

# **OIP GROUP 7**

**Johns, Julie**

**From:** Tracci, Robert N  
**Sent:** Wednesday, January 17, 2007 7:04 PM  
**To:** 'Volkov, Michael'  
**Subject:** RE: Statement

EFF1OLA(3)-2

I sent draft to House leadership as well. Would be very meaningful to have a release from Boehner's office.

FOIA Exemption b(6)

**From:** Volkov, Michael [mailto: [REDACTED]@mail.house.gov]  
**Sent:** Wednesday, January 17, 2007 6:29 PM  
**To:** Tracci, Robert N  
**Subject:** Re: Statement

EFF1OLA(3)-3

No. I think they spoke today  
Michael Volkov

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

**From:** Tracci, Robert N <Robert.N.Tracci@usdoj.gov>  
**To:** Volkov, Michael  
**Sent:** Wed Jan 17 18:26:33 2007  
**Subject:** RE: Statement

Do you know when they spoke or when briefing will be?

FOIA Exemption b(6)

**From:** Volkov, Michael [mailto: [REDACTED]@mail.house.gov]  
**Sent:** Wednesday, January 17, 2007 6:22 PM  
**To:** Tracci, Robert N  
**Subject:** Re: Statement

EFF1OLA(3)-4

Beautiful. Smith spoke to ag and he has set up briefing of members and will issue statement after briefing  
Michael Volkov

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

**From:** Tracci, Robert N <Robert.N.Tracci@usdoj.gov>  
**To:** Tracci, Robert N <Robert.N.Tracci@usdoj.gov>; Volkov, Michael  
**Sent:** Wed Jan 17 18:18:26 2007

EFF1OLA(3)-5

Re: Statement

Page 2 of 2

Subject: RE: Statement

Let me know if you are going to use any of this. Going to shop to SJC as well.

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From: Tracci, Robert N  
Sent: Wednesday, January 17, 2007 6:15 PM  
To: 'Volkov, Michael'  
Subject: Statement

EFFOLA(3)-6

"America remains a nation at war and we support the President's demonstrated commitment to protecting Americans from terrorist attack.

"Following the terrorist attacks of September 11, 2001, the President took immediate steps to enhance the ability of United States to detect, disrupt, and deter terrorist attacks. The Terrorist Surveillance Program (TSP), which authorized the National Security Agency to monitor international calls of suspected terrorists, represented an important component of this response. Congressional passage of the USA PATRIOT Act and the authorization of the use of force, which we are each proud to have supported, were also critical to the President's antiterrorism strategy. There have been no terrorist attacks in the United States since 9/11, and these tools have been instrumental in averting one.

"The Administration recently stated that it would not reauthorize TSP because it had streamlined and improved the speed and agility of the Foreign Intelligence Surveillance Court. Rather than welcoming a development that many had sought, Democrats are attempting to exploit this issue for partisan purposes. Americans deserve better.

"The President has a constitutional responsibility to protect Americans against foreign attack while adhering to the law. President Bush has exercised this authority responsibly and effectively. Rather than condemning the Administration for taking steps to enhance efforts to defeat terrorism, we ought to be commending it. Rather than attacking the Administration for taking additional steps to improve the FISA process, we ought to be applauding it.

12/10/2007

Ahmad, Usman

FOIA Exemption b(6)

From: Holsclaw, Kevin [REDACTED]@mail.house.gov  
Sent: Wednesday, September 12, 2007 11:00 AM  
To: Tracci, Robert N  
Subject: RE: "the wall"

EFF2OLA(1)-30

Rob:

Thanks for the links and the read. We appreciate it very much. I will pull it all together.

Lungren gave a presentation at the ABA convention and we received a question based on his comments on this issue.

Thanks again,

Kevin

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

From: Rob Tracci  
Sent: Tuesday, September 11, 2007 8:09 PM  
To: Holsclaw, Kevin  
Subject: Re: "the wall"

EFF2OLA(1)-31

Kevin -- this is still the state of the art. Hope you found the links I sent with additional links to memo helpful. Rob

FOIA Exemption b(6)

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

From: Holsclaw, Kevin [REDACTED]@mail.house.gov  
To: Tracci, Robert N  
Sent: Tue Sep 11 19:17:10 2007  
Subject: "the wall"

EFF2OLA(1)-32

Rob:

I rummaged through my files and dug up the DOJ supplied information regarding the "wall." Looking through it, this is what I came up with. As per our discussion, any comments, deletions, or additions are appreciated:

Prior to the enactment of the PATRIOT Act a so-called "wall" separated intelligence personnel from law enforcement personnel. The effect of this "wall" was to limit information sharing and the larger counterterrorism effort. This obstacle was traced to the requirement that applications for orders authorizing electronic surveillance or physical searches under FISA had to include a certification from a high ranking Executive Branch official that "the primary purpose" of the surveillance of the collection had to be to obtain foreign intelligence information rather than evidence of a crime. This had the effect of limiting coordination between intelligence and law enforcement personnel because courts evaluated the government's purpose for using FISA in

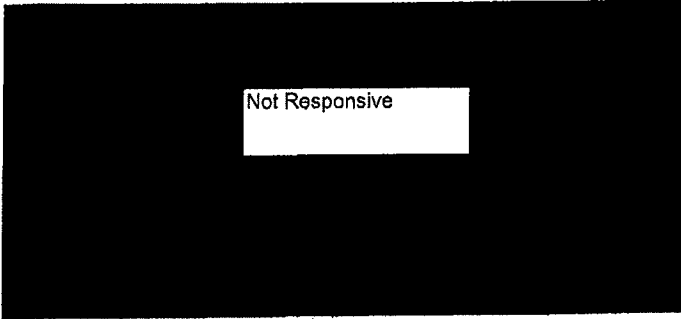
3/14/2008

part by examining the coordination between intelligence and law enforcement officials. The concern was that the more cooperation that was found, the greater the likelihood that the courts would find that the required "the primary purpose" threshold had not been met.

Although the Department of Justice operated on a set of largely unwritten guidelines with respect to this question, in 1995, the Department established formal procedures that more clearly separated the law enforcement and intelligence investigations and which had the effect of encumbering the sharing of information between intelligence and law enforcement investigators. A great deal of confusion arose as to when the sharing of information would and would not be permitted. In fact, FBI agents were informed that too much information sharing could be a "career stopper."

Section 218 of the PATRIOT Act sought to eliminate this perception of a "wall" between intelligence agents and law enforcement agents. The language of Section 218 replaced "the primary purpose" requirement with a "significant purpose" standard. The ultimate effect of this change in the law was to alter both the formal and informal "cultural restrictions" with respect to information sharing.

Ahmad, Usman



Not Responsive

EFF2OLA(1)-70

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**From:** Traccl, Robert N  
**Sent:** Wednesday, November 14, 2007 4:37 PM  
**To:** 'Volkov, Michael'  
**Subject:** FW: FISA Amendment

EFF2OLA(1)-71

This Act and the amendments made by this Act shall not be construed to prohibit the President of the United States from engaging in surveillance deemed necessary to monitor suspected terrorist activities, foreign espionage activities, and other threats to the national security of the United States.

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**From:** Traccl, Robert N  
**Sent:** Wednesday, November 14, 2007 4:19 PM  
**To:** 'Volkov, Michael'  
**Subject:** RE: FISA Amendment

EFF2OLA(1)-72

Nothing in this Act shall limit the authority of the President to monitor communications of known or suspected terrorist organizations, individuals or entities in circumstances deemed necessary to avert an attack on the United States or to otherwise protect the national security of the United States. Any individual or entity that assists or has assisted the United States in circumstances the President deems necessary to monitor or intercept the communications of known or suspected foreign terrorist organizations or to otherwise protect the national security of the United States against any foreign power shall not be subject to any legal liability for conduct relating to such assistance.

Nothing in this legislation shall limit the authority of the President of the United States to take steps necessary to intercept communications of Al-Qaeda, Hezbollah, or other terrorist organizations that may pose a threat to the national security the United States or its allies.

Nothing in this legislation shall limit the authority of the President of the United States to take steps necessary to intercept foreign communications in exigent circumstances in order to protect the national security of the United States or avert terrorist attacks on the United States or its allies.

Nothing in this legislation shall limit the authority of the President to monitor foreign communications in circumstances deemed necessary to protect the national security interests of the United States.

Nothing in this legislation shall interfere with the President's authority to monitor foreign communications to protect the safety of Members of the United States Armed Forces or Federal employees acting in an official capacity.

Notwithstanding any other provision of this legislation, the President shall have authority to monitor the communications

3/13/2008

of FTOs in circumstances deemed necessary to protect the national security of the United States:

FOIA Exemption b(6)

**From:** Volkov, Michael [mailto: [REDACTED]@mail.house.gov]  
**Sent:** Wednesday, November 14, 2007 4:05 PM  
**To:** Traccl, Robert N  
**Subject:** RE: FISA Amendment

EFF2OLA(1)-73

We need a new MTR idea ASAP

Michael Volkov  
Chief Minority Counsel  
Subcommittee on Crime,  
Terrorism, and Homeland Security  
Rayburn B-351  
Washington, D.C. 20515

[REDACTED]

Exemption 6

**From:** Rob Traccl  
**Sent:** Wednesday, November 14, 2007 4:03 PM  
**To:** Volkov, Michael  
**Subject:** RE: FISA Amendment

EFF2OLA(1)-74

Working on talkers now.

They won't dare to deny a MTR in the Rule right?

FOIA Exemption b(6)

**From:** Volkov, Michael [mailto: [REDACTED]@mail.house.gov]  
**Sent:** Wednesday, November 14, 2007 3:36 PM  
**To:** Traccl, Robert N  
**Subject:** FW: FISA Amendment  
**Importance:** High

EFF2OLA(1)-75

Michael Volkov  
Chief Minority Counsel  
Subcommittee on Crime,  
Terrorism, and Homeland Security  
Rayburn B-351  
Washington, D.C. 20515

[REDACTED]

FOIA Exemption b(6)

[REDACTED]

Not responsive

EFF2OLA(1)-76

Ahmad, Usman

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From: Traccl, Robert N

Sent: Wednesday, November 14, 2007 7:03 PM

EFF2OLA(2)-55

To: 'Volkov, Michael'

Attachments: S. 473.pdf

Manager's amendment doesn't fix any of the key problems identified by the SAP (attached)

This Manager's Amdt makes it unclear whether "lawful" authority means all IC-directed Intel activity carried out pursuant to FISA, or other statutory limitation. The MTR Mr Smith offered provided a broader grant of authority for the President to take steps necessary to avert terrorist attacks or otherwise protect the national security without such limitation.

Second, the manager's amendment adds new additional requirements on the criteria for the significant purpose test which are burdensome and unhelpful.

Third, the manager's amendment places additional burdens on the disclosure of US person names by requiring the relevant determinations to be made by an SES level employee or higher.

Fourth, the manager's amendment makes clear that the RESTORE Act (and perhaps FISA, but it is ambiguous on this question) does not apply to undocumented aliens.

<<S. 473.pdf>>



**Ahmad, Usman**

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From: Traccl, Robert N  
Sent: Thursday, February 07, 2008 7:42 AM  
To: Benczkowski, Brian A (OLA)  
Subject: Fw:

EFF2OLA(2)-6

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

From: Jezierski, Crystal <[REDACTED]@mail.house.gov>  
To: Traccl, Robert N  
Sent: Wed Feb 06 21:47:07 2008  
Subject: Re:

EFF2OLA(2)-7

Thanks. I will circulate these.  
Crystal Roberts Jezierski

direct  
cell

FOIA Exemption b(6)

[REDACTED]@mail.house.gov

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

From: Rob Traccl  
To: Jezierski, Crystal  
Sent: Wed Feb 06 20:11:37 2008  
Subject: Re:

EFF2OLA(2)-8

Thanks. Here are some FISA questions for consideration. They pertain to proposed amendments to the FISA bill in the Senate.

"What would be the problem with a provision that would prevent bulk collection, that is require that you have a specific, individual target in mind when you do the collection?" (Feingold 3912)

"What's wrong with having the Intelligence agencies have to go back and pull information gathered under procedures that the FISA court finds to be insufficient?" (Feingold 3915)

"What's wrong with having an amendment that would prohibit reverse targeting, that is targeting someone outside the US if a significant purpose is to acquire the communications of someone here?" (Feingold 3913)

"What's wrong with a provision that would require you to get a court order unless you know that the communication would be foreign to foreign?"

FOIA Exemption b(6)

----- Original Message -----  
From: Jezierski, Crystal <[REDACTED]@mail.house.gov>  
To: Traccl, Robert N  
Sent: Wed Feb 06 19:27:03 2008  
Subject: Re:

EFF2OLA(2)-9

Ok. Well let us know if you want us to shop around a question. We gave offices a couple of questions re it earlier today. We're happy to try to push it if you'd like. And/or the AG could mention it to members tomorrow morning. Just let me know.  
Crystal Roberts Jezierski

direct  
cell

FOIA Exemption b(6)

[REDACTED]@mail.house.gov

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

From: Rob Traccl  
To: Jezierski, Crystal  
Sent: Wed Feb 06 19:23:55 2008

EFF2OLA(2)-10

Subject:

Crystal -- DOJ is not reaching out to Members separately on the issue you discussed in your voicemail. Rob

Ahmad, Usman

FOIA Exemption b(6)

From: Lynch, Caroline [REDACTED]@mail.house.gov  
Sent: Friday, October 05, 2007 9:21 AM  
To: Tracci, Robert N  
Subject: RE: FISA Proposal

EFF2OLA(2)-168

Are you sure this is wrong? It looks right to us.

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

From: Rob Tracci  
Sent: Thursday, October 04, 2007 7:48 PM  
To: Lynch, Caroline  
Subject: Fw: FISA Proposal

EFF2OLA(2)-169

Sorry for delay.

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

From: [REDACTED] FOIA Exemption b(6)  
To: Tracci, Robert N  
Cc: Gerry, Brett (OLP); Benczkowski, Brian A (OLA); Demers, John (NSD); Eisenberg, John  
Sent: Thu Oct 04 19:44:56 2007  
Subject: FISA Proposal

EFF2OLA(2)-170

Rob:

Attached is the word version of the FISA modernization proposal.

Thanks,

[REDACTED] FOIA Exemption b(6)

Gerry, Brett

FOIA Exemption b(6)

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**From:** Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov  
**Sent:** Tuesday, September 25, 2007 9:52 AM  
**To:** Gerry, Brett (OLP)  
**Subject:** RE: Technical Assistance

EFF2OLA(1)-3

Thanks.

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**From:** Gerry, Brett (OLP) [mailto:Brett.Gerry@usdoj.gov]  
**Sent:** Tuesday, September 25, 2007 9:48 AM  
**To:** Livingston, J (Intelligence)  
**Cc:** Eisenberg, John; Nichols, Carl (CIV)  
**Subject:** Technical Assistance

EFF2OLA(1)-4

<<FISA Mod Liability Technical Assistance.pdf>>  
Jack-

Pursuant to our meeting with Mike D. on Friday, I am attaching technical assistance you and Mike requested on three issues: (i) a provision for the pre-emption of state regulatory commission actions; (ii) a proposed re-write of the PAA liability provision to allow a mechanism for dismissal; and (iii) suggested technical edits to the section 408 liability provision (which are marked to reflect changes). I will be difficult to reach until early this afternoon; if you need immediate assistance please contact Carl or John.

Thanks,  
Brett

1/25/2008

Ahmad, Usman

FOIA Exemption b(6)

**From:** Matal, Joe (Judiciary-Rep) [redacted]@judiciary-rep.senate.gov

EFF2OLA(2)-13

**Sent:** Thursday, January 24, 2008 1:31 PM

**To:** Traccl, Robert N; Benczkowski, Brian A (OLA)

**Subject:** RE: FISA amendment: attacks on U.S. servicemen

Thanks -- just what I needed.

**From:** Traccl, Robert N [mailto:Robert.N.Traccl@usdoj.gov]

EFF2OLA(2)-14

**Sent:** Thursday, January 24, 2008 1:29 PM

**To:** Matal, Joe (Judiciary-Rep); Benczkowski, Brian A (OLA)

**Subject:** RE: FISA amendment: attacks on U.S. servicemen

- It is not clear why the term "U.S. servicemen" is used when 18 USC 1388, which is referenced in the proposal, uses the term "member of the Armed services" and both 18 USC 111 (assault of federal employee) and 18 USC 1114 (murder/attempted murder/manslaughter of federal employee) use the phrase "member of the uniformed services" to define U.S. servicemen.
- The word "knowingly" should be moved before "assaults, batters, or destroys" or the legislation could be read to require a knowing standard only for property damage.
- The legislation requires separate objects: assault on a person, damage to property. As currently drafted, it could be read to prohibit assaulting property.
- The term "immediate family" is not defined.
- Penalties could be aligned with current statute on assaulting US officials, which is no more than 1 year for simple assault, no more than 8 years for other assaults, no more than 20 years for bodily injury. 18 USC 111. Property damage should not be deemed a graver offense than interfering with a government official's performance of duties. 18 USC 111.
- There is no fine provision for damages.
- The exception states: "This section shall not apply to a person who is subject to the Uniform Code of Military Justice," which includes all current members of the military. Although the purpose of the exception appears to be to bar prosecution of current members of the military under this provision, perhaps the exception should include the phrase "apply to conduct by a person who is subject . . ." so that the exception could not be construed to exempt actions against current members of the military.

FOIA Exemption b(6)

**From:** Matal, Joe (Judiciary-Rep) [mailto:[redacted]@judiciary-rep.senate.gov]

EFF2OLA(2)-15

**Sent:** Tuesday, January 22, 2008 2:20 PM

**To:** Traccl, Robert N; Benczkowski, Brian A (OLA)

**Subject:** FISA amendment: attacks on U.S. servicemen

Bencz, Rob: We may add the below proposal to an amendment that Kyl will offer on the FISA bill. Would it be possible to vet this for technicals with the relevant folks at DOJ within the next day or two? Our aim in offering the amendment is to make the Dems back off on their amendments, but there is always the risk that this will get a vote and be adopted, so I want to make sure that it is

3/12/2008

done right.

The draft provision would make it a federal offense to attack U.S. servicemen on account of their service or status as soldiers -- including all assaults, battery (which includes spitting), and damage to property -- e.g., keying a soldier's car, as recently happened in Chicago to a U.S. Marine who was about to deploy to Iraq. (See the Black Five website for this story.) The provision would apply anywhere in the United States.

The recent Solomon amendment case, *Rumsfeld v. FAIR*, recognized a power in Congress to enact legislation furthering the raising and supporting armies. Protecting current or recent servicemen from attack and harassment should be well within that power.

Here is the proposal:

Chapter 67 of title 18, United States Code, is amended by adding at the end the following:

Section 1389. Prohibition on Attacks on U.S. Servicemen on Account of Service.

(a) IN GENERAL.--- Whoever assaults, batters, or knowingly destroys or injures the property of a United States serviceman or of a member of the immediate family of a United States serviceman, on account of such serviceman's military service or status as a United States serviceman, or who attempts or conspires to do so, shall be fined under this title and---

- (1) in the case of a simple assault, or destruction or injury to property in which the damage or attempted damage to such property does not exceed the sum of \$500, be imprisoned not more than two years;
- (2) in the case of destruction or injury to property in which the damage or attempted damage to such property exceeds the sum of \$500, be imprisoned not less than 90 days nor more than 10 years; and
- (3) in the case of a battery, or an assault resulting in bodily injury, be imprisoned not less than 2 years nor more than 30 years.

(b) EXCEPTION.--- This section shall not apply to a person who is subject to the Uniform Code of Military Justice.

(c) DEFINITION.--- For purposes of this section, the term "United States serviceman" has the same meaning as "member of the Armed Forces" does in section 1388, and shall include a former member of the Armed Forces during the period within 5 years of his discharge from the Armed Forces.

Ahmad, Usman

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**From:** Tracci, Robert N  
**Sent:** Monday, October 29, 2007 6:49 PM  
**To:** Tracci, Robert N  
**Subject:** FW: Closed session SSCI testimony

EFF2OLA(2)-113

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**From:** Tracci, Robert N  
**Sent:** Monday, October 29, 2007 6:42 PM  
**To:** Tracci, Robert N  
**Subject:** FW: Closed session SSCI testimony

EFF2OLA(2)-114

FOIA Exemption b(6)

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**From:** Rice, K (Intelligence) [mailto:██████████@SSCI.senate.gov]  
**Sent:** Monday, October 29, 2007 6:33 PM  
**To:** Tracci, Robert N  
**Cc:** Livingston, J (Intelligence)  
**Subject:** RE: Closed session SSCI testimony

EFF2OLA(2)-115

FOIA Exemption b(6)

Rob—if you get a chance tomorrow, please call Jack ██████████ or me ██████████ on this. Thanks. Kathleen

FOIA Exemption b(6)

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**From:** Rossi, Nick (Judiciary-Rep) [mailto:██████████@judiciary-rep.senate.gov]  
**Sent:** Monday, October 29, 2007 6:16 PM  
**To:** Tracci, Robert N  
**Cc:** Livingston, J (Intelligence); Rice, K (Intelligence)  
**Subject:** RE: Closed session SSCI testimony  
**Importance:** High

EFF2OLA(2)-116

Rob,  
In response to your inquiry, I do not have access to any testimony that may have been provided to the SSCI in closed session on the carrier liability issue. I do not think they have publicly acknowledged which companies, if any, provided testimony. Nevertheless, Jack Livingston or Kathleen Rice (copied on this email) may be able to assist you if it would help Ken Walstein prepare for Wednesday's Judiciary Committee hearing on FISA and the SSCI bill.  
Regards,  
Nick

FOIA Exemption b(6)

Gerry, Brett

EFF2AG(1)-58

From: Eisenberg, John  
Sent: Monday, October 15, 2007 2:30 PM  
To: Gerry, Brett (OLP); [redacted]@ssci.senate.gov; [redacted]@ssci.senate.gov  
Cc: [redacted]@ssci.senate.gov; [redacted]@ssci.senate.gov; [redacted]@ssci.senate.gov  
Subject: RE: PAA expiration

And I think correct. The President signed on August 5, if I remember correctly. Feb 1 is 180 days later.

FOIA Exemption b(6)

EFF2AG(1)-59

-----Original Message-----  
From: Gerry, Brett (OLP)  
Sent: Monday, October 15, 2007 2:29 PM  
To: [redacted]@ssci.senate.gov; Eisenberg, John; [redacted]@ssci.senate.gov  
Cc: [redacted]@ssci.senate.gov; [redacted]@ssci.senate.gov; [redacted]@ssci.senate.gov  
Subject: Re: PAA expiration

That is a safe approach.

FOIA Exemption b(6)

EFF2AG(1)-60

----- Original Message -----  
From: Healey, C (Intelligence) [redacted]@ssci.senate.gov  
To: Eisenberg, John; Livingston, J (Intelligence) [redacted]@ssci.senate.gov; Gerry, Brett (OLP)  
Cc: Davidson, M (Intelligence) [redacted]@ssci.senate.gov; Starzak, Alissa (Intelligence) [redacted]@ssci.senate.gov; Rice, K (Intelligence) [redacted]@ssci.senate.gov  
Sent: Mon Oct 15 14:25:42 2007  
Subject: RE: PAA expiration

I will go with the President's statement that it is February 1st.

Christine Healey  
Senate Select Committee on Intelligence  
[redacted] (direct)  
[redacted].senate.gov

FOIA Exemption b(6)

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

EFF2AG(1)-61

From: Eisenberg, John [mailto:John.Eisenberg@usdoj.gov]  
Sent: Monday, October 15, 2007 2:20 PM  
To: Healey, C (Intelligence); Livingston, J (Intelligence); Gerry, Brett (OLP)  
Cc: Davidson, M (Intelligence); Starzak, Alissa (Intelligence); Rice, K (Intelligence)  
Subject: RE: PAA expiration

I haven't thought about it--perhaps because in my heart of hearts I continue to believe Congress will make it permanent!

FOIA Exemption b(6)

EFF2AG(1)-62

-----Original Message-----  
From: Healey, C (Intelligence) [mailto:[redacted]@ssci.senate.gov]  
Sent: Monday, October 15, 2007 2:19 PM  
To: Eisenberg, John; Livingston, J (Intelligence); Gerry, Brett (OLP)  
Cc: Davidson, M (Intelligence); Starzak, Alissa (Intelligence); Rice, K (Intelligence)  
Subject: PAA expiration

On a different note, what does OLC consider to be the day that the PAA expires?

Christine Healey  
Senate Select Committee on Intelligence  
[redacted] (direct)  
[redacted]

FOIA Exemptions b(6)



██████████@ssci.senate.gov

FOIA Exemptions b(6)

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

EFF2AG(1)-63

From: Eisenberg, John [mailto:John.Eisenberg@usdoj.gov]  
Sent: Monday, October 15, 2007 1:12 PM  
To: Livingston, J (Intelligence); Gerry, Brett (OLP); Ben Powell; Vito Potenza (work); Demers, John (NSD); Greer, John  
Cc: Davidson, M (Intelligence); Healey, C (Intelligence); Starzak, Alissa (Intelligence); Rice, K (Intelligence)  
Subject: RE: revisions

I think "surveillance" is fine here because it is a limitation on "electronic surveillance." I think you're probably right with respect to "directed."

FOIA Exemption b(6)

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

EFF2AG(1)-64

From: Livingston, J (Intelligence) [mailto:██████████@ssci.senate.gov]  
Sent: Monday, October 15, 2007 1:09 PM  
To: Gerry, Brett (OLP); Ben Powell; Vito Potenza (work); Demers, John (NSD); Greer, John; Eisenberg, John  
Cc: Davidson, M (Intelligence); Healey, C (Intelligence); Starzak, Alissa (Intelligence); Rice, K (Intelligence)  
Subject: FW: revisions

Are we sure we don't want to modify 701 to read "Nothing in the definition of electronic surveillance under section 101(f) shall be construed to encompass [any acquisition] that is [targeted] in accordance with this title at a person reasonably believed to be located outside the United States."?

Doesn't this make more sense than the current language of "Nothing in the definition of electronic surveillance under section 101(f) shall be construed to encompass [surveillance] that is [directed] in accordance with this title at a person reasonably believed to be located outside the United States."?

Gerry, Brett

From: Gerry, Brett (OLP) [EFF2AG(1)-68]  
Sent: Friday, October 12, 2007 8:27 PM  
To: [REDACTED]@ssci.senate.gov [FOIA Exemption b(6)]  
Subject: Re: targeting

Thanks.

[FOIA Exemption b(6)]

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

From: Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov [EFF2AG(1)-69]  
To: Gerry, Brett (OLP)  
Sent: Fri Oct 12 20:08:22 2007  
Subject: RE: targeting

We went with your modified language.

From: Gerry, Brett (OLP) [mailto:Brett.Gerry@usdoj.gov] [EFF2AG(1)-70]  
Sent: Friday, October 12, 2007 3:33 PM  
To: Livingston, J (Intelligence)  
Cc: Eisenberg, John  
Subject: RE: targeting

We believe we could live with it with two changes: first, strike the clause "subject to the requirements of this title," which on reflection could be read (incorrectly in my view) to preclude overseas collection conducted outside of this title. Second, we prefer slightly the formulation "to acquire FII" to "for the purposes of collecting FII," to minimize the risk of it being interpreted as authorizing the targeting but not the acquisition (again, unlikely, but one never knows). This concern goes away entirely if you have the acquisition of FII as the subject and then use targeting to modify, but I understand this to be a problem for some (although I would make the pitch that three of the four elsur definitions use "acquisition" as the subject of the sentence).

You should know that the change of the formulation "directed at" to "targeting" does carry with it one slight risk which we should discuss, but it is one that I think we can probably live with (but do not prefer).

Here is the language with the modification described above:

"Notwithstanding any other law, the Attorney General and the Director of National Intelligence may authorize jointly, for periods of up to one year, the targeting of persons reasonably believed to be located outside of the United States to acquire foreign intelligence information."

[FOIA Exemption b(6)]

[EFF2AG(1)-71]

From: Livingston, J (Intelligence) [mailto:[REDACTED]@ssci.senate.gov]  
Sent: Friday, October 12, 2007 1:44 PM  
To: Gerry, Brett (OLP)  
Subject: targeting

"Procedures for Acquiring the Communications of Certain Persons Overseas

"Sec. 703. (a) Authorization.-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 targeting of persons reasonably believed to be located outside of the United States for the purpose of acquiring foreign intelligence information.

Gerry, Brett

FOIA Exemption b(6)

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**From:** Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov] EFF2AG(1)-122  
**Sent:** Thursday, November 08, 2007 7:41 AM  
**To:** Gerry, Brett (OLP)  
**Subject:** Re: Wyden Amendments

We can't touch the bill until after judiciary is done with it. That means the language can only be added as an amendment right now. Once we get the bill to the floor, then we can fix it with our mangars' amendment.

-----  
Sent from my BlackBerry Wireless Device

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

**From:** Gerry, Brett (OLP) <Brett.Gerry@usdoj.gov>  
**To:** Livingston, J (Intelligence)  
**Sent:** Wed Nov 07 19:56:01 2007  
**Subject:** RE: Wyden Amendments

EFF2AG(1)-123

What we sent a while back is sufficient. I also had sent more recent text to Eric Pelofsky (which was worse but at least technically correct). Neither found its way into the mark, I'm not sure why.

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FOIA Exemption b(6)

**From:** Livingston, J (Intelligence) [mailto:[REDACTED]@ssci.senate.gov]  
**Sent:** Wednesday, November 07, 2007 3:04 PM  
**To:** Gerry, Brett (OLP)  
**Subject:** Wyden Amendments

EFF2AG(1)-124

Do you all have more recent text for fixing the Wyden amendments or is what you sent a while back sufficient? Thanks.

**Gerry, Brett**

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**From:** Gerry, Brett (OLP)  
**Sent:** Tuesday, September 25, 2007 9:48 AM  
**To:** 'Livingston, J (Intelligence)'  
**Cc:** Eisenberg, John; Nichols, Carl (CIV)  
**Subject:** Technical Assistance

EFF2AG(1)-176

**Attachments:** FISA Mod Liability Technical Assistance.pdf



FISA Mod Liability  
Technical A...

Jack-

Pursuant to our meeting with Mike D. on Friday, I am attaching technical assistance you and Mike requested on three issues: (i) a provision for the pre-emption of state regulatory commission actions; (ii) a proposed re-write of the PAA liability provision to allow a mechanism for dismissal; and (iii) suggested technical edits to the section 408 liability provision (which are marked to reflect changes). I will be difficult to reach until early this afternoon; if you need immediate assistance please contact Carl or John.

Thanks,  
Brett

Gerry, Brett

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**From:** Gerry, Brett (OLP)  
**Sent:** Monday, September 24, 2007 7:08 PM  
**To:** 'Livingston, J (Intelligence)'  
**Cc:** Rice, K (Intelligence)  
**Subject:** RE: Liability and Preemption Language

EFF2AG(1)-177

Jack-

Give me a quick call -- 514-0893.

-Brett

FOIA Exemption b(6)

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**From:** Livingston, J (Intelligence) [mailto: [REDACTED]@sscl.senate.gov]  
**Sent:** Monday, September 24, 2007 6:43 PM  
**To:** Gerry, Brett (OLP)  
**Cc:** Rice, K (Intelligence)  
**Subject:** Liability and Preemption Language  
**Importance:** High

EFF2AG(1)-178

Brett,

It would really be helpful to get DOJ's updated liability protection and preemption language by tomorrow morning. Kathleen and I begin to wrestle with Mike and Chris tomorrow over text they've got an "interesting" approach to say the least. I'm at a significant disadvantage on these issues at this point.

As soon as I can, I'm going to send you the latest Bond proposal (and Mike will likely send you his proposal) sometime tomorrow after we take a stab at working out some of our differences (but we're pretty far apart on the most important issue of how to solve the foreign targeting problem).

Could you please forward this to Carl Nichols for me (I don't seem to have his address handy).

Thanks.

Jack

1/25/2008

**Gerry, Brett**

FOIA Exemption b(6)

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

EFF2AG(1)-200

**Sent:** Thursday, October 25, 2007 2:16 PM

**To:** Gerry, Brett (OLP)

**Cc:** Livingston, J (Intelligence)

**Subject:** Wyden amendment technical

Brett,

Still working on obtaining concurrence on the Wyden amendment technical that you proposed, which we would describe as an amendment that conforms the phraseology of targeting to the rest of the bill. Getting close.

Mike

1/25/2008

Gerry, Brett

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**From:** Gerry, Brett (OLP)  
**Sent:** Tuesday, October 23, 2007 11:22 AM  
**To:** 'Davidson, M (Intelligence)'  
**Subject:** RE: Spoke with John Dickas

EFF2AG(2)-8

Thanks Mike.

FOIA Exemption b(6)

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**From:** Davidson, M (Intelligence) [mailto:██████████@ssci.senate.gov]  
**Sent:** Tuesday, October 23, 2007 11:13 AM  
**To:** Gerry, Brett (OLP)  
**Subject:** Spoke with John Dickas

EFF2AG(2)-7

Brett,

John got your message.

I've given him the suggested technical and recommended it to him.

He seemed interested but needs to discuss with colleagues. Although referred to as the Wyden amendment, there were other proponents (the vote was 9-6 in favor, the Chairman and Vice Chairman being among the 6 - which says something about the power of the US person issue, that there can be 9 votes in the committee for an amendment that neither the Chairman nor Vice Chairman supported.)

John is off to a budget meeting (we're preparing to conference our authorization) and will call you.

Mike

1/30/2008



Gerry, Brett

FOIA Exemption b(6)

**From:** Rice, K (Intelligence) [REDACTED]@SSCI.senate.gov] EFF2AG(2)-20  
**Sent:** Wednesday, October 17, 2007 3:26 PM  
**To:** Gerry, Brett (OLP); Eisenberg, John  
**Cc:** Livingston, J (Intelligence)  
**Subject:** amendments

**Attachments:** Feingold ARM07U00\_xml.pdf; Feingold EAS07B12\_xml.pdf; Feingold EAS07B14\_xml.pdf; Feingold EAS07B15\_xml.pdf; Feingold EAS07B55\_xml.pdf; Feingold EAS07B56\_xml.pdf; Feingold EAS07B57\_xml.pdf; Feingold EAS07B60\_xml.pdf; Feingold sunset amendment.doc; Feinstein amendment - exclusivity.doc; Wyden ARM07T96\_xml.pdf; Wyden EAS07B46\_xml.pdf; Wyden ARM07T98\_xml.pdf; Whitehouse EAS07B45\_xml.pdf; Whitehouse EAS07B54\_xml.pdf; Whitehouse EAS07B58\_xml.pdf; Whitehouse EAS07C09\_xml.pdf; Whitehouse FISA-SW-amendments-3.doc

Brett/John—attached are a number of amendments that have been filed for mark-up tomorrow (two of Wyden's are pasted below although I think they overlap with his leg counsel version). Please take a look at these and let us know your thoughts, including which ones are show-stoppers. Thanks. Kathleen

Here are four Wyden amendments for tomorrow's markup. #1 and #2 are attached, #3 and #4 are below (leg counsel is still working on the write-ups). Senator Feingold is a cosponsor for #2, #3 and #4.

#3

**Purpose:** To protect the rights of American citizens who travel outside the United States

Strike page 6, line 23 to page 7, line 12.  
Strike page 17, line 19 to page 18, line 18

On page 6, after line 22 insert:

- (1) An acquisition authorized under subsection (a) may not target a United States person except pursuant to Title I of this Act.
- (2) The acquisition by any electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a United States person who is reasonably believed to be located outside the United States, if the contents are acquired outside the United States, by intentionally targeting that United States person, under circumstances in which a person has reasonable expectation of privacy and a warrant would be required for law enforcement purposes if the technique were used inside the United States, may occur only subsequent to an order obtained pursuant to Title I of this Act.
- (3) The Attorney General shall submit to the Foreign Intelligence Surveillance Court, no later than 30 days following the passage of this Act, procedures for determining whether a target reasonably believed to be outside the United States is a United States person. No targeting shall occur contrary to the procedures, as approved by the Court.

#4

1/25/2008

Purpose: To ensure adequate oversight by Congress and Inspectors General.

On page 22 line 8, strike "are authorized to" and insert "shall".

On page 22 line 12, insert the following:

"(B) with respect to acquisitions authorized under subsection (a), shall review the number of disseminated intelligence reports containing a reference to a United States person identity and the number of United States person identities subsequently disseminated by that element in response to requests for identities that were not referred to by name or title in the original reporting;

(C) with respect to acquisitions authorized under subsection (a), shall review the number of targets that were later determined to be located in the United States and the number of persons located in the United States whose communications have been reviewed;"

On page 22 line 12, strike "report" and insert "provide".

On page 23, after line 13, insert:

(iii) with respect to acquisitions authorized under subsection (a), the number of targets that were later determined to be located in the United States and the number of persons located in the United States whose communications have been reviewed;"

On page 23, line 22, insert the following:

"(C) Court Access. – The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall provide such review to the Foreign Intelligence Surveillance Court.

On page 24, line 8, strike "a description of".

On page 24, line 11, strike "a description of".

On page 24, line 14, strike "a summary of".

On page 24, line 18, add at the end: ", including a copy of any order or pleading containing significant legal interpretations of this Act"

On page 24, line 19, strike "a summary of".

On page 24, line 21, add at the end: ", including a copy of any order or pleading containing significant legal interpretations of this Act"

On page 24, line 22, strike "a description of".

On page 25, line 17, strike "a description of".

On page 25, line 19, strike "the results of".