

b2/b6

From: [REDACTED]
Sent: Tuesday, June 03, 2008 11:15 AM
To: [REDACTED]
Subject: Fw: EFF #12

Attachments: EAS07D29_xml.pdf; ARM07V70_xml.pdf; winmail1.dat; winmail2.dat; winmail3.dat



EAS07D29_xml.pdf (23 KB) ARM07V70_xml.pdf (21 KB) winmail1.dat (3 KB) winmail2.dat (131 KB) winmail3.dat (118 KB)

Chris:

After some discussion here, the preference is to have a larger (those who attended on Tuesday who have TS/SCI clearance) classified discussion tomorrow.

And begin the slimmed down, around a conference table discussions on Monday, continuing into Tuesday if necessary, so that we can advise committee and Senate leadership by the end of Tuesday how we will proceed if debate begins on Wednesday or later next week.

I'll send a follow up note with a suggestion about Friday issues, and how we might proceed on Monday.

Many thanks.

Mike

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

From: [REDACTED]
Sent: Thursday, November 29, 2007 9:47 AM
To: Davidson, M (Intelligence); Livingston, J (Intelligence)
Cc: [REDACTED]
Subject: FISA Meeting Tomorrow

Mike/Jack,

I just wanted to get an idea from you regarding attendance on your side for tomorrow's meeting. The reason I ask is that Mike had mentioned the

possibility that this would be a more focused effort with a slimmed down group. If that is in fact the case we would only bring the core group from the Administration. If it is going to be a broader discussion, we will need additional folks.

Thanks,
[REDACTED]

b2/b6

[Redacted]

From: "Davidson, M \ (Intelligence)" <[Redacted]@ssci.senate.gov>
To: [Redacted]
cc: "Ben Powell" <[Redacted]@ssci.senate.gov>, "Livingston, J \ (Intelligence)" <[Redacted]@ssci.senate.gov>, "Demers, John \ (NSD)" <John.Demers@usdoj.gov>, <john.eisenberg@usdoj.gov>, [Redacted], "Healey, C \ (Intelligence)" <[Redacted]@ssci.senate.gov>, "Rice, K \ (Intelligence)" <[Redacted]@ssci.senate.gov>, "Starzak, Alissa \ (Intelligence)" <[Redacted]@ssci.senate.gov>, "Olsen, Matthew \ (NSD)" <Matthew.Olsen@usdoj.gov>, [Redacted]

Date: Tuesday, December 04, 2007 01:02PM
Subject: RE: today's meeting

Sorry for not getting back sooner.

Yes, let's meet in SH-219, the hearing room.

Yesterday, I mentioned that we had done some drafting on applying to AUMFs the FISA declaration of war authority – enlarging the time from 15 to 30 days, and providing for reporting.

This is an idea that hadn't ripened into anything that Senator Rockefeller had considered, let alone approved.

With that caveat here is some initial thinking on the subject.

Mike

From: [Redacted]
Sent: Tuesday, December 04, 2007 8:28 AM
To: Davidson, M (Intelligence)
Cc: Ben Powell; Livingston, J (Intelligence); [Redacted]; Demers, John (NSD); john.eisenberg@usdoj.gov; [Redacted] Healey, C (Intelligence); Rice, K (Intelligence); Starzak, Alissa (Intelligence); Olsen, Matthew (NSD); [Redacted]
Subject: Re: today's meeting

Mike,

b2/b4

Just wanted to touch base with you regarding a follow up meeting today (Tuesday). After looking at everyone's calendars, does 2pm today work for you? Assume it will be in the same room.

Thanks,
[REDACTED]

Davidson, M (Intelligence) wrote:

We'll meet in SH-219. -----Original Message-----From: Ben Powell
[mailto:[REDACTED]] Sent: Monday, December 03, 2007 12:03 PMTo:
Davidson, M (Intelligence)Cc: Livingston, J (Intelligence);
[REDACTED]; [REDACTED]; Demers, John(NSD); john.eisenberg@usdoj.gov;
[REDACTED]; Healey, C (Intelligence);Rice, K (Intelligence); Starzak,
Alissa (Intelligence)Subject: Re: today's meeting up to you. we are
bringing a smaller group. [REDACTED] can give you the details. will still
probably be a very tight fit in your conference rooms. Davidson, M
(Intelligence) wrote:

Ben: Yes, we want very much to proceed today at 1. And I do
think it would be useful to slim down. On our end, I'd
like

to

begin with Rockefeller/Bond/Leahy/Specter representatives.
That, notsurprisingly, causes some angst here. There are
people who attend tothe interests of individual members of
the two committees who have devoted a great deal of effort to
these matters, and to whom thosmembers will look for advice
in assessing in what comes out of thisprocess. But after
several larger sessions, we need to give a smallerone a
try. At points in the discussion, I know there will be a
strong interest,particularly from the Judiciary Committee,
for one or several people tojoin us -- who may in fact be
designees on our staff, for particularmatters, but let's
start with a smaller group than last week. That said, when I
went into our system on Friday to make a roomreservation, the
available room today was our hearing room, which is

not

exactly a sitting-around-a-conference-table environment. I
may try toswitch with people who had reserved our conference
rooms, although withthe addition of Leahy/Specter
participants either of our SH-211conference rooms would
result in a tight fit. On your end, I leave it entirely to
your judgment. We have benefitedthroughout this process from
the participation of DNI/DOJ/NSAcolleagues. If meeting in
SH-219 helps to give you additional latitudein that regard,
that alone would be a good reason to meet there. Mike

-----Original Message-----From: Ben Powell
[mailto:[REDACTED]] Sent: Monday, December 03, 2007 9:23
AMTo: Davidson, M (Intelligence); Livingston, J

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(Intelligence); [redacted]; [redacted]; Demers, John (NSD);
john.eisenberg@usdoj.gov; [redacted] Subject: today's
meeting Mike -- Just wanted to check that you want to go
ahead with a meeting today at 1pm. We will bring a smaller
group if you want to hold a slimmed down meeting today.
Assume we will do it in SSCI spaces? Ben

>

Attachments:

ARM07V70_xml.pdf

b2/b6

[REDACTED]

From: "Rice, K (Intelligence)" <[REDACTED]@SSCI.senate.gov>
To: [REDACTED]

Date: Friday, April 04, 2008 07:50PM
Subject: Re: On the return of H.R. 3773 to the Senate

And rescheduling to friday when we are all there won't do it? Oh, well. Have a good weekend. Talk to you monday.

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

From: [REDACTED]
To: Rice, K (Intelligence)
Sent: Fri Apr 04 19:48:46 2008
Subject: Re: On the return of H.R. 3773 to the Senate

I know. We are just listening. We would be hard pressed to say we need it, yet did not show.

[REDACTED]
ODNI/OGC
[REDACTED]

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

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

From: "Rice, K (Intelligence)" [REDACTED]@SSCI.senate.gov]
Sent: 04/04/2008 07:11 PM AST
To: [REDACTED]
Subject: Re: On the return of H.R. 3773 to the Senate

You should have taken Monday off. Rocky is irrelevant to getting a bill in the Senate. This bill will only change if at all in favor of the dems so you need repub support to pass it. Which means you need bond, not rocky.

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

From: [REDACTED]
To: Rice, K (Intelligence)
Sent: Fri Apr 04 19:07:13 2008
Subject: Re: On the return of H.R. 3773 to the Senate

b2/b4

I take one day off . . .

[REDACTED]
ODNI/OGC
[REDACTED]

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

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

From: "Rice, K (Intelligence)" [REDACTED]@SSCI.senate.gov]
Sent: 04/04/2008 07:02 PM AST
To: [REDACTED]
Subject: Re: On the return of H.R. 3773 to the Senate

Not a good idea.

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

From: [REDACTED]
To: Rice, K (Intelligence)
Sent: Fri Apr 04 18:50:46 2008
Subject: Fw: On the return of H.R. 3773 to the Senate

Fyi

[REDACTED]
ODNI/OGC
[REDACTED]

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

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

From: [REDACTED]
Sent: 04/04/2008 06:46 PM EDT
To: [REDACTED]@ssci.senate.gov
Cc: "Benjamin Powell" [REDACTED]; "Louis Tucker"
[REDACTED]@ssci.senate.gov>; [REDACTED]
Subject: RE: On the return of H.R. 3773 to the Senate

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[Redacted]

Jack: We are planning to attend on Monday at 2 pm; we told Mike over a week ago that we would and the Chairman raised it with the DNI in a phone call earlier this week. It is not a negotiation session. Have a good weekend Jack.

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

[Redacted]

-----"Livingston, J (Intelligence)" <[Redacted]@ssci.senate.gov> wrote: -----

To: "Davidson, M (Intelligence)" <[Redacted]@ssci.senate.gov>, "Ben Powell" <[Redacted]>, "Demers, John (NSD)" <John.Demers@usdoj.gov>, "Eisenberg, John" <John.Eisenberg@usdoj.gov>, <Carl.Nichols@usdoj.gov>, "Potenza, Vito" <[Redacted]>, "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: "Livingston, J (Intelligence)" <[Redacted]@ssci.senate.gov>

Date: 04/04/2008 01:16PM

cc: "Healey, C (Intelligence)" <[Redacted]@ssci.senate.gov>, "Starzak, Alissa (Intelligence)" <[Redacted]@ssci.senate.gov>

Subject: RE: On the return of H.R. 3773 to the Senate

Mike,

Consistent with our earlier discussion this morning, I just spoke with Louis and I need to keep Monday free to help out with the Minority Report to the Committee's Phase II reports. Louis has authorized me to participate in bipartisan negotiations on Friday, April 11. My schedule is pretty open that day, so if you want to go with the 2:00 meeting time, or perhaps something earlier, that's fine with me. Thanks.

Jack

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[REDACTED]

From: Davidson, M (Intelligence)
Sent: Friday, March 28, 2008 4:54 PM
To: 'Ben Powell'; 'Demers, John (NSD)'; 'Eisenberg, John'; 'Carl.Nichols@usdoj.gov'; 'Potenza, Vito'; [REDACTED]; [REDACTED]; [REDACTED]; 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: RE: On the return of H.R. 3773 to the Senate

After consulting with Ben about a date and time, let's plan to meet on Monday, April 7, at 2, for a full afternoon, bipartisan Senate-side discussion (Intelligence and Judiciary) with ODNI/DOJ/NSA to help set us on a path that enables the branches to reach agreement on a good law.

I've reserved both our hearing room, SH-219, and a conference room in SH-211, depending on the number of participants. Let's assume for now that we'll meet in 219.

Looking forward to seeing all.

Mike

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; [REDACTED]; [REDACTED]; [REDACTED]; 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 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

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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 section at a person reasonably believe to be located outside the United States." If

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[REDACTED]

there is any need to have anything that achieves the purpose of a carve-out (to confess, we're doubters about that in light of the "notwithstanding any" preface to section 702 (old 703)), new 702(c)(2) does that by making clear that nothing in the definition of e.s. produces the consequence to be avoided, namely, a requirement of proceeding under Title I. And because, that can be achieved without a change in the definition of e.s., there is no need for any of the anti-carve-out provisions in the bill. We've placed a substantially identical provision in section 703 (old 704).

A key aspect of the attached is a solution, which we believe works, to the timing of judicial review debate.

Whatever the practical or theoretical significance of the prior approval/pre-approval debate may have been before enactment of the PAA when every authorization under the PAA would be a first-time authorization, the fact is that a large part of what occurs in the future will be an annual cycle of reauthorizations.

702(i)(5), on page 11, is designed to encourage orderliness in that annual process by providing, to the extent practicable, a schedule of synchronized handoffs from one year's authorizations to the next, while making it absolutely clear in 5(E) that the AG/DNI are free to submit certifications for additional authorizations at other times during the year as necessary.

Building on this, as a matter of both administrative and judicial efficiency, the AG/DNI should be able to submit, in advance of the expiration of an annual authorization (or set of them) the certification and procedures for the new authorization year. That, as a practical matter, will allow for approval by the beginning of the new authorization year. But the attached makes perfectly clear that at any time, without characterizing it as an emergency, the AG/DNI may provide for immediate action.

There is a goal or expectation, but not a mandate, that accompanies this. Approval by the beginning of a new authorization year (subject to the AG/DNI's immediate implementation power) serves valuable interests, none of which involves any solicitude toward foreign targets. It will mean that directives which are issued come with the strength, that may be important someday to a doubtful carrier, that the U.S. person protections (i.e., the completeness of certifications and adequacy of targeting and minimization procedures) have been approved. It will also increase the opportunity to be able (note, not mandated, but be able) to make corrections before collection begins. The same goal, when possible, exists for new authorizations.

But to underscore the point again, the attached is written to give the AG/DNI the full authority to begin when needed, and to continue until directed otherwise by the Court of

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Review.

One other topic – guidelines. You'll see that we propose, in 702(f) on pages 4-5 a general provision for guidelines, applicable to all the limitations in 702(b), without any required detail, the existence of which the AG/DNI must certify, but which are submitted to committees here, not to the FISC for review.

These are highlights. There are other items, all of which we should discuss.

Chris and Alissa are here next week; I'll be away. We'll reverse that during the second week of the recess. Please don't hesitate to begin an exchange of thoughts with whomever may be here. Let's definitely plan to sit down together as early as possible during the first week back.

And a Happy Easter and start of spring to all.

Mike

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[Redacted]

From: "Healey, C \ (Intelligence\)" <[Redacted]@ssci.senate.gov>
To: <brett.gerry@usdoj.gov>
cc: [Redacted], "Roland, Sarah E" <Sarah.E.Roland@usdoj.gov>

Date: Wednesday, August 29, 2007 01:05PM
Subject: FW: FISA implementation

Brett -

Sarah is out this week and I am trying to arrange a briefing on FISA implementation for mid-week next week.

I started out asking for it (in early August) to take place with NSA, DOJ, and ODNI on Tuesday Sept. 2nd and this has evolved into a NSA briefing and demo on September 7th. I would still like to have a briefing here at the Hart before Friday with DOJ and ODNI (see below).

If you could be in touch with [Redacted] of ODNI OGC on this for the time being while Sarah is away, I would appreciate it.

Thanks,

Chris

From: [Redacted]
Sent: Wednesday, August 29, 2007 12:51 PM
To: Healey, C (Intelligence)
Cc: Roland, Sarah E; [Redacted]; Davidson, M (Intelligence); Livingston, J (Intelligence); Rice, K (Intelligence)
Subject: Re: FISA implementation

Chris,

Tuesday may be difficult, but let me check with the those here at DNI and I will get back to you.

Thanks,
[Redacted]

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[REDACTED]

Healey, C (Intelligence) wrote:

Sarah and [REDACTED] -

As you recall, earlier this month I asked for a staff briefing on the new act's implementation for Tuesday, September 4th. NSA would like us to go to Ft. Meade for a briefing and demo and we are working to set this up for Friday, September 7th.

I see an additional set of issues relating to the legal and regulatory issues involved with implementation, and we would like to hear from ODNI and Justice in a separate briefing here at the Hart building -- on Tuesday afternoon, if possible, with DOJ NSD and ODNI general counsel and privacy office people.

Please let me know what works for you.

Thanks,

Chris

Christine Healey

Senate Select Committee on Intelligence

[REDACTED]

[REDACTED] [@ssci.senate.gov](mailto:[REDACTED]@ssci.senate.gov)

b2/b6

[Redacted]

From: "Healey, C \ (Intelligence)" <[Redacted]@ssci.senate.gov>
To: [Redacted]
cc: "Roland, Sarah E" <Sarah.E.Roland@usdoj.gov>, [Redacted]
[Redacted], "Davidson, M \ (Intelligence)"
<[Redacted]@ssci.senate.gov>, "Livingston, J \ (Intelligence)"
<[Redacted]@ssci.senate.gov>, "Rice, K \ (Intelligence)"
<[Redacted]@ssci.senate.gov>

Date: Wednesday, August 29, 2007 12:55PM
Subject: RE: FISA implementation

[Redacted] - Thanks. Sarah's out of office message says that she is out until Tuesday. I will contact her PDAAG Brian B. and ask him to coordinate with you. Chris

From: [Redacted]
Sent: Wednesday, August 29, 2007 12:51 PM
To: Healey, C (Intelligence)
Cc: Roland, Sarah E; [Redacted]; Davidson, M (Intelligence); Livingston, J (Intelligence); Rice, K (Intelligence)
Subject: Re: FISA implementation

Chris,

Tuesday may be difficult, but let me check with the those here at DNI and I will get back to you.

Thanks,
[Redacted]

Healey, C (Intelligence) wrote:

Sarah and [Redacted] -

As you recall, earlier this month I asked for a staff briefing on the new act's implementation for Tuesday, September 4th. NSA would like us to go to Ft. Meade for a briefing and demo and we are working to set this up for Friday, September 7th.

I see an additional set of issues relating to the legal and regulatory issues involved with implementation, and we would like to hear from ODNI and Justice in a separate briefing here at the Hart building - on Tuesday afternoon,

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if possible, with DOJ NSD and ODNI general counsel and privacy office people.

Please let me know what works for you.

Thanks,

Chris

Christine Healey

Senate Select Committee on Intelligence



 [@ssci.senate.gov](mailto: [redacted]@ssci.senate.gov)

b2/b4

From: "Livingston, J (Intelligence)" <[REDACTED]@ssci.senate.gov>
To: "Davidson, M (Intelligence)" <[REDACTED]@ssci.senate.gov>, "Ben Powell"
[REDACTED], "Demers, John (NSD)" <John.Demers@usdoj.gov>,
[REDACTED], "Eisenberg, John"
<John.Eisenberg@usdoj.gov>, <Carl.Nichols@usdoj.gov>, "Potenza, Vito"
[REDACTED], "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>
cc: "Healey, C (Intelligence)" <[REDACTED]@ssci.senate.gov>, "Starzak, Alissa
(Intelligence)" <[REDACTED]@ssci.senate.gov>, <[REDACTED]@mail.house.gov>,
"Tucker, L (Intelligence)" <[REDACTED]@ssci.senate.gov>

Date: Tuesday, April 15, 2008 06:09PM
Subject: RE: FISA, Monday, April 21, 1 pm

Wyndee,

We understand that you would like to meet to see if we can reach a bicameral solution on the FISA legislation. I think the most productive use of our time on Monday will be to figure out what modest changes can be made to the Senate bill, since it appears to have the most support in Congress (a supermajority in the Senate and apparent near-majority in the House). We look forward to your thoughts. Thanks.

Jack

From: Davidson, M (Intelligence)
Sent: Tuesday, April 15, 2008 4:16 PM
To: "Ben Powell"; Demers, John (NSD); [REDACTED] Eisenberg, John; Carl.Nichols@usdoj.gov; Potenza, Vito;
[REDACTED] 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); [REDACTED]@mail.house.gov
Subject: FISA, Monday, April 21, 1 pm

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

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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

b2/b6

[Redacted]

From: "Rice, K (Intelligence)" <[Redacted]@SSCI.senate.gov>
To: [Redacted]

Date: Friday, April 18, 2008 01:25PM
Subject: [WARNING : A/V UNSCANNABLE] FW: Technical FISA edits -- Tuesday, April 22, 10 am, SD-668 (Senate Legislative Counsel)

[Redacted]

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

From: Starzak, Alissa (Intelligence)
Sent: Friday, April 18, 2008 1:14 PM
To: [Redacted]
Cc: Davidson, M (Intelligence); [Redacted]; John Demers; [Redacted]; Easley, Stephanie (Legis Counsel); Henderson, John (Legis Counsel); [Redacted]@mail.house.gov; DeRosa, Mary (Judiciary-Dem); Espinel, Zulima (Judiciary-Dem); Solomon, Matthew (Judiciary-Dem); [Redacted]@mail.house.gov; [Redacted]@mail.house.gov; Rossi, Nick (Judiciary-Rep); [Redacted]@mail.house.gov; [Redacted]@mail.house.gov; Livingston, J (Intelligence); Healey, C (Intelligence); Rice, K (Intelligence); [Redacted]
Subject: RE: Technical FISA edits -- Tuesday, April 22, 10 am, SD-668 (Senate Legislative Counsel)

Great. Let's plan on meeting at Senate Legislative Counsel's offices (Dirksen-668) at 10 am on Wednesday.

Also, Stephanie put together a draft of the redline I circulated in leg counsel format. It's attached. When we actually sit down, this draft should be easier to work with than the redline I circulated.

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

From: [Redacted]
Sent: Friday, April 18, 2008 12:57 PM
To: Starzak, Alissa (Intelligence)
Cc: Davidson, M (Intelligence); [Redacted]; John Demers; [Redacted]; Easley, Stephanie (Legis Counsel); Henderson, John (Legis Counsel); [Redacted]@mail.house.gov; DeRosa, Mary (Judiciary-Dem); Espinel, Zulima (Judiciary-Dem); Solomon, Matthew (Judiciary-Dem); [Redacted]@mail.house.gov; [Redacted]@mail.house.gov; Rossi, Nick (Judiciary-Rep); [Redacted]@mail.house.gov; [Redacted]@mail.house.gov; Livingston, J (Intelligence); Healey, C (Intelligence); Rice, K (Intelligence); [Redacted]
Subject: RE: Technical FISA edits -- Tuesday, April 22, 10 am, SD-668 (Senate Legislative Counsel)

9/4/2008 2:18 PM

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[REDACTED]

Alissa,

I am available and I checked with NSA [REDACTED] and [REDACTED] (cc'ed above) who can attend as well.

[REDACTED]
ODNI/CGC
[REDACTED]

This message and any attachments may contain confidential or privileged information and are only for the use of the intended recipient of this message. If you are not the intended recipient, please notify the sender by return email, and delete or destroy this and all copies of this message and all attachments.

-----"Starzak, Alissa (Intelligence)" <[REDACTED]@ssci.senate.gov> wrote:

To: [REDACTED], "Davidson, M (Intelligence)" <[REDACTED]@ssci.senate.gov>
From: "Starzak, Alissa (Intelligence)" <[REDACTED]@ssci.senate.gov>
Date: 04/18/2008 12:28PM
CC: [REDACTED], "John Demers" <john.demers@usdoj.gov>, [REDACTED], "Easley, Stephanie (Legis Counsel)" <[REDACTED]@slc.senate.gov>, [REDACTED], "Henderson, John (Legis Counsel)" <[REDACTED]@slc.senate.gov>, [REDACTED]@mail.house.gov>, [REDACTED], "DeRosa, Mary (Judiciary-Dem)" <[REDACTED]@Judiciary-dem.senate.gov>, [REDACTED], "Espinel, Zulima (Judiciary-Dem)" <[REDACTED]@Judiciary-dem.senate.gov>, [REDACTED], "Solomon, Matthew (Judiciary-Dem)" <[REDACTED]@Judiciary-dem.senate.gov>, [REDACTED]@mail.house.gov>, [REDACTED]@mail.house.gov>, [REDACTED], "Rosen, Nick (Judiciary-Rep)" <[REDACTED]@judiciary-rep.senate.gov>, [REDACTED]@mail.house.gov>, [REDACTED]@mail.house.gov>, [REDACTED], "Livingston, J (Intelligence)" <[REDACTED]@ssci.senate.gov>, [REDACTED], "Healey, C (Intelligence)" <[REDACTED]@ssci.senate.gov>, "Rice, K (Intelligence)" <[REDACTED]@ssci.senate.gov>
Subject: RE: Technical FISA edits -- Tuesday, April 22, 10 am, SD-668 (Senate Legislative Counsel)

What about Wednesday morning at 10 am? Would that work for everyone?

-----Original Message-----
From: [REDACTED]
Sent: Friday, April 18, 2008 9:17 AM
To: Davidson, M (Intelligence)

b2/b6

Cc: [redacted]; John Demers;
 [redacted]; Easley, Stephanie (Legis Counsel); Henderson,
 John (Legis Counsel); [redacted]@mail.house.gov; DeRosa, Mary
 (Judiciary-Dem); Espinel, Zulima (Judiciary-Dem); Solomon, Matthew
 (Judiciary-Dem); [redacted]@mail.house.gov;
 [redacted]@mail.house.gov; Rossi, Nick (Judiciary-Rep);
 [redacted]@mail.house.gov; [redacted]@mail.house.gov;
 Livingston, J (Intelligence); Healey, C (Intelligence); Rice, K
 (Intelligence); Starzak, Alissa (Intelligence)
 Subject: Re: Technical FISA edits -- Tuesday, April 22, 10 am, SD-668
 (Senate Legislative Counsel)

Mike - I appologize for this, but some unavoidable conflicts have
 arisen Tuesday morning. Can we push it back? or do Wednesday is free.
 Lets talk when I am down there this morning.

[redacted]
 ODNI/OGC
 [redacted]

This message and any attachments may contain confidential or
 privileged information and are only for the use of the intended
 recipient of this message. If you are not the intended recipient,
 please notify the sender by return email, and delete or destroy this
 and all copies of this message and all attachments.

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

To: [redacted], "Ben Powell" [redacted],
 "Demers, John (NSD)" <John.Demers@usdoj.gov>,
 [redacted], "Easley, Stephanie (Legis Counsel)"
 <[redacted]@slc.senate.gov>, "Henderson, John (Legis Counsel)"
 <[redacted]@slc.senate.gov>, <[redacted]@mail.house.gov>,
 "DeRosa, Mary (Judiciary-Dem)" <[redacted]@Judiciary-dem.senate.gov>,
 "Espinel, Zulima (Judiciary-Dem)"
 <[redacted]@Judiciary-dem.senate.gov>,
 "Solomon, Matthew (Judiciary-Dem)"
 <[redacted]@Judiciary-dem.senate.gov>,
 [redacted]@mail.house.gov>, <[redacted]@mail.house.gov>,
 "Rossi, Nick (Judiciary-Rep)"
 <[redacted]@judiciary-rep.senate.gov>, <[redacted]@mail.house.gov>,
 [redacted]@mail.house.gov>,
 From: "Davidson, M (Intelligence)" <[redacted]@ssci.senate.gov>
 Date: 04/17/2008 06:54PM
 cc: "Livingston, J (Intelligence)" <[redacted]@ssci.senate.gov>,
 "Healey, C (Intelligence)" <[redacted]@ssci.senate.gov>, "Rice, K
 (Intelligence)"
 <[redacted]@ssci.senate.gov>, "Starzak, Alissa (Intelligence)"

9/4/2008 2:18 PM

b2/b6

[REDACTED]
<[REDACTED]@ssci.senate.gov>
Subject: Technical FISA edits -- Tuesday, April 22, 10 am, SD-668
(Senate Legislative Counsel)

[REDACTED], Alissa, and I had a chance to talk this morning about the best time to meet on FISA technical edits. [REDACTED] suggested that Tuesday (April

22) would provide him and other ODNI/DOJ/NSA participants time to review the document Alissa circulated and be prepared to discuss technical drafting questions. For those who will be joining the discussion (fewer, I'm sure, than the entire list above), let's meet at 10 a.m. that day.

Senate Legislative Counsel, Dirksen 668, will provide a conference table.

(Lou and Wyndee or Eric: could you pass this on to any interested Republican colleagues at HPSCI and House Judiciary.)

Mike

Attachments:

EAS08133_xml.pdf

b2/b6

[REDACTED]

From: "Starzak, Alissa (Intelligence)" <[REDACTED]@ssci.senate.gov>
To: "Demers, John" <John.Demers@usdoj.gov>, [REDACTED]
cc: "Davidson, M (Intelligence)" <[REDACTED]@ssci.senate.gov>, [REDACTED], [REDACTED],
"Easley, Stephanie (Legis Counsel)" <[REDACTED]@slc.senate.gov>,
"Henderson, John (Legis Counsel)" <[REDACTED]@slc.senate.gov>,
[REDACTED]@mail.house.gov>, "DeRosa, Mary (Judiciary-Dem)"
[REDACTED]@Judiciary-dem.senate.gov>, "Espinel, Zulima (Judiciary-Dem)"
[REDACTED]@Judiciary-dem.senate.gov>, "Solomon, Matthew
(Judiciary-Dem)" <[REDACTED]@Judiciary-dem.senate.gov>,
[REDACTED]@mail.house.gov>, <[REDACTED]@mail.house.gov>,
"Rossi, Nick (Judiciary-Rep)" <[REDACTED]@judiciary-rep.senate.gov>,
[REDACTED]@mail.house.gov>, <[REDACTED]@mail.house.gov>, [REDACTED]
[REDACTED], "Livingston, J (Intelligence)"
[REDACTED]@ssci.senate.gov>, "Healey, C (Intelligence)"
[REDACTED]@ssci.senate.gov>, "Rice, K (Intelligence)" <[REDACTED]@ssci.senate.gov>,
[REDACTED]

Date: Friday, April 18, 2008 01:47PM
Subject: RE: Technical FISA edits -- Tuesday, April 22, 10 am, SD-668 (Senate Legislative Counsel)

9 am is fine for me, and I think it's actually better for some of our House colleagues. Does that pose a problem for anyone?

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

From: Demers, John [mailto:John.Demers@usdoj.gov]
Sent: Friday, April 18, 2008 1:42 PM
To: Starzak, Alissa (Intelligence); [REDACTED]; [REDACTED]; Easley, Stephanie (Legis Counsel); Henderson, John (Legis Counsel); [REDACTED]@mail.house.gov; DeRosa, Mary (Judiciary-Dem); Espinel, Zulima (Judiciary-Dem); Solomon, Matthew (Judiciary-Dem); [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; Rossi, Nick (Judiciary-Rep); [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; [REDACTED]; Livingston, J (Intelligence); Healey, C (Intelligence); Rice, K (Intelligence); [REDACTED]
Subject: RE: Technical FISA edits -- Tuesday, April 22, 10 am, SD-668 (Senate Legislative Counsel)

Alissa and all,

Can we do this earlier (at 9 am)? It will be difficult for DOJ folks to start at 10 and be able to be back in time for later appointments.

b2/b6

Thanks,
John

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

From: Starzak, Alissa (Intelligence)

[mailto: [REDACTED]@ssci.senate.gov]

Sent: Friday, April 18, 2008 1:14 PM

To: [REDACTED]

Cc: Davidson, M (Intelligence); [REDACTED]; Demers, John; [REDACTED]; Easley, Stephanie (Legis Counsel); Henderson, John (Legis Counsel); [REDACTED]@mail.house.gov; DeRosa, Mary (Judiciary-Dem); Espinel, Zulima (Judiciary-Dem); Solomon, Matthew (Judiciary-Dem); [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; Rossi, Nick

(Judiciary-Rep); Lou.DeBaca@mail.house.gov;

[REDACTED]@mail.house.gov;

[REDACTED]; Livingston, J (Intelligence); Healey, C (Intelligence);

Rice, K (Intelligence); [REDACTED]

Subject: RE: Technical FISA edits -- Tuesday, April 22, 10 am, SD-668 (Senate Legislative Counsel)

Great. Let's plan on meeting at Senate Legislative Counsel's offices (Dirksen-668) at 10 am on Wednesday.

Also, Stephanie put together a draft of the redline I circulated in leg counsel format. It's attached. When we actually sit down, this draft should be easier to work with than the redline I circulated.

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

From: [REDACTED]

Sent: Friday, April 18, 2008 12:57 PM

To: Starzak, Alissa (Intelligence)

Cc: Davidson, M (Intelligence); [REDACTED]; John Demers; [REDACTED]; Easley, Stephanie (Legis Counsel); Henderson, John (Legis Counsel); [REDACTED]@mail.house.gov; DeRosa, Mary (Judiciary-Dem); Espinel, Zulima (Judiciary-Dem); Solomon, Matthew (Judiciary-Dem); [REDACTED]@mail.house.gov;

[REDACTED]@mail.house.gov; Rossi, Nick (Judiciary-Rep);

[REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; [REDACTED];

Livingston, J (Intelligence); Healey, C (Intelligence); Rice, K (Intelligence); [REDACTED]

Subject: RE: Technical FISA edits -- Tuesday, April 22, 10 am, SD-668 (Senate Legislative Counsel)

Alissa,

I am available and I checked with NSA ([REDACTED] cc'ed above) who can attend as well.

[REDACTED]

9/4/2008 2:18 PM

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ODNI/OGC

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-----"Starzak, Alissa (Intelligence)" <[REDACTED]@ssci.senate.gov>
wrote:

To: [REDACTED], "Davidson, M (Intelligence)" <[REDACTED]@ssci.senate.gov>
From: "Starzak, Alissa (Intelligence)" <[REDACTED]@ssci.senate.gov>
Date: 04/18/2008 12:28PM
cc: [REDACTED], "John Demers" <john.demers@usdoj.gov>, [REDACTED], "Easley, Stephanie (Legis Counsel)" <[REDACTED]@slc.senate.gov>, "Henderson, John (Legis Counsel)" <[REDACTED]@slc.senate.gov>, <[REDACTED]@mail.house.gov>, "DeRosa, Mary (Judiciary-Dem)" <[REDACTED]@Judiciary-dem.senate.gov>, "Espinel, Zulima (Judiciary-Dem)" <[REDACTED]@Judiciary-dem.senate.gov>, "Solomon, Matthew (Judiciary-Dem)" <[REDACTED]@Judiciary-dem.senate.gov>, <[REDACTED]@mail.house.gov>, <[REDACTED]@mail.house.gov>, "Rossi, Nick (Judiciary-Rep)" <[REDACTED]@judiciary-rep.senate.gov>, <[REDACTED]@mail.house.gov>, <[REDACTED]@mail.house.gov>, "Livingston, J (Intelligence)" <[REDACTED]@ssci.senate.gov>, "Healey, C (Intelligence)" <[REDACTED]@ssci.senate.gov>, "Rice, K (Intelligence)" <[REDACTED]@ssci.senate.gov>
Subject: RE: Technical FISA edits -- Tuesday, April 22, 10 am, SD-668 (Senate Legislative Counsel)

What about Wednesday morning at 10 am? Would that work for everyone?

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

From: [REDACTED]
Sent: Friday, April 18, 2008 9:17 AM
To: Davidson, M (Intelligence)

b2/b6

[Redacted]

Cc: [Redacted]; John Demers;
 George.Bobb@usdoj.gov;
 Easley, Stephanie (Legis Counsel); Henderson, John (Legis Counsel);
 [Redacted]@mail.house.gov; DeRosa, Mary (Judiciary-Dem); Espinel,
 Zulima
 (Judiciary-Dem); Solomon, Matthew (Judiciary-Dem);
 [Redacted]@mail.house.gov; [Redacted]@mail.house.gov; Rossi,
 Nick
 (Judiciary-Rep); [Redacted]@mail.house.gov;
 [Redacted]@mail.house.gov;
 [Redacted]; Livingston, J (Intelligence); Healey, C (Intelligence);
 Rice, K
 (Intelligence); Starzak, Alissa (Intelligence)
 Subject: Re: Technical FISA edits -- Tuesday, April 22, 10 am, SD-668
 (Senate Legislative Counsel)

Mike - I appologize for this, but some unavoidable conflicts have
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 Tuesday morning. Can we push it back? or do Wednesday is free. Lets
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 when I am down there this morning.

[Redacted]
 ODNI/OGC
 [Redacted]

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 by
 return email, and delete or destroy this and all copies of this
 message
 and
 all attachments.

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

To: [Redacted], "Ben Powell" [Redacted],
 "Demers,
 John (NSD)" <John.Demers@usdoj.gov>, [Redacted]
 [Redacted], "Easley, Stephanie (Legis Counsel)"
 <[Redacted]@slc.senate.gov>, "Henderson, John (Legis Counsel)"
 <[Redacted]@slc.senate.gov>, <[Redacted]@mail.house.gov>,
 "DeRosa,
 Mary (Judiciary-Dem)" <[Redacted]@Judiciary-dem.senate.gov>,
 "Espinel,

b2/b6

[REDACTED]

Zulima (Judiciary-Dem) " <[REDACTED]@Judiciary-dem.senate.gov>,
"Solomon, Matthew (Judiciary-Dem) "
<[REDACTED]@Judiciary-dem.senate.gov>,
<[REDACTED]@mail.house.gov>,
<[REDACTED]@mail.house.gov>, "Rossi, Nick (Judiciary-Rep) "
<[REDACTED]@judiciary-rep.senate.gov>, <[REDACTED]@mail.house.gov>,
<[REDACTED]@mail.house.gov>, [REDACTED]@ssci.senate.gov>
From: "Davidson, M (Intelligence)" <[REDACTED]@ssci.senate.gov>
Date: 04/17/2008 06:54PM
cc: "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>
Subject: Technical FISA edits -- Tuesday, April 22, 10 am, SD-668
(Senate
Legislative Counsel)

[REDACTED], Alissa, and I had a chance to talk this morning about the best time to meet on FISA technical edits. [REDACTED] suggested that Tuesday (April 22) would provide him and other ODNI/DOJ/NSA participants time to review the document Alissa circulated and be prepared to discuss technical drafting questions. For those who will be joining the discussion (fewer, I'm sure, than the entire list above), let's meet at 10 a.m. that day. Senate Legislative Counsel, Dirksen 668, will provide a conference table. (Lou and Wyndee or Eric: could you pass this on to any interested Republican colleagues at HPSCI and House Judiciary.)

Mike

b2/b6



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

Date: Monday, May 19, 2008 06:26PM
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>, "Starzak, Alissa (Intelligence)" <[redacted]@ssci.senate.gov>, <[redacted]@mail.house.gov>, <[redacted]@mail.house.gov>, <[redacted]@mail.house.gov>, <[redacted]@mail.house.gov>, <[redacted]@mail.house.gov>, <[redacted]@mail.house.gov>, <Peter_Owen@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 Peter Owen 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.

b2/b6



Hope you can join.

Mike

b2/b6

[REDACTED]

From: [REDACTED]

To: "Mike Davidson" <[REDACTED]@ssci.senate.gov>, "Jack Livingston"
<[REDACTED]@ssci.senate.gov>, "Christine Healey"
<[REDACTED]@ssci.senate.gov>, "K Rice" <[REDACTED]@ssci.senate.gov>, "Alissa
Starzak" <[REDACTED]@ssci.senate.gov>, "John Demers"
<John.Demers@usdoj.gov>, [REDACTED]

cc: "Ken Wainstein" <kenneth.wainstein@usdoj.gov>, [REDACTED]

bcc: [REDACTED]

Date: Saturday, February 02, 2008 01:30PM

Subject: Wmd amendment

Mike/Jack--Saw the comments on the wmd amendment and will take a look. While everyone on this email realizes it, I hope others do not lose sight of the fact that the surveillance impacted by the amendment can only be carried out with individual approval of the fisa court and must be renewed to continue. As we all know, that is a rigorous process to get applications approved and renewed. I have seen some get confused that this amendment is about warrantless activity that is being permitted and confused with the foreign targeting activity.

b2/b6

From: [REDACTED]
To: "L Tucker" <[REDACTED]@SSCI.Senate.Gov>
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]
bcc: [REDACTED]

Date: Friday, June 06, 2008 04:04PM
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" <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



Attachments:

SSCI Lawyer take on Dem 6-5-08 FISA Offer.doc

SUMMARY OF 6/5/08 DEM COUNTER-OFFER

TITLE I

- AGREE TO DROP COMPLIANCE REVIEWS
- AGREE TO DROP LANGUAGE REQUIRING REPORTS ON U.S. PERSONS TO REFERENCE "NUMBER AND NATURE" – KEEP "ACCOUNTING." DEMOCRAT TEXT DOES NOT KEEP THE SENATE FORMULATION OF "ACCOUNTING OF THE NUMBER," BUT INSTEAD USES ONLY THE VAGUE TERM "ACCOUNTING," WHICH IS ESSENTIALLY NO BETTER THAN THE TERM "NATURE." [SEE PP. 30, LINE 23 AND PAGE 31, LINE 1]
- ACCEPT LANGUAGE ELIMINATING REQUIREMENT THAT THE AG/DNI SUBMIT TO THE FISC AN EXPLANATION RE: WHY EXIGENT CIRCUMSTANCES EXIST (BUT RETAIN REQUIREMENT THAT AG/DNI NOTIFY FISC THAT THEY ARE INVOKING EXIGENT CIRCUMSTANCES) [SEE P. 10, LINES 7-16]
- DELETE SENATE'S CLARIFICATION OF ELECTRONIC SURVEILLANCE (WHICH DEMOCRATS INCORRECTLY BELIEVE UNDERMINES EXCLUSIVITY LANGUAGE) AND RE-INSERT RULE OF CONSTRUCTION. THESE RULES OF CONSTRUCTION, WHEN COMBINED WITH OTHER TEXT, OPERATE TO CREATE INCONSISTENCIES AND ANOMALIES WITHIN THE FISA STATUTE. [SEE P. 2, LINE 13; P. 6, LINE 9; AND P. 37, LINE 9]
- INSERTS A REQUIREMENT THAT A CERTIFICATION MUST BE SUBMITTED TO THE FISC PRIOR TO INITIATION OF ACQUISITION UNDER EXIGENT CIRCUMSTANCES. THIS FORMULATION COULD RESULT IN AN OPERATIONAL GAP IN COVERAGE IN CIRCUMSTANCES WHERE TIME DOES NOT PERMIT THE PREPARATION OF A CERTIFICATION. [SEE P. 6, LINES 3-5]
- CHANGE SUNSET TO DEC 2011 (NOW 3.5 YEARS AWAY)
- REQUIRE NSA TO PROMULGATE REVERSE TARGETING GUIDELINES AND SUBMIT GUIDELINES TO COURT AND CONGRESS. COURT AND CONGRESS DO NOT APPROVE GUIDELINES, MERELY SEE THEM. THESE GUIDELINES ARE REDUNDANT WITH THE CURRENT STATUTORY REQUIREMENT FOR TARGETING PROCEDURES. A REASONABLE COMPROMISE TO DEMOCRAT CONCERNS WOULD BE TO REQUIRE THAT TARGETING PROCEDURE PROVISIONS CONTAIN AN EXPLICIT REFERENCE TO GUIDELINES TO ENSURE COMPLIANCE WITH THE LIMITATIONS IN SUBSECTION (B), E.G.,

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REVERSE TARGETING, ETC. WE SHOULD ALSO DELETE THE DEMOCRAT "TRAINING" AND "SUBMISSION OF GUIDELINES" REQUIREMENTS AS UNNECESSARY MICROMANAGEMENT. [SEE P. 7, LINE 17 THROUGH P. 8, LINE 19]

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- DELETES A USEFUL "CONSTRUCTION" SUBPARAGRAPH THAT PROVIDES THE GOVERNMENT WITH NEEDED FLEXIBILITY IN SETTING THESE ACQUISITION SCHEDULES. [SEE P. 27, LINE 2]
- REQUIRE FISC TO RULE ON APPLICATIONS WITHIN 30 DAYS, UNLESS THE COURT FINDS THERE IS GOOD CAUSE TO EXTEND (AOC LANGUAGE) [SEE P. 27, LINE 7-12]
- AGENCY REVIEWS SHOULD BE PROVIDED TO JUDICIARY COMMITTEES IN ADDITION TO INTELLIGENCE COMMITTEES. [SEE P. 28, LINES 23-25; P. 30, LINES 8-11; P. 32, LINES 16-19]
- DELETED TEXT IN BOTH OF THE "SECTION 2.5" TARGETING US PERSONS OVERSEAS PROVISIONS THAT WOULD CLEARLY PRESERVE THE GOVERNMENT'S ABILITY TO USE FISA, THE CRIMINAL WIRETAP STATUTES, OR OTHER STATUTORY MEANS TO COLLECT INFORMATION DURING A US PERSON'S RETURN TO THE US. [SEE P. 33, LINE 20 AND P. 47, AFTER LINE 25]
- INSERTS A "SAVINGS PROVISION" THAT IS ONLY APPLICABLE TO FISA AND DOES NOT REFERENCE THE CRIMINAL WIRETAP STATUTE, OR OTHER STATUTORY AUTHORITY. [SEE P. 61, LINES 3-7]4
- REPLACES SENATE VERSION OF WMD DEFINITIONS WITH PRIOR DEMOCRAT VERSION THAT IS INCONSISTENT WITH THE EXISTING TITLE 18 CRIMINAL DEFINITION. [SEE P. 79 - 81]

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TITLE II

- RECOMBINES RETROACTIVE AND PROSPECTIVE LIABILITY PROTECTION INTO ONE SECTION VICE THE TWO SECTIONS IN LATEST REPUBLICAN DRAFT AND ORIGINAL SENATE BILL. [SEE P. 85, LINE 10 THROUGH P. 90, LINE 5]
- KEEP CASES IN DISTRICT COURTS VICE FISC IN LATEST REPUBLICAN PROPOSAL. [SEE P. 85, LINES 18-19]. CONGRESS WOULD NEED TO ADD

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A REFERENCE TO CIRCUIT COURT OF APPEALS OR JUST FEDERAL COURTS GIVEN CURRENT POSTURE OF THE CASES.

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- DELETES THE SUBPARAGRAPH FROM THE RETROACTIVE CIVIL LIABILITY PROTECTION THAT WOULD ALLOW AG TO CERTIFY THAT THE ELECTRONIC COMMUNICATION SERVICE PROVIDER DID NOT PROVIDE THE ALLEGED ASSISTANCE. [SEE P. 87, AFTER LINE 11].
- REDUCE STANDARD OF REVIEW FROM "PREPONDERANCE OF EVIDENCE" TO "SUBSTANTIAL EVIDENCE" BUT DOES NOT INCLUDE THE "ABUSE OF DISCRETION" OR "ARBITRARY AND CAPRICIOUS" STANDARDS FROM EARLIER REPUBLICAN DRAFTS. [SEE P. 87, LINE 16].
- EXPANDS THE SCOPE OF "SUPPLEMENTAL MATERIALS" BY REINSERTING "AND ANY OTHER MATERIALS SUBMITTED BY THE ATTORNEY GENERAL" [SEE P. 88, LINES 1-2]
- ALL INSTANCES IN WHICH LAWSUITS ARE DISMISSED SHOULD BE REPORTED TO CONGRESS [SEE P. 91, LINE 15 THROUGH P. 92, LINE 9]

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TITLE III

- AGREE TO DROP COMMISSION
- REQUIRE INSPECTORS GENERAL TO EXAMINE LEGAL REVIEWS IN ADDITION TO CONDUCTING FACTUAL REVIEWS [SEE P. 94, LINES 10-13] THIS IS AN EXPANSION OF REPUBLICAN COUNTERPROSAL TEXT THAT THE DEMOCRATS DELETE ON PAGE 95, AFTER LINE 21. THE DELETED TEXT CAN BE FOUND ON P. 41, LINE 19 OF THE REPUBLICAN COUNTERPROPOSAL, WHICH ONLY PROVIDED THAT THE IG WOULD HAVE ACCESS TO THE LEGAL OPINIONS.

b2/b6

[REDACTED]

Hi Brett.

Happy to talk at any point. [REDACTED]'s my direct line. Give me a time when you'll be calling, b/c I'll want to include Eric Greenwald, who knows the technical issues better than I do.

Ben, I never heard back from you about our suggestion to convene a Tech team.

Jeremy Bosh, HPSCI

New cell: [REDACTED]

From: Gerry, Brett [mailto:Brett.Gerry@usdoj.gov]
Sent: Monday, May 19, 2008 9:31 AM
To: Bosh, Jeremy
Cc: [REDACTED]
Subject: Technical issues

Jeremy-

Was wondering if Ben and I could talk with you today to walk through a few technical issues raised by the draft circulated late last week, preferably with Carl Nichols. We can be available for a call basically any time today.

Best,
Brett

b2/b6

[REDACTED]

From: [REDACTED]
To: "D (Intelligence) Grannis" [REDACTED]@ssci.senate.gov>, "Ken Wainstein"
<kenneth.wainstein@usdoj.gov>
cc: [REDACTED]
bcc: "Carl Nichols", [REDACTED]

Date: Monday, December 17, 2007 09:54PM
Subject: Re: TSP memos

b2/b6

[REDACTED]

Thanks david. Very helpful.

----- 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
Senate Select Committee on Intelligence
[REDACTED]
[REDACTED]@ssci.senate.gov

b2/b6

[REDACTED]

From: [REDACTED]
To: "Christine Healey" [REDACTED]@ssci.senate.gov>, "Mike Davidson"
[REDACTED]@ssci.senate.gov>, "Jack Livingston"
[REDACTED]@ssci.senate.gov>, "K Rice" [REDACTED]@ssci.senate.gov>
cc: "Brett Gerry" <Brett.Gerry@usdoj.gov>
bcc: [REDACTED]

Date: Friday, September 28, 2007 10:22PM
Subject: Fisa discussions

Chris-- thanks for the note. just saw this as brett sent to me. The email address below is missing the second "a" (email address is [REDACTED])

Right now I have another appointment from 9-11am on tuesday, but will see on Monday if I can change it or we can do an alternative time.

I will see you at offsite on sunday if you are going to make it.

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

From: Healey, C (Intelligence) [REDACTED]@ssci.senate.gov>
To: [REDACTED]; Gerry, Brett (OLP)
Cc: Davidson, M (Intelligence) [REDACTED]@ssci.senate.gov>; Livingston, J (Intelligence)
[REDACTED]@ssci.senate.gov>; Rice, K (Intelligence) [REDACTED]@ssci.senate.gov>
Sent: Fri Sep 28 18:56:44 2007
Subject: FISA discussions

Ben and Brett -

Mike, Jack, Kathleen and I have been doing a lot of talking about FISA legislation and wondered if we might get you to join our conversation on Tuesday morning. Is there any chance we could get on your calendars for Tuesday morning at 10 am in the SSCI spaces?

Given the late hour, and the changing of the guard at OCA, I am writing to you directly to see if this is in the realm of the possible.

Thanks,

Chris

b2/b6

[REDACTED]

Christine Healey
Senate Select Committee on Intelligence

[REDACTED]

[REDACTED]@ssci.senate.gov <mailto:[REDACTED]@ssci.senate.gov>

b2/b6

Page 1 of 3



From: [REDACTED]
Sent: Wednesday, March 05, 2008 2:56 PM
To: [REDACTED]@ssci.senate.gov
Subject: Fw: CQ: Democrats Weigh Options on Surveillance Bill as Talks Continue

Melvin: What do you think the Chairman is referring to in the highlighted quote below? Thanks for any insight.

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



Democrats Weigh Options on Surveillance Bill as Talks Continue

By Tim Starks, CQ Staff

House Democrats do not plan to bring electronic surveillance legislation to the floor this week, but are weighing their options.

Lawmakers are still divided over whether to grant retroactive legal immunity to telecommunications companies alleged to have assisted in the Bush administration's warrantless surveillance program.

House Majority Leader Steny H. Hoyer said Wednesday the idea of breaking the electronic surveillance renewal law into two parts, so the less controversial portion can be considered by the House while talks continue on immunity for telecommunications companies, is under consideration.

Senate legislation (HR 3773) overhauling the Foreign Intelligence Surveillance Act (PL 95-511) is made up of two major titles, or sections. The first would deal with how the administration conducts surveillance of foreign targets who may be communicating with people in the United States, and the second would deal with immunity.

"Taking up Title I with some other things included is an option," Hoyer said.

But the Maryland Democrat wouldn't say if this strategy is likely to be used by House leaders. "It's one option. I'm not saying I'm leaning towards it.

"I'm trying to create consensus to move forward," and if that goal can be furthered by letting the House vote on one portion of the renewal legislation while the tougher part is negotiated, he would consider it, he said.

Hoyer said meetings with Senate Democrats on the bill "have been positive," although he said there have been no breakthroughs on the immunity issue.

He also said the bill would not come to the House floor this week. A decision on going forward next week will be made late this week or early next week, he said.

The House-passed bill takes a different approach to the question of how surveillance would be conducted than does the Senate-passed bill. It would give the secret FISA court authority to issue so-called "basket" warrants for a large number of foreign targets at once who might be communicating with people in the United States. The Senate bill would authorize warrantless surveillance of foreign targets who might be communicating with people in the United States, but the FISA court would be involved in the approval of the procedures for conducting such surveillance.

The House legislation would not grant retroactive immunity.

Senate Intelligence Chairman John D. Rockefeller IV, D-W.Va., said Tuesday the idea of breaking the bill in two "would never get anywhere in the Senate." He said Republicans won't go along with it. He said the White House continues to boycott the meetings, so it's hard to get a sense of whether anything Democrats like will win White House approval. He said he believed Republicans wanted FISA as a political issue more than they wanted to resolve it.

If Congress wants to act soon, lawmakers would have to do something before their next recess begins March 15.

Republicans continue to insist that the Senate-passed bill is the only viable compromise legislation, and therefore House-Senate negotiations are unnecessary. "The White House gave up a lot to get us where we are," said Michigan Rep. Peter Hoekstra, the top Republican on the House Intelligence Committee.

House Minority Leader John A. Boehner, R-Ohio, said he is convinced it is only a matter of time before House Democrats give up on their efforts to block immunity for telecommunications companies.

"We'll win this, no ifs, ands or buts," he said. "The only question is when they cry 'uncle.'"

He said he is convinced Republican efforts to paint the Democrats as a danger to national security are succeeding in building pressure on the House Democrats.

Democrats met through the day Tuesday but did not make any pertinent progress, aides said.

Staff for Pennsylvania Sen. Arlen Specter, the top Republican on the Senate Judiciary Committee, were the only Republicans present at an early meeting. Specter said he sent aides, despite the Republican boycott of the meetings, because it was his "duty."

Rockefeller said he was optimistic about getting something done, but added, "That's easy for me

to say, because we passed the bill so easily and over there it's very, very difficult."

He said after meeting with at least one House Democrat leader Tuesday "there was some suggestion that we don't rush it immediately."

Rockefeller said he had "made some concessions on Title I" but Title II was still an issue for House Democrats.

House Democrats aired their views on a FISA overhaul at a caucus meeting later Tuesday. Caucus Vice Chairman John B. Larsen, D-Conn, said after the meeting, "There was no decision on FISA, but it was an excellent conversation."

b2/b6

[REDACTED]

From: [REDACTED]
To: "Jack Livingston" [REDACTED]@ssci.senate.gov>, "Brett Gerry" <Brett.Gerry@usdoj.gov>
cc: "John Eisenberg" <John.Eisenberg@usdoj.gov>, [REDACTED] "K Rice" [REDACTED]@ssci.senate.gov>, [REDACTED] >, "Vito Potenza (work)" [REDACTED], "John Demers" <John.Demers@usdoj.gov>, "Carl Nichols" <Carl.Nichols@usdoj.gov>, "Ken Wainstein" <kenneth.wainstein@usdoj.gov>

Date: Friday, October 12, 2007 08:19PM
Subject: Re: Timeline

Thanks Jack. And thanks for all your patience and help.

----- Original Message -----
From: "Livingston, J (Intelligence)" [REDACTED].senate.gov]
Sent: 10/12/2007 08:17 PM AST
To: Gerry, Brett (OLP) <Brett.Gerry@usdoj.gov>; [REDACTED], Rice, K
Cc: Eisenberg, John <John.Eisenberg@usdoj.gov>; [REDACTED] (Intelligence)" [REDACTED]@ssci.senate.gov>; [REDACTED]; Demers, John (NSD) <John.Demers@usdoj.gov>; Nichols, Carl (CIV) <Carl.Nichols@usdoj.gov>; Wainstein, Kenneth (NSD) <Kenneth.Wainstein@usdoj.gov>
Subject: Timeline

We finished our discussion with the Chairman's staff about an hour ago. Chris Healey will come in tomorrow to get the modifications to the leg counsel. I imagine that we'll have a draft sometime tomorrow afternoon. I need to clear that text with Louis and Senator Bond. At that point we should be able to get you a copy (maybe even earlier) so you can start ripping it apart. We're hoping that we (all SSCI lawyers) can get together with your team on Sunday to address any final concerns. Andy Johnson wants to provide it to members and their liaison first thing on Monday morning. Amendments will be due probably by COB Tuesday or maybe Wednesday morning.

Thanks for all your help in this process. Your assistance has made this into a much better product. It's not a great bill, but it's better than I thought it would be.

ba/bc

[REDACTED]

From: [REDACTED]
To: "Jack Livingston" [REDACTED]@ssci.senate.gov
cc: [REDACTED], "John Demers" <John.Demers@usdoj.gov>

Date: Thursday, June 12, 2008 11:35AM
Subject: Re: FW: FISA Response

will take a look, thanks Jack.
-----"Livingston, J (Intelligence)" [REDACTED]@ssci.senate.gov wrote: -----

To: "Demers, John" <John.Demers@usdoj.gov>, [REDACTED]
From: "Livingston, J (Intelligence)" [REDACTED]@ssci.senate.gov
Date: 06/12/2008 11:19AM
Subject: FW: FISA Response

I just sent this response to Jeremy. Call me if you have any substantive disagreements with the points we've made or the solutions we've proposed. Thanks.

Jack

From: Livingston, J (Intelligence)
Sent: Thursday, June 12, 2008 11:17 AM
To: 'Bash, Jeremy'
Cc: Tucker, L (Intelligence); Sixkiller, Mariah
Subject: FISA Response

Jeremy,

Thanks for the response. Just to clarify, we don't consider these to be "underbrush" items, because many of them will likely be member issues for our side if you and I can't reach resolution. I wanted to see if you and I could achieve options to clear away some of these issues if possible to demonstrate that there were fewer member issues than the number our caucus see in your counter-proposal. I called them secondary originally, because, in our opinion, many of them appear to be staff-driven items (from the Senate side) that keep getting inserted into Democratic counterproposals.

Of the eleven items discussed, it appears so far that we have consensus on items 7 (accounting of the number), 8 (only with respect to the "Savings" provision) and 9.a. (WMD lone wolf and for or on behalf of a foreign power). Here is my response to the remaining issues (page and line cites are to the PDF version of your latest counterproposal, unless otherwise noted):

b2/b4

- [REDACTED]
- Section 702(c)(1)(A) – Certification Required for Acquisition.** Our concern was that the insertion of the phrase "until such time as certification is submitted pursuant to subsection (g)" [at page 6, lines 3-5] could have the unintended consequence of not allowing collection in exigent circumstances until a certification is actually submitted. It was my impression that neither you nor Eric intended for that result to occur. However, your most recent "fix" appears to have the same unintended consequence. Your fix would cause the first paragraph of the "Conduct of Acquisition" subsection to read as follows: "(1) In general.—An acquisition authorized under subsection (a) *may be conducted only in accordance with—(A) the certification made by the Attorney General and the Director of National Intelligence pursuant to subsection (g); and (B) the targeting and minimization procedures required by subsections (d) and (e).*" The problem with this formulation is that it deletes "a *determination under paragraph (1)(B) of such subsection.*" That means that you can only conduct an acquisition *when a certification is made pursuant to subsection (g).* Under subsection (g) there are two ways of making a certification: (1) in routine cases by submitting it to the FISA court; and (2) in exigent cases, by submitting it to the FISA court no later than 7 days after the AG and DNI make a determination to authorize the acquisition. So, even though subsection (g)(1)(B) would authorize the AG and DNI to authorize an acquisition and seek immediate collection, Section 702(c)(1)(A) would require that the acquisition be delayed until the certification is actually filed with the FISA court (sometime within 7 days after the determination). We don't want to create the possibility for such an operational gap. We can solve this problem in one of two ways: (1) we can go with a paragraph that reads as follows: "(1) In general.—An acquisition authorized under subsection (a) may be conducted only in accordance with—(A) the certification made by the Attorney General and the Director of National Intelligence pursuant to subsection (g) or a determination under paragraph (1)(B) of such subsection; and (B) the targeting and minimization procedures required by subsections (d) and (e)."; or (2) we can go with a paragraph that reads as follows: "(1) In general.—An acquisition authorized under subsection (a) may be conducted only in accordance with—(A) the certification or determination made by the Attorney General and the Director of National Intelligence pursuant to subsection (g); and (B) the targeting and minimization procedures required by subsections (d) and (e)." Of these two, I prefer the second because, in my opinion, it reads more cleanly. Our members see your last language as walking away from our agreement on pre-post court; I don't think that is what you are trying to do though. If not, I trust you would view the above options as agreeable 'fix' options. This is definitely a big issue for our members.
 - Section 702(c)(2)—Rule of Construction.** I concur that this is likely a member issue. Let me just highlight why we feel the "clarification" or "carve out" of the electronic surveillance definition is preferable to the "rule of construction" approach. To date, I have heard two main objections to the "clarification/carve out" approach: (1) the clarification approach has a limiting effect on the exclusive means section; and (2) the clarification approach could have unspecified unintended consequences. In my opinion, these objections have no merit. First, the "clarification" approach has absolutely no effect on the exclusive means section, because our language explicitly spells out that the "clarification" does not apply to the use of "electronic surveillance" in the exclusive means section [". . . electronic surveillance (as defined in section 101(f), regardless of the limitation of section 701)]. Second, while it is hard to respond to unspecified "unintended consequences," I'm assuming that such concerns would apply to electronic surveillance or acquisition activities related to U.S. persons in the United States. The "carve out" is a very narrow clarification that electronic surveillance does not include the targeting of persons reasonably believed to be located outside the United States. Given the numerous limitations and procedures in the underlying bill, this clarification only applies to non-U.S. persons located overseas. There are other reasons to favor the "clarification" approach over the "construction" approach. Placing this "carve out" language in various "construction" provisions throughout Title VII has the effect of creating an artificial dichotomy (or at least an internal inconsistency) in the FISA statute. It sets up a situation in which the acquisition activities of the government will trigger both the current definition of electronic surveillance and the Title VII foreign targeting procedures. The "clarification" approach draws a clear line between electronic surveillance and acquisition activities. Under the "construction" approach, the same activity can be both electronic surveillance and an acquisition activity. The "construction" approach might encourage lawsuits from plaintiffs alleging that the government is violating the definition of electronic surveillance and relying upon an unconstitutional acquisition authority in Title VII. The "construction" approach causes these sections of FISA to pull against each other, while the "clarification" approach strengthens the procedures contained in Title VII by making clear that such activity is not electronic surveillance under the meaning of FISA. It is also

b2/b6



important to note that the "clarification" approach has already been approved by the Foreign Intelligence Surveillance Court in the context of the Protect America Act. We should not be abandoning a proven approach accepted by the FISA court, because of unspecified hypotheticals. Our members have not yet seen a solid rationale for your approach and would need to see that articulated as better than the FISA Court approved approach.

3. **Section 702(f) – Reverse Targeting Guidelines.** We proposed folding all of the subsection (b) limitations, including reverse targeting, into guidelines within the targeting procedures. Our suggested approach has the advantage of obviating the need for any redundant guidelines. We don't have any problem with the FISC reviewing the revised targeting procedures (that will include the guidelines for all of the subsection (b) limitations). In fact, the Senate bill has always contained that requirement. The FISC needs to ensure that the procedures ensure compliance with the subsection (b) limitations. We don't believe that the training or submission requirements are necessary in the context of the targeting procedures. Our oversight of NSA in the context of this collection has revealed that they already have an impressive training program for their employees. Also, we don't feel that a statutory requirement to get copies of these targeting procedures will be necessary. I'm interested in what your leg counsel has drafted. It sounds like we may be able to reach an accommodation on this issue.

4. **Section 702(i)(5) – Schedule for Renewals/Reauthorization.** This "Schedule" section has always been problematic for us. It was originally drafted as a possible solution to the "Prior-Court Review" issue. Even though we have agreed to compromise text on the Prior-Court Review issue, this "Schedule" provision keeps popping up in both of our drafts. It's a bad idea because it imposes a submission requirement of "at least 30 days before the expiration of such authorization." This is a deviation from standard FISA and the criminal wiretap statutes which contain no such requirement. The problem with this unnecessary requirement is that if the Intelligence Community submits a certification or procedures 29 days prior to expiration, there is a technical violation of this statutory provision. Historically, statutory violations of any kind are always reported to the Intelligence Oversight Board. Given that this statutory requirement has no real consequence anyway given the changes made in the context of Prior-Court Review, we would recommend dropping it in its entirety. Our members have not seen a clear argument for its inclusion. With respect to the deletion of the "construction" provision, it is my recollection that it was a formulation that was always linked in our drafts to this "Schedule" provision [page 27, after line 2; see also our latest draft, page 10, lines 20-23]. It was intended to provide the AG and DNI with a certain degree of flexibility in submitting certifications and procedures for additional and existing authorizations. If we're not going to drop this "Schedule" provision, we recommend that the subparagraph on page 21, lines 6-22 be amended as follows: "(C) Amendments.—The Attorney General and the Director of National Intelligence may amend a certification submitted in accordance with subsection (f) or the targeting and minimization procedures submitted in accordance with subsection (d) and (e) as necessary at any time, even if the Court is conducting or has completed its review or approval of the original or prior certification or procedures. Such amended certification or amended procedures shall be submitted to the Court not later than 7 days after amending such certification or procedures. The Court shall review any amendment under this subparagraph under the procedures set forth in this subsection. The Attorney General and the Director of National Intelligence may authorize the use of an amended certification or amended procedures pending the Court's review of such amended certification or amended procedures." We offer that these minor modifications to your version of the "Amendments" subparagraph provide sufficient flexibility to allow the deletion of the "construction" provision.

5. **Section 702(j)(2) – "Good Cause" Exception for FISC Time Limits.** I appreciate your proposal to improve the "good cause" standard to "extends that time as necessary for good cause, in a manner consistent with national security." We have members who are wedded to the due process standard, which requires that this issue be elevated to the Member level.

b2/b6



6. **Section 702(f) – Providing Reports to the Judiciary Committee.** I understand your position. We have some members that have problems with this approach; it is a member level issue.

7. **Section 702(f)(3) – “Accounting” of Disseminated Information (in Reports/Reviews).** I appreciate your willingness to accept the original compromise language contained in the Senate bill.

8. **Section 703(a)/704(a)/708 – Jurisdiction of the FISC on 2.5 Authority (from E.O. 12333).** I appreciate your willingness to modify the Savings provision to permit the government to use statutory means (in addition to FISA) and we can accept your following modification of page 61, line 6-7: “or otherwise engage in any activity that is authorized under any other title of this Act or Chapters 119, 121, or 206 of Title 18, United States Code.” Consistent with the intent of the Senate version of HR 3773, we still believe that from a practitioner’s standpoint, the ability to use methods other than Title VII of FISA should be explicit in each “2.5” Section. Our latest proposal contained the following language to address this issue: “Nothing in this paragraph shall be construed to limit the authority of the Government to seek an order or authorization under, or otherwise engage in any activity that is authorized under, any other title of this Act or other statutory authority.” This text could be revised, consistent with the text used in the Savings provision modification, to read: “Nothing in this paragraph shall be construed to limit the authority of the Government to seek an order or authorization under, or otherwise engage in any activity that is authorized under, any other title of this Act or Chapters 119, 121, or 206 of Title 18, United States Code.” The argument for taking this provision out is that it is unnecessary. The argument for leaving the provision in is that it provides clear guidance to practitioners and the Court.

9. **Section 110 – WMD Definitions.** Page 80, line 4. There were two issues.
 - a. **Agent of a Foreign Power.** I appreciate your willingness to accept the Senate language that includes the distinctions between a lone wolf WMD proliferator and a WMD proliferator acting for or on behalf of a foreign power. We don’t believe this distinction is redundant. The current FISA definitions make a distinction between a lone wolf international terrorist and a person who knowingly engages in international terrorism for or on behalf of a foreign power.

 - b. **WMD Definition.** We may have had a miscommunication on this issue. I have no language to offer beyond the Senate version of the WMD definition, which was accepted by voice vote. The Senate bill did not “broaden” the definition of WMD. In fact, that Senate text narrowed the meaning of “destructive device” within the definition of WMD to address Democrat concerns. Other than that change, the Senate bill text is almost identical to the Title 18 criminal definition of WMD [18 USC 2332a(c)(2)] and our members see no reason to further deviate from that definition. Our members need to see a clear argument for deviating from the Title 18 definition.

10. **Title II (Section 802(a)(2)) – Certification Requirement.** Page 86. I don’t think it’s clear that (a)(2) is simply a subset of (a)(1). If that were the case, we wouldn’t need the restatement of “Notwithstanding any other provision of law . . .” in (a)(2) and “the person/electronic communication service provider did not provide the alleged assistance” would come *after* the additional limitations in paragraph (2). Paragraph (1) is the prospective liability provision that was contained in Section 203 of the Senate bill. Paragraph (2) is the retroactive liability provision contained in Section 202 of the Senate bill. These liability provisions have always had different triggering criteria. Also, these provisions were designed to protect sources and methods by including a “did not provide the alleged assistance” certification option in each section. It is possible that new lawsuits may be brought that only allege past participation in the program. If such a case were to be dismissed, then that lawsuit will confirm that the carrier participated in the TSP. The inclusion of a parallel “did not provide the alleged assistance” would prevent this

b2/b4



disclosure of sensitive sources and methods. We have the ability to eliminate any risk by the simple inclusion of the parallel structure. If this is primarily a leg counsel concern, you know our reasons for overruling that advice. If we can't agree on this issue, Members may insist on returning to the separate structures contained in the Senate bill and the latest Republican proposal. As this touches on a key issue in our agreement to date, this will clearly be a member issue if we are unable to clarify the language.

11. *Title II (Section 802(b)(2)) – Supplemental Materials.* Page 87-88. We had proposed striking the "any other materials submitted by the Attorney General" to limit the scope of materials reviewed by the FISC and to prevent a wholesale examination of the TSP (legal opinions, etc.). To address the concern of private sector entities about the basis for a certification that a carrier did not provide assistance, we could amend the text as follows: "(2) Supplemental Materials.—In its review of a certification made pursuant to subsection (a), the court may examine the court order, certification, or directive described in subsection (a), any relevant court order, certification, written request or directive submitted pursuant to subsection (d), and any other document submitted by the Attorney General, in his discretion, to show that the electronic communication service provider did not provide the alleged assistance."

Thanks and I look forward to your thoughts. Speak to you soon,

Jack

b2/b4

[REDACTED]

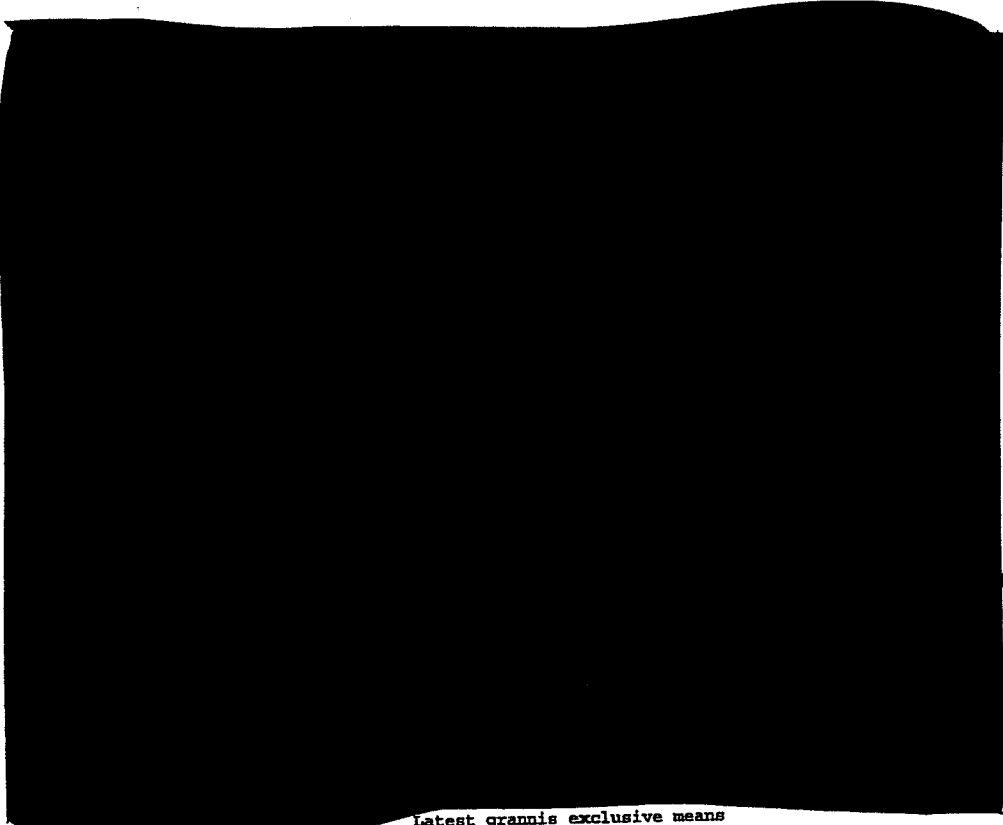
From: [REDACTED]
To: "Jack Livingston" [REDACTED]@ssci.senate.gov>, "John Demers" <John.Demers@usdoj.gov>
Date: Thursday, January 31, 2008 09:46PM
Subject: Re: Feinstein Exclusive Means

No problem. Thanks for all your efforts. Where does the manager's amend to fix 2.5 and the reporting issue fit in all this?

----- Original Message -----
From: "Livingston, J (Intelligence)" [REDACTED]@ssci.senate.gov]
Sent: 01/31/2008 09:24 PM EST
To: "Demers, John" <John.Demers@usdoj.gov>; [REDACTED]
Subject: Feinstein Exclusive Means

Thanks for all your help today. I apologize for all the spam, but your input helped us get to a final deal, almost. The Feinstein exclusive means amendment is out there without any debate limitation, which essentially means it needs a 60 vote threshold to pass. David Grannis is working on changes with leg counsel. We can talk about this tomorrow, but we need to make sure we're in lockstep about what we want. He's at a bit of disadvantage given the UC agreement, so we should be able to get a decent deal.

b2/b4



Out of scope

Latest grannis exclusive means

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

From: Livingston, J (Intelligence)
Sent: Thursday, January 31, 2008 2:53 PM
To: 'John.Demers@usdoj.gov'; [REDACTED]; Rice, K (Intelligence)
Subject: Fw: FISA Amendment

Please take a look at this. We're down to this as a last issue.

Sent from my BlackBerry Wireless Device

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

From: Grannis, D (Intelligence)
To: Duck, Jennifer (Judiciary-Dem); Dube, M (Intelligence); Davidson, M (Intelligence);
Healey, C (Intelligence); Starzak, Alissa (Intelligence); Tucker, L (Intelligence);
Livingston, J (Intelligence); Rice, K (Intelligence)
Cc: Johnson, A (Intelligence); Cleveland, Peter (Feinstein)
Sent: Thu Jan 31 14:51:00 2008
Subject: FW: FISA Amendment

Attached is the revised exclusivity amendment as we had discussed earlier today that makes

b2/b4

the two main changes: only allows physical searches in the context of stored communications (actually, stored electronic communications or stored electronic data that is in the custody of an electronic communications service provider); and only has a trigger of a national emergency of the type that prevents the Congress or the FISC from taking actions otherwise contemplated.

David

-----Original Message-----
From: Henderson, John (Legis Counsel) [mailto: [REDACTED]@slc.senate.gov]
Sent: Thursday, January 31, 2008 2:40 PM
To: Grannis, D (Intelligence)
Subject: RE: FISA Amendment

David,

Here is the revised. Let me know if you need anything else.

John

b2/b6

[REDACTED]

From: [REDACTED]
To: "Jeremy Bash" [REDACTED]@mail.house.gov>

Date: Saturday, August 04, 2007 11:57PM

Subject:

Well, we can finally get some sleep. Putting fisa language into the legislative grinder is certainly a high wire act. One of the drafts flying around on thu (from us no less) missed a crucial saving clause and we grimly renamed it "the end the nsa act". Spent an hour after the senate vote trying to get exact copy of what passed. Some of the ic folks and doj were hardly breathing.

You must have some interesting stories.....we will have to compare notes. hope you get some enjoyable time off/trips. Thanks for all your help in working through this process.

b2/b6

[REDACTED]

From: [REDACTED]
To: "Jeremy Bash" [REDACTED]@mail.house.gov, "Mike Davidson" [REDACTED]@ssci.senate.gov, "Jack Livingston" [REDACTED]@ssci.senate.gov, "Chris Donesa" [REDACTED]@mail.house.gov, "Christine Healey" [REDACTED]@ssci.senate.gov
cc: [REDACTED] "John Demers" <John.Demers@usdoj.gov>

Date: Saturday, February 23, 2008 01:42PM
Subject: Re: Update

Correction is simply the wrong word and that is not what mike said below. That said, you will have statement shortly.

----- Original Message -----
From: "Bash, Jeremy" [REDACTED]@mail.house.gov]
Sent: 02/23/2008 01:32 PM EST
To: "Davidson, M (Intelligence)" [REDACTED]@ssci.senate.gov; [REDACTED] "Livingston, J (Intelligence)" [REDACTED]@ssci.senate.gov; "Donesa, Chris" [REDACTED]@mail.house.gov; "Healey, C (Intelligence)" [REDACTED]@ssci.senate.gov
Cc: [REDACTED] <John.Demers@usdoj.gov>
Subject: RE: Update

I agree with Mike that the public record needs to be corrected promptly.

From: Davidson, M (Intelligence) [REDACTED]@ssci.senate.gov]
Sent: Fri 2/22/2008 11:41 PM
To: [REDACTED]; Livingston, J (Intelligence); Bash, Jeremy; Donesa, Chris; Healey, C (Intelligence)
Cc: [REDACTED] John.Demers@usdoj.gov
Subject: Re: Update

Ben,

Thanks for the update.

Given the sending of the letter to Chairman Reyes (copies to Chairman Rockefeller, Ranking Member Hoekstra, and Vice Chairman Bond), which I assume the press has, I think it is imperative that there now will be a prompt public assurance.

Hope that the ODNI will do that as quickly as possible.

Mike

b2/b6

[REDACTED]

Sent from my BlackBerry Wireless Handheld

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

From: [REDACTED]
To: Davidson, M (Intelligence); Livingston, J (Intelligence); Jeremy Bash
<[REDACTED]@mail.house.gov>; Chris Donesa <[REDACTED]@mail.house.gov>; Healey,
C (Intelligence) <[REDACTED]>
Cc: [REDACTED]; John Demers <John.Demers@usdoj.gov>
Sent: Fri Feb 22 21:41:14 2008
Subject: Update

This evening the remaining provider who was not cooperating with new taskings informed us they would cooperate. We were informed after the letter was sent. We are working to implement immediately. Will keep you updated.

Do not know if there will be a release issued by us, a letter, etc.

b2/b6

[REDACTED]

From: [REDACTED]
 To: "Jeremy Bash" [REDACTED]@mail.house.gov>, "Chris Donesa"
 [REDACTED]@mail.house.gov>, "Wyndee Parker"
 [REDACTED]@mail.house.gov>
 cc: [REDACTED], "Vito Potenza (work)" <[REDACTED]>, "Brett \((NSD)\
 Gerry" <Brett.Gerry@usdoj.gov>, "John Eisenberg"
 <John.Eisenberg@usdoj.gov>, "kenneth.wainstein@usdoj.gov"
 <kenneth.wainstein@usdoj.gov>, "Steve Bradbury"
 <Steve.Bradbury@usdoj.gov>
 bcc: [REDACTED]
 Date: Wednesday, May 30, 2007 07:27AM
 Subject: Fw: WP: Reality, Not Rhetoric, On FISA (Reyes Op-Ed)

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

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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

b2/b6



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

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[REDACTED]

From: [REDACTED]
To: "Jack Livingston" <[REDACTED]@ssci.senate.gov>, [REDACTED]
"Mike Davidson" <[REDACTED]@ssci.senate.gov>, "K Rice"
<[REDACTED]@ssci.senate.gov>, "Christine Healey" <[REDACTED]@ssci.senate.gov>,
[REDACTED], "Starzak, Alissa (Intelligence)"
<[REDACTED]@ssci.senate.gov>, "Brett Gerry" <Brett.Gerry@usdoj.gov>, "John
Eisenberg" <John.Eisenberg@usdoj.gov>, "Vito Potenza (work)"
[REDACTED]

Date: Thursday, October 11, 2007 12:36AM

Subject: Re: Sleep on this?

On first glance, puts all the emphasis on "electronic". Does that put us in a place where we have to use electronic methods when perhaps there is a better non-electronic way to do it? (And could be more precise to do it that way). While we can limit to act to providers and knock out some of the worries of too broad a statute, not sure we want to artificially force the method to be "electronic". But I could be incorrectly reading this and need to get views of doj/nsa.

----- Original Message -----
From: "Livingston, J (Intelligence)" <[REDACTED]@ssci.senate.gov>
Sent: 10/10/2007 08:37 PM AST
To: [REDACTED]; Davidson, M (Intelligence)"
<[REDACTED]@ssci.senate.gov>; Rice, K (Intelligence)"
<[REDACTED]@ssci.senate.gov>; Healey, C (Intelligence)"
<[REDACTED]@ssci.senate.gov>; [REDACTED]
<[REDACTED]@ssci.senate.gov>; Starzak, Alissa (Intelligence)"
<[REDACTED]@ssci.senate.gov>; Gerry, Brett (OLP)" <Brett.Gerry@usdoj.gov>;
<John.Eisenberg@usdoj.gov>
Subject: Sleep on this?

I was thinking about other ways of solving the authorization problem. How about:

Sec. 703. (a) AUTHORIZATION.--(1) Notwithstanding any other law, but subject to the requirements of this title, the Attorney General and the Director of National Intelligence may authorize jointly, for periods of up to one year, the electronic targeting of persons reasonably believed to be located outside of the United States for the purpose of acquiring foreign intelligence information.

or