings on the Senate side, and we hope this will make a contribution to that end.

The underlying document begins with the Senate amendment to H.R. 3773. The strike outs and insertions represent a combination of matters (additions, deletions, or modifications) in the House amendment that we would propose for acceptance, or matters that we would propose be amended in some way. There are a number of items in the House amendment that are not included (e.g., the Commission and statute of limitations amendment). The matters taken or modified from the House amendment include both substantive matters and drafting recommendations from the House Legislative Counsel, some of which, such as much of Title III, the two Legislative Counsel offices worked on together.

All of the proposed changes are in Titles I and III. The attached makes no changes to Title II.

Principal items are:

The proposed sunset, which is in Title III (in accordance with a Legislative Counsel placement recommendation), is December 2011, in order to provide more time for experience than the 2009 date would allow while making clear the expectation that the permanent system should be settled on during the term of the President who will be elected this November.

The Feinstein exclusivity amendment is included. For ourselves, we have not foreclosed the possibility of including some form of the additional text that David Grannis had been exchanging with Jack and John D. on collection following an attack on the United States, particularly one for which the Congress enacts an AUMF. That could very well be a subject of discussion.

The IG review provision is included -- as the text had been developed by Senator Leahy, with the House modification that the IGs should select one of them who is presidentially appointed and Senate confirmed to coordinate the review. Not to mix up legislative issues, but we would be happy if that turned out to be an Inspector General for the Intelligence Community.

Our proposed alternative to the electronic surveillance definition carve-out, which we believe achieves everything that may have been sought in the carve-out, is in section 702(c)(2) on page 4: "Nothing in the definition of electronic surveillance shall be construed to require an application under section 104 for an acquisition that is targeted in accordance with this

Out of Scope



Attachments:

HEN08153_xml.pdf



HEN08153_xml.pdf
(30 KB)

Please find attached the leg counsel version of the exclusivity language we discussed last night. A quick note on the text:

Instead of repeating the phrase "physical search of stored electronic communications or stored electronic data in the custody of an electronic communications service provider," I propose that we use the phrase "acquisition of stored electronic communications" and then add a definition for "stored electronic communications" that uses all of the first term. This avoids repeating a very unwieldy phrase four times in the amendment, and it does not speak directly to the question of whether the acquisition of a stored communication is surveillance or a search, which I understand to be a plus for DOJ.

On a general note - we have tried to take the concerns of the ODNI and DOJ very seriously in drafting this language. I think this gives the Executive all the authority and flexibility that you have said would be needed, but with reasonable constraints, trigger mechanisms, and oversight that is necessary for substantive and political reasons. If there is something we have missed, let's talk, but we really hope this language will be accepted and we can finally put the exclusivity debate behind us.

Many thanks,
David

David Grannis
Professional Staff Member
Senate Select Committee on Intelligence

@ssci.senate.gov

ba2/b6

b2/bu

From: "Davidson, M (Intelligence)" [redacted]@ssci.senate.gov>
To: <Carl.Nichols@usdoj.gov>, [redacted]

Date: Tuesday, May 20, 2008 06:18PM
Subject: Postscript

History: This message has been forwarded.

Carl and [redacted]

Notwithstanding the brief rough patch in the middle, it was a helpful conversation. Many thanks. I do believe we'll get to the finish line.

Let me supplement the idea (for the sake of discussion) floated at the end, about dealing with this through the CJ's designation power.

If the MDL is itself a precedent, then perhaps it should also be the model to the extent possible.

28 USC 1407(b) provides (emphasis added):

(b) Such coordinated or consolidated pretrial proceedings shall be conducted by a judge or judges to whom such actions are assigned by the judicial panel on multidistrict litigation. For this purpose, upon request of the panel, a circuit judge or a district judge may be designated and assigned temporarily for service in the transferee district by the Chief Justice of the United States or the chief judge of the circuit, as may be required, in accordance with the provisions of chapter 13 of this title [28 USCS §§ 291 et seq.].

What if the MDL Panel were both given the power to further transfer these cases to the FISC, and to request the CJ (building on what Congress has provided under (b)), to designate and assigned temporarily for service in the FISC the judge to whom it, the MDL, has assigned these actions?

Perhaps, by keeping the authority with the MDL – plus the CJ, in a manner that is compatible with the way that Congress has legislated in the area of multidistrict cases, that might make a contribution to resolving the policy question discussed this morning. It would give the Judicial Branch complete authority over the assignment of these cases.

[REDACTED]

(This is just my own thought for consideration, not a group thought.)

Mike

Out of Scope

From: [REDACTED]
Sent: Monday, February 04, 2008 8:03 PM
To: "Griswold, Jonathan"
Subject: Re: Protect America Act

Jonathan: My apologies for such a tardy response (I have been swamped as we start Hearing season!). Let me give you some info below and then send you the jointly signed DNI-AG Views Letter that I expect we will complete tomorrow.

While the Protect America Act was scheduled to expire on February 1, 2008, Congress has extended that Act for fifteen days, through February 16, 2008. Failure to pass long-term legislation during this period will seriously impair our ability to obtain vital foreign intelligence information, including the location, intentions, and capabilities of terrorists and other foreign intelligence targets abroad.

First, the expiration of the authorities in the Protect America Act would plunge critical intelligence programs into a state of uncertainty which could cause us to delay the gathering of, or simply miss, critical foreign intelligence information. Expiration would result in a degradation of critical tools necessary to carry out our national security mission. Without these authorities, there is significant doubt surrounding the future of aspects of our operations. For instance, expiration would create uncertainty concerning:

- The ability to modify certifications and procedures issued under the Protect America Act to reflect operational needs and the implementation of procedures to ensure that agencies are fully integrated protecting the Nation;
- The continuing validity of liability protection for those who assist us according to the procedures under the Protect America Act;
- The continuing validity of the judicial mechanism for compelling the assistance needed to protect our national security;
- The ability to cover intelligence gaps created by new communication paths or technologies. If the intelligence community uncovers such new methods, it will need to act to cover these intelligence gaps.

All of these aspects of our operations are subject to great uncertainty and delay if the authorities of the Protect America Act expire. Indeed, some critical operations will simply not be possible without

the tools provided by the Protect America Act. We will be forced to pursue intelligence collection under FISA's outdated legal framework---a framework that we already know leads to intelligence gaps. This degradation of our intelligence capability will occur despite the fact that, as the Department of Justice has notified Congress, the FISA Court has approved our targeting procedures pursuant to the Protect America Act.

Second, expiration or continued short-term extensions of the Protect America Act means that an issue of paramount importance will not be addressed. This is the issue of providing liability protection for those who provided vital assistance to the Nation after September 11, 2001. Senior leaders of the intelligence community have consistently emphasized the critical need to address this issue since 2006. See, "FISA for the 21st Century" hearing before the Senate Judiciary Committee with Director of the Central Intelligence Agency and Director of the National Security Agency; 2007 Annual Threat Assessment Hearing before the Senate Select Committee on Intelligence with Director of National Intelligence. Ever since the first Administration proposal to modernize FISA in April 2007, the Administration had noted that meeting the intelligence community's operational needs had two critical components---modernizing FISA's authorities and providing liability protection. The Protect America Act updated FISA's legal framework, but it did not address the need for liability protection.

Let me know if additional info is needed Jonathan.

Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence

-----"Griswold, Jonathan" <[redacted]@mail.house.gov> wrote: -----

To: [redacted]
From: "Griswold, Jonathan" <[redacted]@mail.house.gov>
Date: 01/29/2008 09:43AM
Subject: Protect America Act

Kathleen:

I understand that FISA will not collapse if we don't pass a bill by Feb. 1st. Which parts of the Law are going to expire after Feb. 1st?

Warmest regards,

Jonathan Griswold

Legislative Assistant

The Honorable John J. Duncan, Jr.

b2/b6

b2/b6

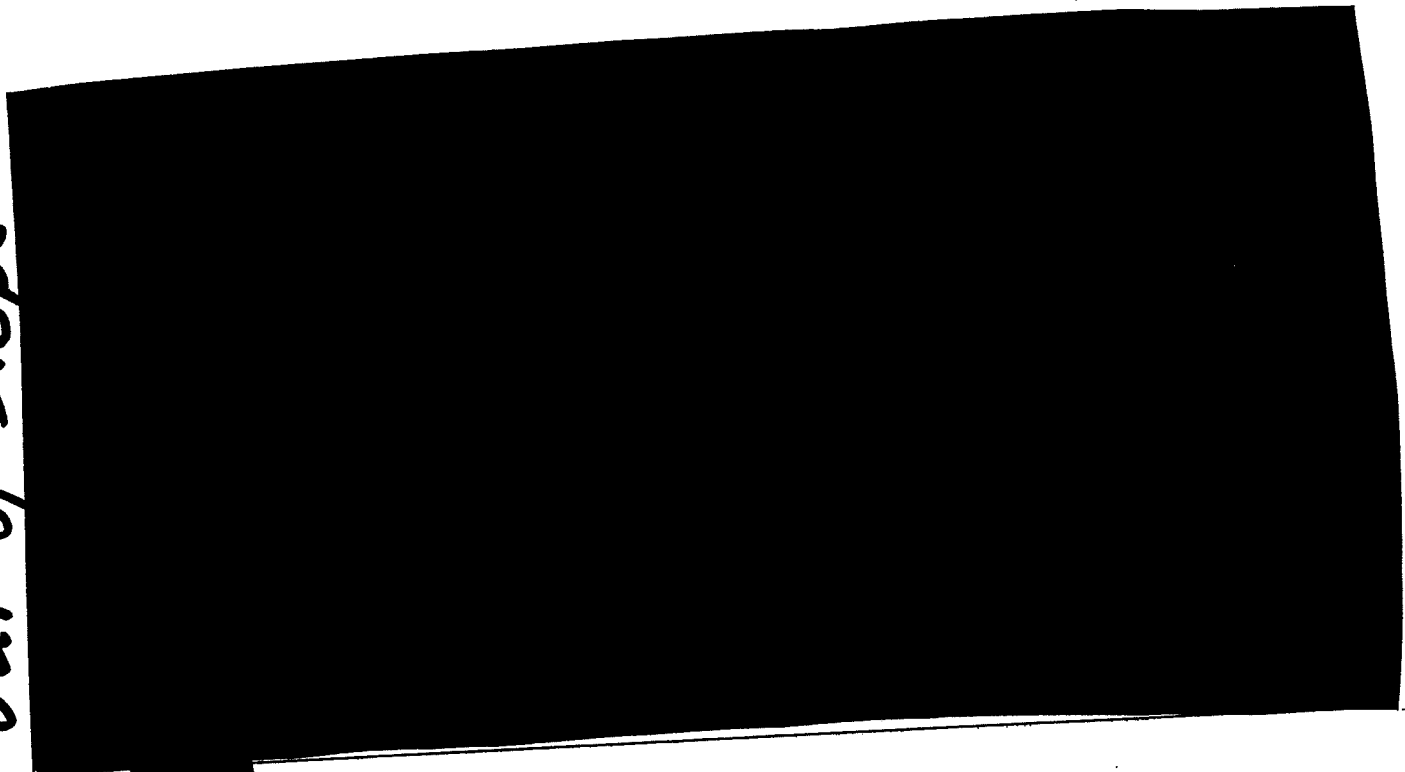
Member of Congress, Second District, Tennessee

800 Market Street; Suite 110 Knoxville, Tennessee 37902



www.house.gov/duncan

Out of Scope

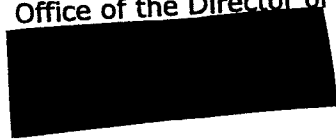


From: [redacted]
Sent: Friday, February 01, 2008 3:36 PM
To: "Stout, Jennifer \(\Webb\)"
Cc: "Sozan, Michael \(\Webb\)"; "Jones, Nelson \(\Webb\)"; [redacted]
Subject: DIN Response to Letter from Sen. Webb

b2/b6

Jennifer: I have attached the DNI's response to Senator Webb, along with four attachments to that letter. We will also provide some classified information early next week to the SSCI Security Officer for the Senator to review in their Hart 211 spaces. The DNI, Mike McConnell, enjoyed meeting with the Senator and we hope this information helps address his concerns. At the mtg on Jan 29, we talked with the Senator about him going out to the National Security Agency (NSA) in Maryland, where he could see the process, meet the people, "kick the tires so to speak." We believe that would be very useful for him as he considers the upcoming FISA legislation. NSA could come pick him up at the Capitol and take him to their building, and the bring him back to the Capitol. That would take about 4 hours. Please let me know if we can assist in any way. Many thanks.

Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence



-----"Stout, Jennifer \(\Webb\)" <[redacted]@webb.senate.gov> wrote: -----

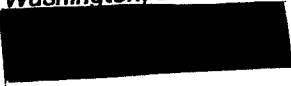
To: [redacted]
From: "Stout, Jennifer \(\Webb\)" <[redacted]@webb.senate.gov>
Date: 01/31/2008 12:51PM
cc: "Sozan, Michael \(\Webb\)" <[redacted]@webb.senate.gov>, "Jones, Nelson \(\Webb\)" <[redacted]@webb.senate.gov>
Subject: Letter from Sen. Webb to McConnell

Kathleen,

Attached, please find a letter from Senator Webb to Admiral McConnell as a follow up to their recent meeting.

Best,
Jennifer

Jennifer Park Stout
Senior Advisor
Office of Senator Jim Webb
144 Russell Senate Office Building
Washington, DC 20510



ba/bc

Fw: Floor Update: FISA Agreement

Out of Scope

ba2/b6



From: [Redacted]
Sent: Thursday, January 31, 2008 9:28 PM
To: "Marcel Lettre"; "David V. Broome"
Subject: Re: Floor Update: FISA Agreement

Thanks Marcel.
Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence
[Redacted]

----- Original Message -----

From: "Lettre, Marcel (Reid)" [Redacted]@reid.senate.gov]
Sent: 01/31/2008 09:17 PM EST
To: [Redacted] <David.V.Broome@who.eop.gov>
Subject: Fw: Floor Update: FISA Agreement

Know you probably have this already but here it is again.

Sent from my BlackBerry

----- Original Message -----

From: Engle, Tricia (DPC) [Redacted]@DPC.SENATE.GOV>
To: D-FLOOR@LISTSERV.SENATE.GOV <D-FLOOR@LISTSERV.SENATE.GOV>
Sent: Thu Jan 31 20:48:08 2008
Subject: Floor Update: FISA Agreement

The Senate has entered into an agreement to consider the FISA legislation under the following parameters:

Fw: Floor Update: FISA Agreement

Only the following first degree amendments are in order to the bill with no second degrees permitted prior to a vote in relation to the first degree. Any listed debate time is equally divided and controlled in the usual form. Please note that the amendments are not required to be offered in the order listed below.

The following amendments will be agreed to by consent:

Whitehouse #3932, as modified;

Kennedy #3960, as modified;

Bond #3945;

The following amendments will be subject to a majority vote threshold, with a motion to table any of these 8 amendments in order, and considered under the time limitations listed:

Bond #3941, as modified (20 minutes);

Bond #3938, as modified (20 minutes);

Feingold #3907, (2 hours);

Specter-Whitehouse #3927 (2 hours);

Feingold #3913 (40 minutes);

Feingold #3912 (40 minutes);

Feingold #3915 (40 minutes);

Feingold-Webb regarding sequestration (90 minutes);

The following 3 amendments will be considered under the listed time limitation and will be subject to a 60-vote threshold. If the amendment does not achieve that threshold, the amendment will be withdrawn:

Feinstein #3919 (2 hours);

Cardin #3930 (60 minutes);

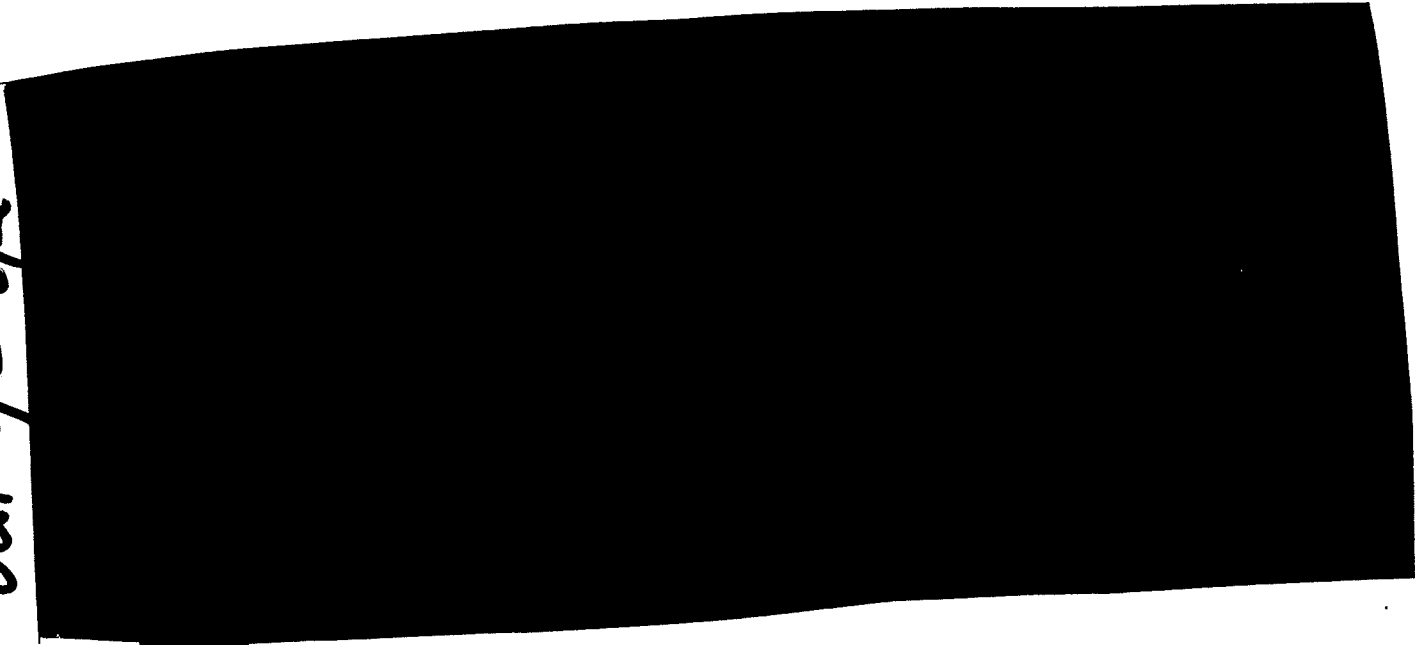
Whitehouse #3920 (60 minutes); and

Finally, the Feinstein #3910 is also in order, without any debate limitation.

Upon disposition of all amendments, the substitute amendment, as amended, will be agreed to and the bill read a third time. The Senate will then vote on the motion to invoke cloture on S. 2248. Upon passage of the bill, the Senate will proceed to H.R. 3773, strike all after the enacting clause, insert the text of the Senate passed bill, and pass the House bill, as amended.

Fw: Floor Update: FISA Agreement

Out of Scope



bx/b6

From: [Redacted]
Sent: Wednesday, January 30, 2008 8:57 PM
To: "Louis Tucker"
Subject: Re: FISA

Louis; As soon as you have text we'll look at it and provide our views.
Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence
[Redacted]

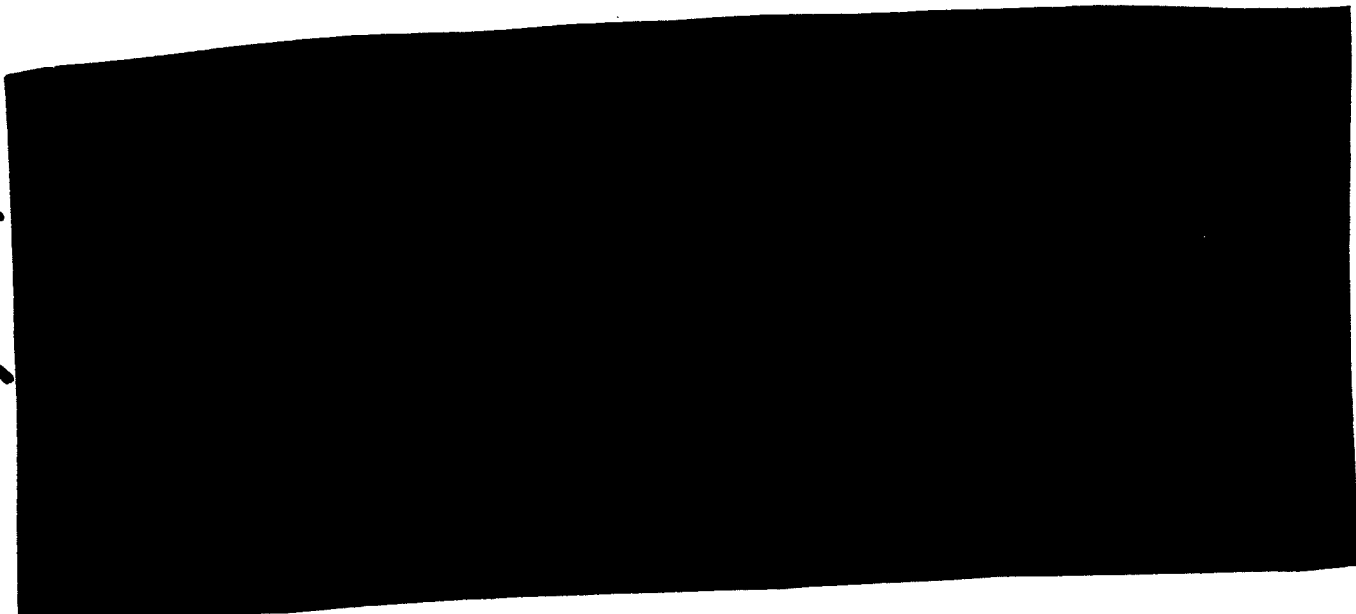
----- Original Message -----
From: "Tucker, L (Intelligence)" [Redacted]@SSCI.Senate.Gov]
Sent: 01/30/2008 08:55 PM EST
To: [Redacted]
Subject: FISA

We have a tentative agreement; it takes UC and it will take much of tomorrow to get all mbr sign-off. We'd like your folks to look at it tomorrow and get back to us asap with DNI support or non-support. We won't have final leg counsel language to get to you until about 10:30am. Let's talk in the morning.

Louis Tucker
Republican Staff Director
Senate Select Committee on Intelligence
202-224-1700

Re: Senate Amendment Views

Out of Scope



From: [Redacted]
Sent: Thursday, February 07, 2008 10:14 AM
To: "Todd Rosenblum"
Subject: Re: Senate Amendment Views

Thanks Todd. Can you note which oversight amendments he might support?
Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence
[Redacted]

ba/bb

----- Original Message -----
From: "Rosenblum, T (Intelligence)" [Redacted]@ssci.senate.gov]
Sent: 02/07/2008 10:09 AM EST
To: [Redacted]
Subject: Re: Senate Amendment Views

Got it, thanks. The senator supports the ssci bill, including immunity. He will support some of the additional oversight amendments as well.

Cheers, Todd
Todd M. Rosenblum
Senate Intelligence Committee
[Redacted]

----- Original Message -----
From: [Redacted]
To: Rosenblum, T (Intelligence)
Sent: Thu Feb 07 08:30:22 2008
Subject: Senate Amendment Views

Todd: I attached a list of our views on each of the FISA Amendments for your use with Senator Bayh. The DNI may try and reach out to Senator Bayh on the phone today to discuss the need for permanent FISA legislation and see if the Senator has any questions or concerns. Let me know if there is additional information that would be helpful. Thanks Todd.

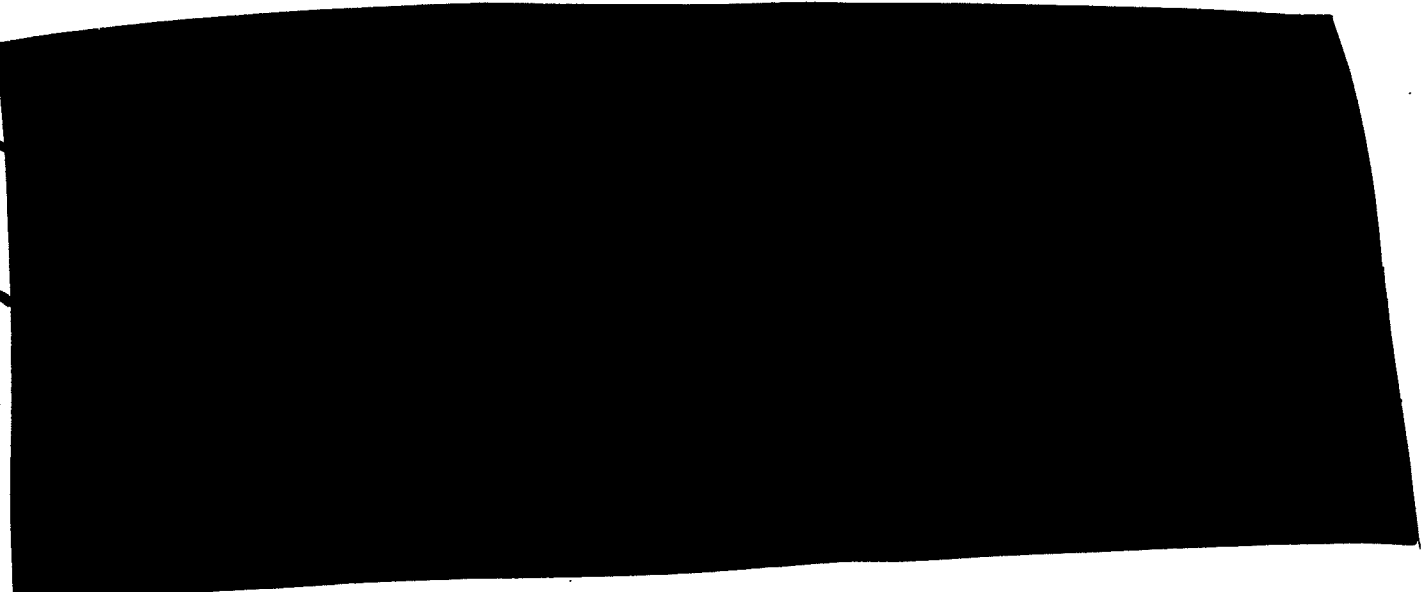
Re: Senate Amendment Views

62/06

Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence



b2/b6
Out of Scope



From: [Redacted]
Sent: Friday, December 28, 2007 9:44 AM
To: "Marcel Lettre"
Subject: FISA Next Steps

Hi Marcel: Hope you are getting some downtime now. I wanted to give you our perspective on the current FISA status:
-We are disappointed that the Senate did not complete the FISA bill week before last;
-We feel strongly that the Senate needs to take it back up upon its return. It appears to us that the debate and votes need to occur; the remaining outstanding issues are not ones that we see being addressed via joint language; they are pretty fundamental differences, but there are only a few of them
-We are always happy to meet with staff, but we really need some certainty in our intell operations and the longer this debate goes on, the greater the likelihood that our partner's support wanes potentially resulting in a critical loss of intelligence capability.
-We will get the appropriate Exec Branch folks together to address Leader Reid's letter to the DNI and we'll get back to you on that in January.

Enjoy the New Years holiday Marcel and we'll talk soon.

Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence

----- Original Message -----

From: "Lettre, Marcel (Reid)" [Redacted]@reid.senate.gov]
Sent: 12/21/2007 01:33 PM EST
To: kathlpt

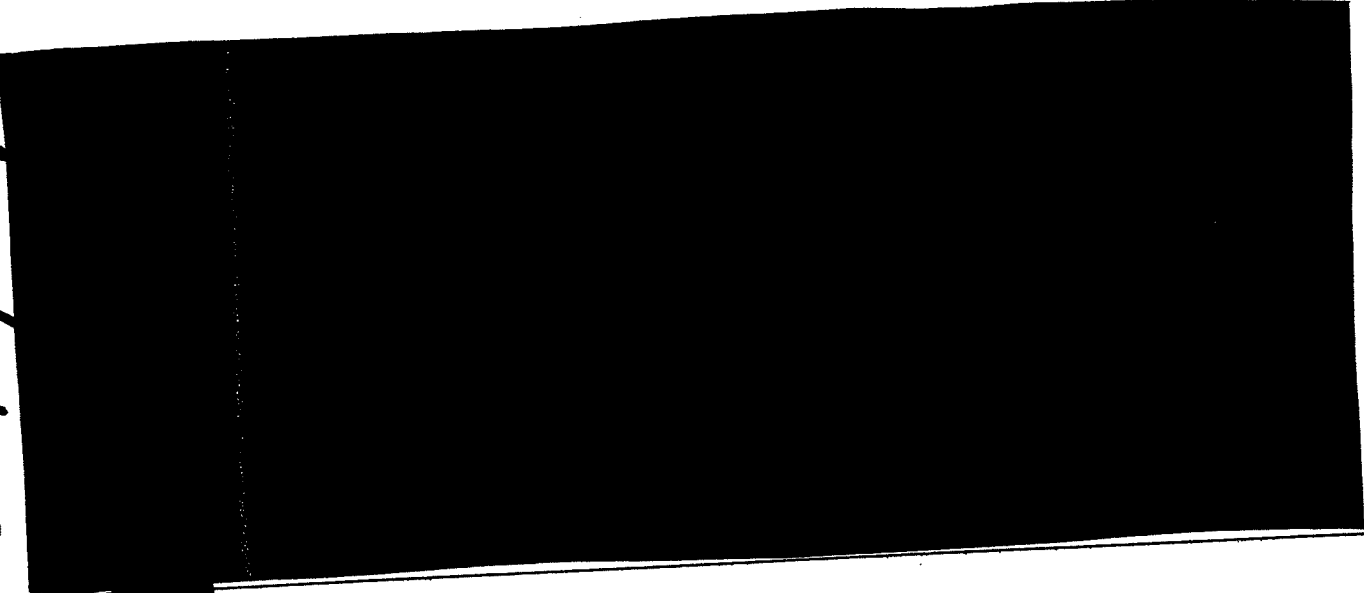
Kathy -

Understand you're out thru the 2nd (good - me too I hope!). Wanted just to check in as we do head into the holidays to see where you think things stand on your end re: FISA. Staff will be back at work here in early January to keep assessing options about how best to move forward. Think it will make sense to reengage with you and others from ODNI at that time to continue the discussion. Keep in touch in the meantime if you have any updates. Sen Reid is still very much considering the option of an extension of the PAA to allow additional time for thorough deliberation/negotiation on the bill. And can I also assume that there will at some appropriate point be a response to his letter request to expand doc access to other Senators?

Thanks and talk soon,

Marcel

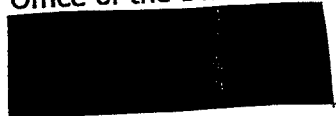
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b2/s6



From: [redacted]
Sent: Tuesday, March 04, 2008 12:48 PM
To: [redacted]@mail.house.gov
Cc: [redacted]@ssci.senate.gov; [redacted] John.Demers@usdoj.gov; "John Eisenberg"; Carl.Nichols@usdoj.gov; "Vito Potenza"; [redacted]@ssci.senate.gov; "Mary Derosa"; "Nick Rossi"; "Chris Donesa"; [redacted]@mail.house.gov; [redacted]@reid.senate.gov; [redacted]@mccconnell.senate.gov; [redacted]
Subject: RE: FISA, meeting tomorrow (Tuesday), 1 pm,

Wyndee: This would not reflect the attendance at last Thursday's session in the Majority Leader's office.

Kathleen Turner
 Director of Legislative Affairs
 Office of the Director of National Intelligence



-----"Parker, Wyndee" [redacted]@mail.house.gov> wrote: -----

To: [redacted]@ssci.senate.gov>
 From: "Parker, Wyndee" [redacted]@mail.house.gov>
 Date: 03/04/2008 12:20PM
 cc: [redacted] <John.Demers@usdoj.gov>, "John Eisenberg" <John.Eisenberg@usdoj.gov>, <Carl.Nichols@usdoj.gov>, "Vito Potenza" [redacted]@judiciary-dem.senate.gov>, "Nick Rossi" [redacted]@judiciary-rep.senate.gov>, "Donesa, Chris" [redacted]@mail.house.gov>, [redacted]@reid.senate.gov>, [redacted]@mccconnell.senate.gov>, [redacted]

Subject: RE: FISA, meeting tomorrow (Tuesday), 1 pm,

Kathleen,
 I am confused by your message. I understand that Senate Republican staff will attend the meeting and that it will therefore be bipartisan.
 Thanks, Wyndee

b2/b6

From: [REDACTED]
 Sent: Tuesday, March 04, 2008 10:48 AM
 To: [REDACTED]@ssci.senate.gov
 Cc: [REDACTED] John.Demers@usdoj.gov; John Eisenberg; Carl.Nichols@usdoj.gov; Vito Potenza;
 [REDACTED]@ssci.senate.gov; Mary Derosa; Nick Rossi; Parker, Wyndee; Donesa, Chris;
 [REDACTED]@reid.senate.gov; [REDACTED]@mccconnell.senate.gov; John Greer
 Subject: Re: FISA, meeting tomorrow (Tuesday), 1 pm,

Mike: We understand there are continuing disagreements on how to proceed forward and that this meeting is not bipartisan like last Thursday's meeting. We cannot be in the middle of disagreements between leadership on how to proceed. Thank you.

Kathleen Turner
 Director of Legislative Affairs
 Office of the Director of National Intelligence

-----"Davidson, M (Intelligence)" [REDACTED]@ssci.senate.gov> wrote: -----

To: "Ben Powell" [REDACTED] "Demers, John (NSD)" <John.Demers@usdoj.gov>,
 "Eisenberg, John" <John.Eisenberg@usdoj.gov>, <Carl.Nichols@usdoj.gov>,
 [REDACTED], "Potenza, Vito" [REDACTED]

From: "Davidson, M (Intelligence)" [REDACTED]@ssci.senate.gov>

Date: 03/03/2008 04:39PM

cc: "Livingston, J (Intelligence)" [REDACTED]@ssci.senate.gov>, "DeRosa, Mary (Judiciary-Dem)"
 [REDACTED]@judiciary-dem.senate.gov>, "Rossi, Nick (Judiciary-Rep)" [REDACTED]@judiciary-
 rep.senate.gov>, "Parker, Wyndee" [REDACTED]@mail.house.gov>,
 [REDACTED]@mail.house.gov>, "Apelbaum, Perry" [REDACTED]@mail.house.gov>, "Weich,
 Ron (Reid)" [REDACTED]@reid.senate.gov>

Subject: FISA, meeting tomorrow (Tuesday), 1 pm,

Ben, et al.:

This follows up on a message that Wyndee Parker has left for Ben.

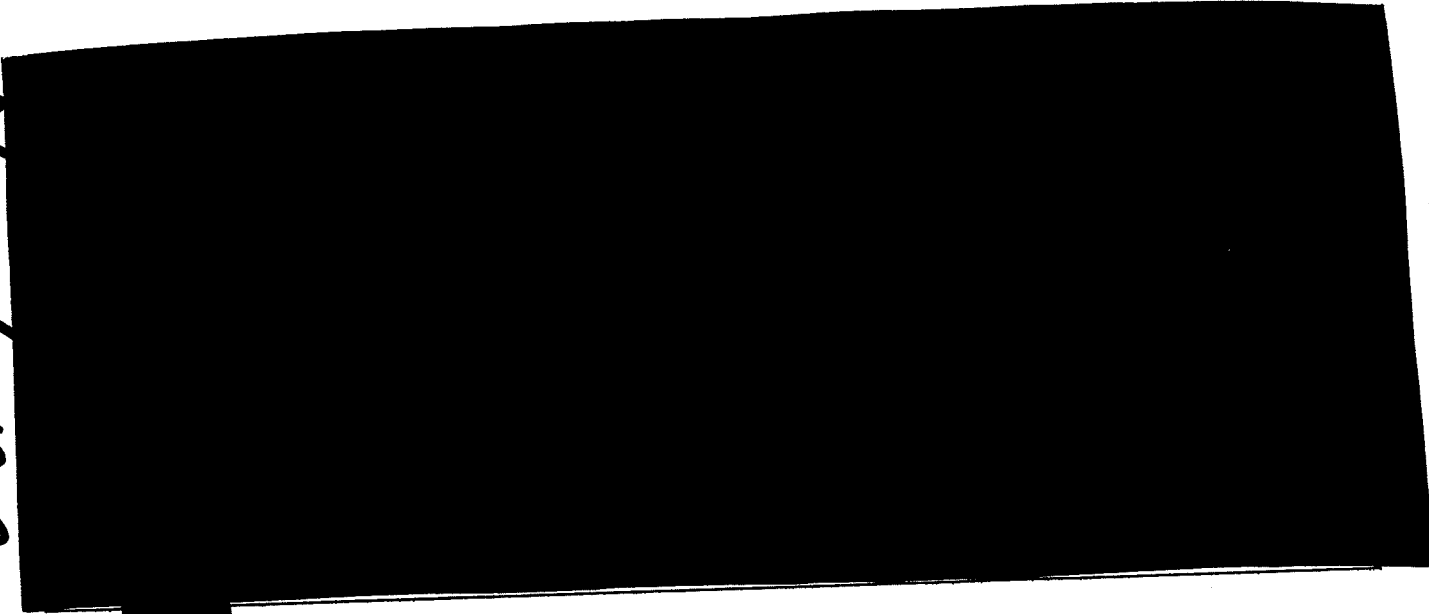
Invitations have been sent to House and Senate Democratic and Republican staff (Leaders' offices and Intelligence and Judiciary Committees) for a bipartisan, bicameral FISA meeting tomorrow (Tuesday), at 1 pm, in H 326, the Majority Whip's Office.

The purpose is to build on the bicameral, bipartisan Members meeting of last week with Ben, and to discuss specific matters that may be presented to the House this week.

Wyndee or I can describe further.

Mike

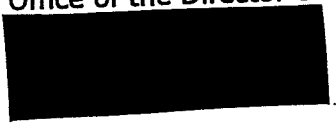
b2/b6 Out of Scope



From: [redacted]
Sent: Monday, April 07, 2008 10:53 AM
To: [redacted]@mcconnell.senate.gov
Subject: Re: Today's Mtg with Senator McConnell-One More Attendee

The DNI will also bring along the National Intelligence Officer for Military Issues, John Landry.

Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence

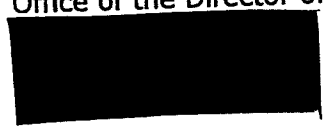


----- [redacted] wrote: -----

To: [redacted]@mcconnell.senate.gov
From: [redacted]
Date: 04/07/2008 09:12AM
Subject: Today's Mtg with Senator McConnell

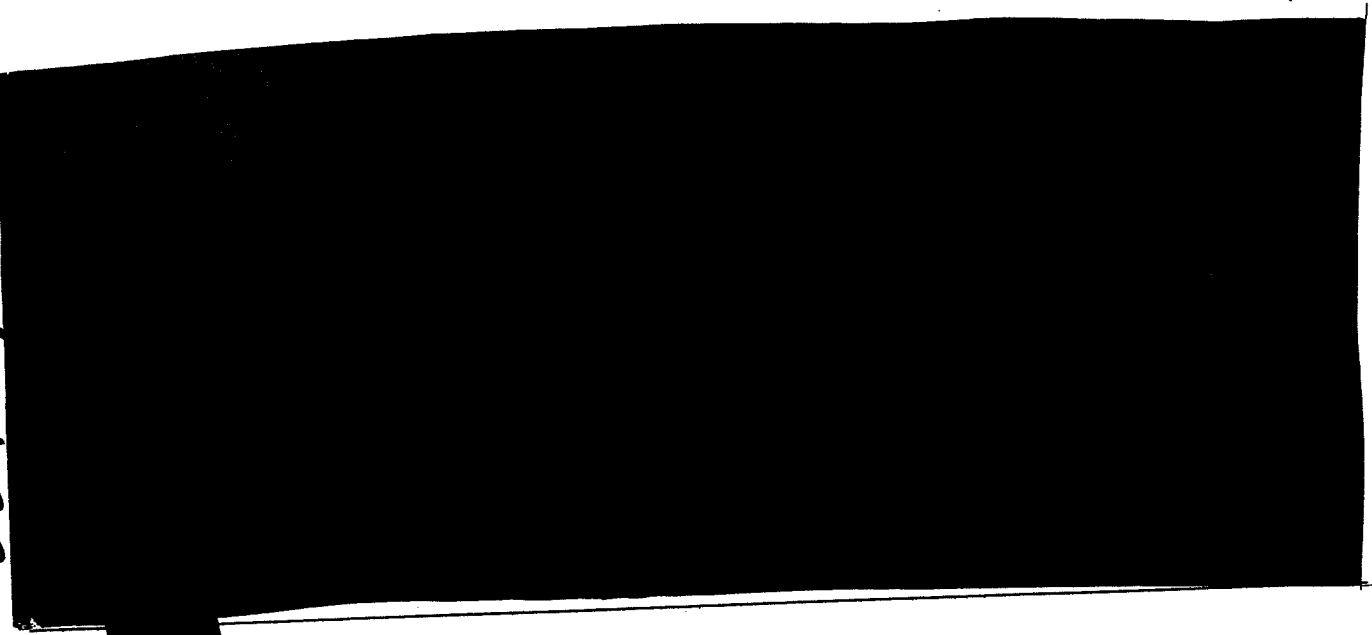
Hi Tom: I just wanted to confirm our session this afternoon at 3:30 pm in S-407 for the DNI to talk about our most recent National Intelligence Estimate Update on Iraq. The DNI will bring along the National Intelligence Officer for the Middle East, Alan Pino. Time permitting, the DNI may also raise FISA--a bit about the impact of the current state on private sector cooperation across a wide front with the Intelligence Community; and possibly cybersecurity initiative--the President's major new initiative in the FY09 budget--the DNI has been to all the Appropriations Subcommittee chairs with a role and we have had very positive feedback. Let me know if the Senator has any hot topics we should be prepared for.

We'll see you later today.
Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence



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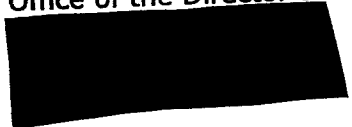
ba/bb



From: [redacted]
Sent: Tuesday, March 04, 2008 10:48 AM
To: [redacted]@ssci.senate.gov
Cc: [redacted] John.Demers@usdoj.gov; "John Eisenberg"; Carl.Nichols@usdoj.gov; "Vito Potenza"; [redacted]
 [redacted]@ssci.senate.gov; "Mary Derosa"; "Nick Rossi"; [redacted]@mail.house.gov; "Chris Donesa";
 [redacted]@mail.house.gov; [redacted]@reid.senate.gov; [redacted]@mccconnell.senate.gov; [redacted]
Subject: Re: FISA, meeting tomorrow (Tuesday), 1 pm,

Mike: We understand there are continuing disagreements on how to proceed forward and that this meeting is not bipartisan like last Thursday's meeting. We cannot be in the middle of disagreements between leadership on how to proceed. Thank you.

Kathleen Turner
 Director of Legislative Affairs
 Office of the Director of National Intelligence



-----"Davidson, M (Intelligence)" <[redacted]@ssci.senate.gov> wrote: -----

To: "Ben Powell" <[redacted]>, "Demers, John (NSD)" <John.Demers@usdoj.gov>, "Eisenberg, John" <John.Eisenberg@usdoj.gov>, <Carl.Nichols@usdoj.gov>, [redacted] "Potenza, Vito" <[redacted]>

From: "Davidson, M (Intelligence)" <[redacted]@ssci.senate.gov>
 Date: 03/03/2008 04:39PM
 cc: "Livingston, J (Intelligence)" <[redacted]@ssci.senate.gov>, "DeRosa, Mary (Judiciary-Dem)" <[redacted]@judiciary-dem.senate.gov>, "Rossi, Nick (Judiciary-Rep)" <[redacted]@judiciary-rep.senate.gov>, "Parker, Wyndee" <[redacted]@mail.house.gov>, [redacted]@mail.house.gov>, "Apelbaum, Perry" <[redacted]@mail.house.gov>, "Weich, Ron (Reid)" <[redacted]@reid.senate.gov>
 Subject: FISA, meeting tomorrow (Tuesday), 1 pm,

Ben, et al.:

This follows up on a message that Wyndee Parker has left for Ben.

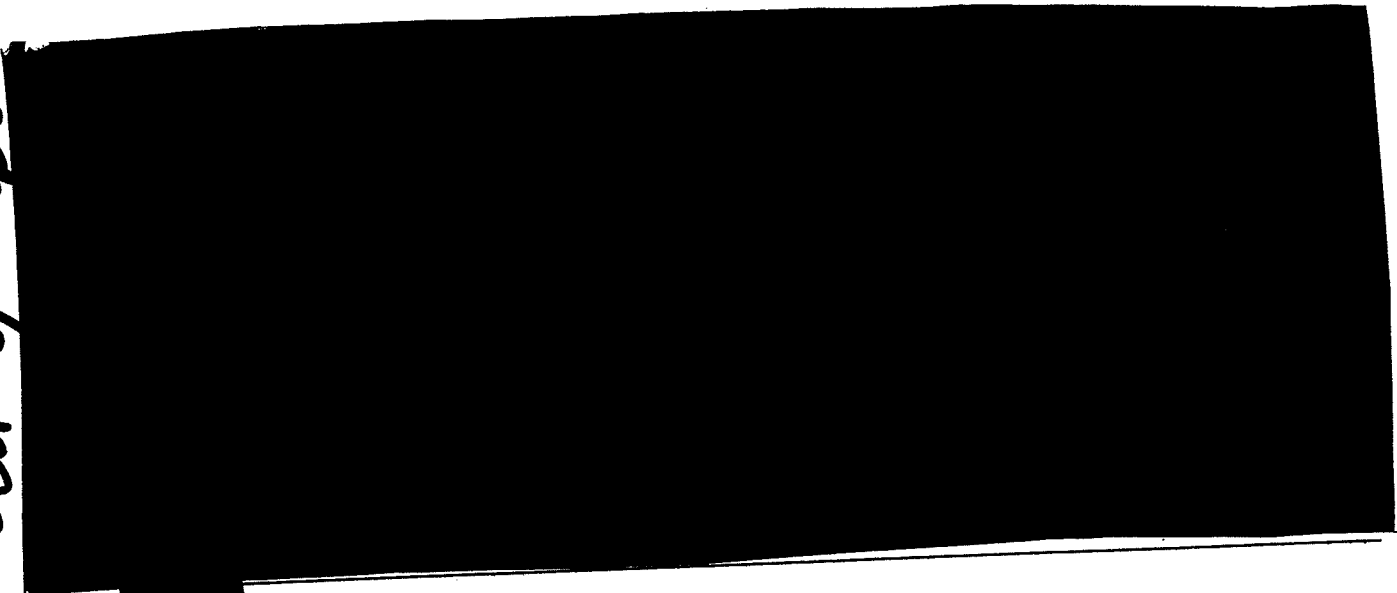
Invitations have been sent to House and Senate Democratic and Republican staff (Leaders' offices and Intelligence and Judiciary Committees) for a bipartisan, bicameral FISA meeting tomorrow (Tuesday), at 1 pm, in H 326, the Majority Whip's Office.

The purpose is to build on the bicameral, bipartisan Members meeting of last week with Ben, and to discuss specific matters that may be presented to the House this week.

Wyndee or I can describe further.

Mike

Out of Scope

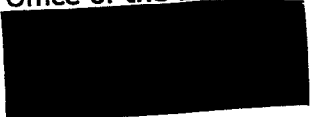


From: [Redacted]
Sent: Friday, February 08, 2008 2:34 PM
To: [Redacted]@lincoln.senate.gov
Cc: [Redacted]; "Benjamin Powell"
Subject: Follow-up to Senator Lincoln's Call with DNI Mike McConnell ref FISA and Immunity

ba/bc

Hello Todd: I left you a voice mail also; I want to try and set some time up for our counsel staff to talk with you on the phone or in a meeting (probably on Monday, Feb 11) to explain the importance of liability protection for private parties alleged to have assisted the government after 9/11. The Director of National Intelligence, Mike McConnell, called Senator Lincoln earlier today to talk about the Bill currently on the Senate floor and the criticality of the provisions to our intelligence capabilities. The Senator stated she had questions about immunity in particular and asked if we would reach out to you and discuss them so that you could further engage with the Senator. Todd, let me know what suits you. Many thanks.

Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence



Update

Out of Scope



From: [Redacted]
Sent: Tuesday, December 11, 2007 10:20 PM
To: "Marcel Lettre"
Subject: Re: Update

bd/bb

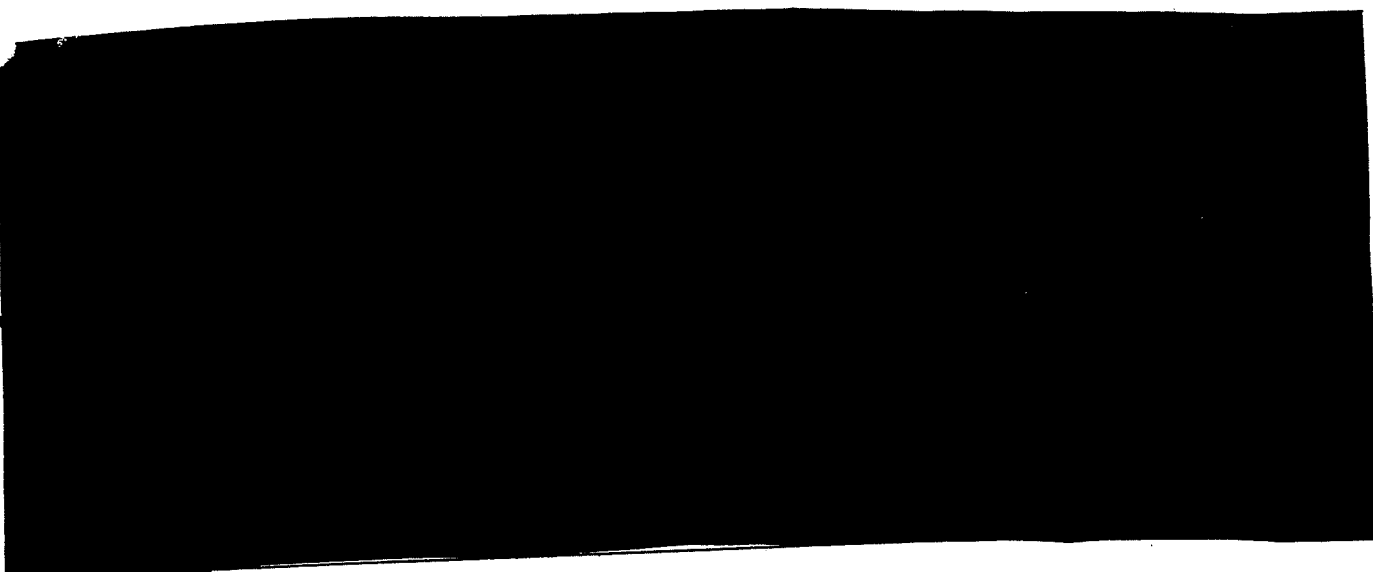
Thanks Marcel. I'll call you tomorrow.
Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence
[Redacted]

----- Original Message -----
From: "Lettre, Marcel (Reid)" [Redacted]@reid.senate.gov
Sent: 12/11/2007 08:41 PM EST
To: [Redacted]
Subject: Update

Kathy - the latest best guess is that we'd be looking, in coordination between the two leaders, at structuring a time agreement to bring fisa to the floor early next week under a process that would attempt to identify a specific but reasonable list of amendments to be considered over the course of 1-2 days on the floor. Our hope is that at least a couple of the issues being worked at the staff level will result in agreement among judiciary, intel, and exec branch, and that other issues would be addressed as part of the floor amendment process. Happy to chat further in more detail tomorrow, about this and also about any thoughts you have re: the all-members briefing thursday. Thanks.

Sent from my BlackBerry

Out of Scope



From: [redacted]
Sent: Friday, January 25, 2008 10:25 AM
To: "Marcel Lettre"
Subject: Re:

Marcel: Yes please have their offices call me and we can help in any way.

I am no parliamentary expert, so I am as confused as the next guy. I guess next up is the cloture vote Monday afternoon; does that look like to pass from your vantage?

Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence

bx/bl

-----"Lettre, Marcel (Reid)" <[redacted]@reid.senate.gov> wrote: -----

To: <[redacted]>
From: "Lettre, Marcel (Reid)" <[redacted]@reid.senate.gov>
Date: 01/25/2008 09:35AM
Subject:

Any thoughts on where we are on FISA right now?

Also, a couple Senators may be interested in taking you up on the offer of a briefing from DNI to help them understand some issues related to FISA – notably, Senators Casey, Webb, and Ben Nelson. Could I put their staffers in contact with you to discuss whether that is possible?

Thanks,

Marcel

Out of Suspect



To: "Jeremy Bash" <[redacted]@mail.house.gov>, "Chris Dones" <[redacted]@mail.house.gov>, "Wyndee Parker" <[redacted]@mail.house.gov>

From: [redacted]
Date: 05/30/2007 07:27AM

cc: [redacted], "Brett \ (NSD\) Gerry" <Brett.Gerry@usdoj.gov>, "John Potenza (work)" <[redacted]@usdoj.gov>, "Vito Eisenberg" <John.Eisenberg@usdoj.gov>, "Kenneth.wainstein@usdoj.gov" <kenneth.wainstein@usdoj.gov>, "Steve Bradbury" <Steve.Bradbury@usdoj.gov>
Subject: Fw: WP: Reality, Not Rhetoric, On FISA (Reyes Op-Ed)

ba/bb

Jeremy/Wyndee--

I was not aware that the DNI made this alleged statement: "He stated that our intelligence agencies must obtain a court order to monitor the communications of foreigners abroad. "

If you could let me know what this refers to, would appreciate it.

Also, if you have a legal theory under which a significant percentage of our current fisa orders are unnecessary under the current law, we certainly would appreciate understanding it.

Our understanding of the law is contained in the classified paper furnished to the committee in March 2006.

Thanks, Ben

----- Original Message -----

From: DNI Public Affairs [dnipao@dni.gov]
Sent: 05/30/2007 01:34 AM AST
To: DNI_NEWS_ALERT@LISTS.dni.gov
Subject: WP: Reality, Not Rhetoric, On FISA (Reyes Op-Ed)

Reality, Not Rhetoric, On FISA

By Silvestre Reyes - The Washington Post

Wednesday, May 30, 2007; A13

The congressional testimony this month by former deputy attorney general James Comey called into question the accuracy of everything I had heard before about the so-called Terrorist

Surveillance Program. According to Comey, in the spring of 2004 President Bush authorized a program of domestic surveillance even though his acting attorney general was so concerned about the surveillance that he could not in good faith "certify its legality."

That the program didn't comply with the Foreign Intelligence Surveillance Act (FISA) was not a shock. We have known that fact since the program's existence was disclosed in December 2005. What was shocking was the amount of dissent, even within the president's own Justice Department, about the perils of ignoring FISA.

FISA has been on the books since 1978 but has been updated and modernized numerous times. The law's purpose is to facilitate secret surveillance and searches on U.S. soil against spies, terrorists and other foreign powers.

A Congressional Research Service report last July found that Congress had made approximately 50 changes to FISA since its inception -- and nearly a dozen updates since Sept. 11, 2001. Whenever FISA has been shown to be inadequate to track the communications of terrorists, Congress has been ready to update the law.

In his May 21 op-ed, Mike McConnell, the director of national intelligence, tried to make the case for the administration's new proposal for rewriting FISA. But his complaints about the current system were inaccurate.

He stated that our intelligence agencies must obtain a court order to monitor the communications of foreigners abroad. That is not correct. Foreign-to-foreign communications, as a rule, do not require a court order.

One of McConnell's principal concerns relates to the time required to obtain a court order under FISA, but what he failed to mention is that the attorney general (or the deputy attorney general or an assistant attorney general) can grant oral approval for surveillance if that Justice Department official believes "an emergency situation exists" and that the facts will support a FISA court order.

All that is required to start emergency surveillance under the current law is a phone call from the National Security Agency or the FBI to one of those Justice Department officials.

Yet that is not the administration's practice. The administration's practice is to get multiple approvals and involve hordes of lawyers. Before we sweep away the FISA framework, Congress must review the administration's cumbersome, uncoordinated process that leads to delays in getting emergency FISA applications approved.

In fact, I believe it was the administration's cumbersome, uncoordinated process and not the statutory requirements that led the president to authorize an end-run around FISA.

Last week, I announced that the House Permanent Select Committee on Intelligence would hold hearings on this issue. These hearings will begin next month and will focus on the following important questions:

- What surveillance activities has President Bush authorized under the NSA surveillance program disclosed in December 2005? What was the legal basis for these activities, and how did those activities change since the inception of the program? What activities are occurring today?
- How does the current FISA system operate? Can this system be improved?
- Are current legal authorities adequate for tracking terrorist communications, or are changes to the law required?

· Do current and proposed legal authorities adequately protect the Fourth Amendment rights of Americans?

Certain hearings may have to occur in closed session, but a major hearing on legislative proposals -- featuring administration witnesses and outside experts -- will take place in open session. Whenever possible, changes to public laws should be debated in public.

Meanwhile, Congress should insist that the Bush administration streamline and modernize its bureaucratic system for handling emergency FISA applications. Thanks to advanced technology, my staff can reach me any time. There is no reason the FBI and the Justice Department can't use every tool at their disposal to speed the process of starting surveillance and searches. If the terrorists move at the speed of the Internet, so should we.

The writer, a Democrat from Texas, is chairman of the House Permanent Select Committee on Intelligence.

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Wed, 30 May 2007 01:35:15