

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ELECTRONIC FRONTIER
FOUNDATION,

Plaintiff,

vs.

DEPARTMENT OF JUSTICE,

Defendant.

)
) Case No. 10-CV-4892-RS
)
) **FIFTH DECLARATION OF**
) **DAVID M. HARDY, SECTION CHIEF,**
) **FBI RECORD MANAGEMENT**
) **DIVISION, RECORDS/INFORMATION**
) **DISSEMINATION SECTION**
)
)
)
)
)

FIFTH DECLARATION OF DAVID M. HARDY

I, David M. Hardy, declare as follows:

1. I am currently the Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), at Federal Bureau of Investigation Headquarters (“FBIHQ”) in Washington, D.C., and currently relocated to Winchester, Virginia. My background, qualifications, and supervisory duties and responsibilities were previously provided in my First, Second, Third and Fourth Hardy Declarations.
2. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith. This Fifth Hardy Declaration hereby incorporates by reference my First Hardy Declaration of January 25, 2011; Second Hardy Declaration of February 29, 2012; Third Hardy Declaration of February 2, 2012; Fourth Hardy Declaration of April 24, 2012; and all Exhibits thereto.
3. This declaration is in response to Court Order dated October 30, 2012, directing the FBI to

revise its original Cardozo and Lynch Indices, attached to the Second Hardy Declaration as Exhibit O and Exhibit P, by grouping documents into functional- and topic-based categories to provide for a more “adequate foundation for review of the soundness of exemptions claimed.” The FBI was directed to provide these revised indices to Plaintiff no later than December 14, 2012. The Court Order also directed the FBI to review pages that were previously withheld in full or part from otherwise responsive documents based upon the determination that the information in question was outside the scope of plaintiff’s FOIA requests. The FBI was directed to complete this review and provide any additional, non-exempt information to Plaintiff by December 14, 2012.

The Cardozo and Lynch *Vaughn* Indices Prior to Revision

4. The Second Hardy Declaration was accompanied by, and incorporated by reference, two *Vaughn* Indices (hereinafter “Cardozo Index or Lynch Index”), each providing a detailed description of the withheld material within each document category group, which were further broken-down into sub-groupings where necessary. Each index specified the relevant page ranges, dates of records (if any), any applicable exemptions that were applied to the pages within the groupings, and described the action taken with respect to each responsive page: withheld in full (WIF), released in part (RIP), or released in full. The Cardozo Index was attached as **Exhibit O** and the Lynch Index was attached as **Exhibit P**. The document categories and sub-categories groupings were created for the ease of the Court and the Plaintiff, and the documents are indexed and categorized by the Division/Office from which they were received. There was no substantive reason for the categorization. The documents were processed, and released to the Plaintiff in the same order as they were received. See Exhibit M, Second Hardy Declaration, for EFF/Cardozo Bates pages 1-1088, and Exhibit N for EFF/Lynch Bates pages 1-275, 275a, and 276-1240.

The Cardozo and Lynch Indices Revised

5. As directed by Court Order, revised Cardozo and Lynch Indices were placed into the mail

to Plaintiff by December 14, 2012.¹ The Court requested the FBI to revise the original *Vaughn* Indices by grouping the documents received by FBI Divisions/Offices into function- and topic-based categories. The new Cardozo Index now contains eight categories of documents and the new Lynch Index now contains 14 categories of documents. These new categories are based on a detailed review of all 2329 pages of responsive material. First, the pages were reviewed to identify common functions or topics for potential grouping. Second, the categories were designated; and third, documents were assigned to the category groupings based on the substantive function or topic.

6. Additionally, the revised indices were enhanced to provide a road map for the declaration in order to locate the appropriate authority behind the exemptions asserted to withhold material in full or in part. A new column titled, "Declaration Cross-Reference," is added to the indices to help the Court and Plaintiff locate within the declaration the paragraphs that provide the descriptive authority behind the assertion of each exemption. Under the column titled, "Description," a more expansive detail of the responsive documents is provided, the number of pages and types of exemptions that are asserted, and a short description (full description located within the declaration) of the authority behind the exemptions asserted.

Review and Re-process of Pages, or Portions of Pages, Considered Outside the Scope "O/S"

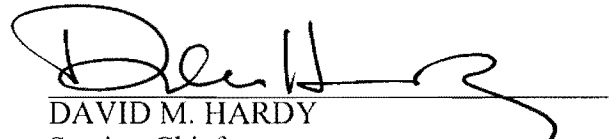
7. Pursuant to Court Order dated November 27, 2012, the FBI conducted "a review of pages that were previously withheld in full or in part from otherwise responsive documents based on the [FBI's] prior determination that the information in question was outside the scope of Plaintiff's FOIA requests." The review concluded that the FBI had determined properly that the pages in question, or portions of pages at issue, were O/S of Plaintiff's FOIA request. However, pursuant to a policy decision that the FBI would no longer out-scope within a page, all Bates pages containing

¹ See Exhibit A for December 14, 2012 release letter to plaintiff, and revised Cardozo and Lynch Indices.

both responsive information and information determined to be O/S of the request were reprocessed to include the out-scoped information. The reprocessing and assertion of FOIA exemptions to this information as if it was considered responsive resulted in the release of no additional information.² See Exhibit A, Lynch Index, category and subgroup 1A, 1C, 1F, 1H, 5B, 7A, and category 9 for further detail and explanation.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that **Exhibits A through B** attached hereto are true and correct copies.

Executed this 31st day of January, 2013



DAVID M. HARDY
Section Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Winchester, VA

² See Exhibit B for reprocessed Lynch Bates pages 94-97, 99-100, 102, 108-110, 112-113, 115, 121-123, 125, 130, 141, 166, 168, 170, 182, 307, 309, 313, 332, 1462-1463, and 1507, which was mailed to Plaintiff December 14, 2012.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ELECTRONIC FRONTIER FOUNDATION

Plaintiff,

v.

Civil Action No. 10-CV-04892-RS

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Exhibit A

U.S. Department of Justice



Federal Bureau of Investigation

Washington, D.C. 20535

12/14/2012

Jennifer Lynch
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

FOIPA Request No's: 1131078 and 1154593
Subject's: Going Dark and Communications System
Compliance with ELSUR

Dear Ms. Lynch:

The Court Order dated October 30, 2012, directed the FBI to revise its original Vaughn Cardozo *Index* ("*Index*") to provide for a more "adequate foundation for review of the soundness of exemptions claimed." See February 29, 2012 "Second Hardy" MSJ filing for original Cardozo *Index* released as Exhibit O. The category groupings were based on individual FBI divisions responding to a July 8, 2009 search Electronic ("EC") request for responsive records on the "Going Dark Program" from January 1, 2007 to June 1, 2009. The order of groupings was based on the order responsive records were received by each FBI division, and then processed, and released to the plaintiff's representative in the same order. See Second Hardy for Bates pages EFF/Cardozo 1-1088 released as Exhibit M. Therefore, the enclosed *Index* organizes the Cardozo material into function- and topic-based categories. In addition, a new column titled, "Declaration Cross-Reference" is added to help the Court and plaintiff pinpoint in the declaration which paragraphs describe in detail the asserted exemptions.

The Court Order dated October 30, 2012, also directed the FBI to revise the original Vaughn Lynch *Index* ("*Index*") to provide for a more "adequate foundation for review of the soundness of exemptions claimed." See February 29, 2012 "Second Hardy" MSJ filing for original Lynch *Index* released as Exhibit P. The category groupings were based on individual FBI divisions responding to a November 8, 2010, January 10, 2011, or March 2, 2011 Electronic Communication (EC) search requests for responsive records for:

"all agency records created on or after January 1, 2006 relating to: 1) any problems, obstacles or limitations that hamper the FBI's current ability to conduct surveillance on communications systems or networks including, but not limited to, encrypted services like Blackberry (RIM), social networking sites like Facebook, peer to peer services or Voice over Internet Protocol (VoIP) services like Skype, etc.; 2) any communications or discussions with the operators of communication systems or networks, or with equipment manufactures and vendors, concerning technical difficulties the FBI has encountered in conducting authorized electronic surveillance; 3) any communications or discussions concerning technical difficulties the FBI has encountered in obtaining assistance from non-U.S. based operators of communication systems, or with equipment manufactures and vendors in the conduct of authorized electronic surveillance; 4) any communications or discussions with the operators of communication systems or networks, or with the equipment manufactures and vendors, concerning development and needs related to electronic communications surveillance-enabling technology; 5) and communications or discussions with foreign government representatives or trade groups about trade restrictions or import or export controls related to electronic communications surveillance-enabling

technology; and, 6) any briefings, discussions, or other exchanges between FBI officials and members of the Senate or House of Representatives concerning implementing a requirement for electronic communications surveillance-enabling technology, including, but not limited to, proposed amendments to the Communications Assistance to Law Enforcement Act (CALEA).”

The order of groupings was based on the order responsive records were received by each FBI division, and then processed, and released to the plaintiff’s representative in the same order. See Second Hardy for Bates pages EFF/Lynch 1-275, 275a, and 276-1240 released as Exhibit N. Therefore, the enclosed *Index* organizes the Lynch material into function- and topic-based categories. In addition, a new column titled, “Declaration Cross-Reference” is added to help the Court and plaintiff pinpoint in the declaration which paragraphs describe in detail the asserted exemptions. In addition, pursuant to Court Order, the FBI conducted a review of information that was previously withheld from documents that also contained responsive information based on the FBI’s prior determination that the information withheld was Outside the Scope (“O/S”) of plaintiff’s FOIA requests. As a result of that review, and pursuant to the agency’s administrative discretion, all Bates pages where O/S redactions were made to pages that also contained responsive information were reprocessed for potential release. See enclosed Exhibit A for reprocessed Lynch Bates pages 94-97, 99-100, 102, 108-110, 112-113, 115, 121-123, 125, 130, 141, 166, 168, 170, 182, 307, 309, 313, 332, 1462-1463, and 1507. See Lynch Index category and subgroup 1A, 1C, 1F, 1H, 5B, 7A, and Category 9 for further detail.

Sincerely,



David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

Enclosure(s)

Electronic Frontier Foundation vs. DOJ, et al

Civil Action No. 10-04892
U. S. District Court
Northern District of California

Cardozo Vaughn Index

Court Order dated October 30, 2012 directs FBI to revise original Vaughn Cardozo *Index* (“*Index*”) to provide for a more “adequate foundation for review of the soundness of exemptions claimed.” See February 29, 2012 “Second Hardy” MSJ filing for original Cardozo *Index* released as Exhibit O. The category groupings were based on individual FBI divisions responding to a July 8, 2009 search Electronic (“EC”) request for responsive records on the “Going Dark Program” from January 1, 2007 to June 1, 2009. The order of groupings was based on the order responsive records were received by each FBI division, and then processed, and released to the plaintiff’s representative in the same order. See Second Hardy for Bates pages EFF/Cardozo 1-1088 released as Exhibit M. Therefore, below is a new detailed description of FBI responsive records by category groupings for information withheld in full (“WIF”), or in part, annotated as released in part (“RIP”) for plaintiff’s Cardozo FOIA 1131078. Pages released in full will be annotated as “RIF.” The responsive material has now been organized into function- and topic-based categories. In addition, a new column titled, “Declaration Cross-Reference” is added to help the Court and plaintiff pinpoint in the declaration which paragraphs describe in detail the asserted exemptions. Finally, the FBI wants to reaffirm its previously declared position that it has not applied the deliberative process privilege to withhold documents reflecting final agency positions.

Category/ Subgroup Number	Bates Page(s)/ (Page Count)	Date(s)	Description	Exemptions Asserted/ Pages	Disposition	Declaration Cross- Reference
			Internal FBI “Going Dark” Strategy and Policy Development			
1A	EFF/Cardozo 67-70, 128, 231-239 (14)	4/14/2008 – 5/29/2009	These 14 Bates pages are unsigned talking points and/or discussion papers prepared by FBI leadership and personnel for internal strategy meetings. They were used to help guide the discussion of FBI participants for the consideration and formulation of strategies and/or initiatives to address emerging technology issues such as the threat of sophisticated encryption that impedes lawful intercepts. <i>Ex. 2:</i> 10 Bates pages asserted “high 2” in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn. <i>Ex. 5:</i> 5Bates pages contained draft deliberative talking point and/or discussion papers concerning development of strategy and policy development. <i>Ex. 6/7C:</i> 2 Bates page (EFF/Cardozo 67, and 239) contained the names and/or identifying information of FBI SAs and support personnel. <i>Ex. 7E:</i> 10 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.	(b)(2) 10 pgs; (b)(5) 5 pgs; (b)(6), (b)(7)(C) 2 pgs; (b)(7)(E) 10 pgs	6 RIP 5 WIF 3 RIF	(b)(2): pg 45, ¶ 92. (b)(5): pgs 46-47, ¶¶ 93-94. (b)(6), (b)(7)(C): pgs 47-49, ¶¶ 95-96. (b)(7)(E): pg 49, ¶ 97
1B	EFF/Cardozo 246-468 (223)	1/15/2008 – 5/29/2009	These 223 Bates pages are e-mails w/attachments discuss the background development of various talking points, discussion papers, and slide presentations on the FBI’s Science and Technology Branch’s “Going Dark Initiative” (also referred to as the National Electronic Surveillance Strategy) to highlight to various internal and external audiences the surveillance challenges faced by the FBI and the law enforcement community. In addition, the e-mail participants were tasked to search for a variety of recommendations, proposals, and advice on multi-point strategies, or actions FBI should, or could, adopt, pursue, or consider in resolving such challenges. The e-mails show how the	(b)(2) 174 pgs; (b)(6), (b)(7)(C) 217 pgs; (b)(7)(D) 2 pgs; (b)(7)(E) 34 pgs	221 RIP 2 RIF	(b)(2): pgs 50-51, ¶ 99. (b)(6), (b)(7)(C): pgs 51-53, ¶¶ 100-102. (b)(7)(D): pgs 53-54, ¶ 103. (b)(7)(E): pg 54, ¶ 104.

			<p>identification, analysis, and review of technical, legal, policy, and resource impediments to the FBI's electronic intercept operations led to the development of a five-prong strategic approach to address the identified lawful intercept capability gap. This five prong strategic approach includes 1) modernization/amendment of existing laws (EX: CALEA), regulations, and assistance mandates, 2) enhancing authorities to protect industry proprietary and Law Enforcement (LE) sensitive lawful intercept information, equipment and techniques, 3) enhancing LE agencies coordination leveraging technical expertise of FBI with other LE entities, 4) enhancing lawful intercept cooperation between communications industry and LEA's with a "One Voice" approach, and 5) seeking new federal funding to bolster lawful intercept capabilities. <i>Ex. 2:</i> Of the 174 Bates pages 162 pages asserted in conjunction with 6/7C for FBI internal, non-public telephone numbers. Of the 174 Bates pages 35 pages asserted "high 2" in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn (b)(2) in these instances. <i>Ex. 6/7C:</i> 217 Bates pages contained the names and/or identifying information of FBI SAs and support personnel, and Other Federal Government ("OFG") employees, but Bates page 406 also contained a name and/or identifying information of a third party individual merely mentioned. <i>Ex. 7D:</i> 2 Bates pages (EFF/Cardozo 416-417) contained information provided by commercial/private companies and other non-government entities under an "Implied" assurance of confidentiality. <i>Ex. 7E:</i> 34 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.</p>			
<p>1C</p>	<p>EFF/Cardozo 469-474 (6)</p>	<p>7/30/2008</p>	<p>These 6 Bates pages are internal FBI talking points/discussion papers related to defining "Going Dark," the need to preserve lawful intercept capabilities, and strategies in developing and implementing a five-pronged National Lawful Intercept Strategy to ensure the future viability of this effective, useful, and indispensable investigative tool for the entire law enforcement</p>	<p>(b)(2) 6 pgs; (b)(6), (b)(7)(C) 1 pg; (b)(7)(E) 6 pgs</p>	<p>6 RIP</p>	<p>(b)(2): pgs 50-51, ¶ 99. (b)(6), (b)(7)(C): pg 51, ¶ 100. (b)(7)(E): pg</p>

			community. <i>Ex. 2:</i> Of the 6 Bates pages only 1 Bates page (EFF/Cardozo 471) asserted in conjunction with 6/7C for FBI internal, non-public telephone numbers. All 6 Bates pages asserted "high 2" in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn (b)(2) in these instances. <i>Ex. 6/7C:</i> 1 Bates page (EFF/Cardozo 471) contained the names and/or identifying information of FBI SAs and support personnel. <i>Ex. 7E:</i> 6 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.			54, ¶ 104.
1D	EFF/Cardozo 658-659, 684-692, 694-701, 703-708, 711-736, 738-762, 765-782, 786-795, 797-846, 864-875, 917-920, 922-936, and 939-952 (199)	1/31/2007 – 4/28/2009	These 199 Bates pages are deliberative talking points and discussion papers related to the FBI's strategic policy development process concerning surveillance challenges posed by emerging technologies. These pages include background development of talking points, discussion papers and slide presentations on the FBI's Science and Technology Branch's "Going Dark Initiative" (also referred to as the National Electronic Surveillance Strategy) to highlight to various internal and external audiences the surveillance challenges faced by the FBI and the law enforcement community, as well as various recommendations, proposals, and advice on multi-point strategies, or actions FBI should, or could, adopt, pursue, or consider to resolve such challenges. The material includes internal discussions between FBI and DOJ on proposals to change policy, legislation, resources, and FBI operational techniques/procedures as well as detailed identification, analysis, and discussion of technical, legal, policy, and resource impediments to FBI electronic intercept operations. <i>Ex. 1:</i> 4 Bates pages (EFF/Cardozo 828-830, 835, and 864) contained specific classified information (SECRET) on intelligence activities exempt from disclosure and properly classified under E.O. 13256, § 1.4, category (c). <i>Ex. 2:</i> Of the 186 Bates pages 3 pages (EFF/Cardozo 736, 749, and 871) asserted in conjunction with 6/7C for FBI internal, non-public telephone numbers. All 186 Bates pages asserted "high 2" in conjunction	(b)(1) 4 pgs; (b)(2) 186 pgs; (b)(5) 186 pgs; (b)(6), (b)(7)(C) 5 pgs; (b)(7)(E) 183 pgs	9 RIP 185 WIF 5 RIF	(b)(1): pgs 60-62, ¶¶ 113-116. (b)(2): pgs 62-63, ¶ 117. (b)(5): pgs 63-65, ¶¶ 119-120. (b)(6), (b)(7)(C): pg 65, ¶ 121. (b)(7)(E): pgs 68-69, ¶ 126.

			with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn (b)(2) in these instances. <i>Ex. 5:</i> 186 Bates pages contained draft deliberative talking points and discussion papers concerning the FBI's strategic policy development process related to ELSUR challenges posed by emerging technologies. <i>Ex. 6/7C:</i> 5 Bates pages (EFF/Cardozo 700, 736, 749, 871, and 918) contained the names and/or identifying information of FBI SAs and support personnel. <i>Ex. 7E:</i> 183 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.			
1E	EFF/Cardozo 709 and 937 (2)	3/18/2009	These 2 Bates pages are FBI internal meeting agendas which list the discussion topics and updates on the "Going Dark Initiative," and proposed future actions/decisions needing to be accomplished to enhance Electronic Surveillance (ELSUR) capabilities. <i>Ex. 6/7C:</i> 2 Bates pages contained the names and/or identifying information of FBI SAs and support personnel.	(b)(6), (b)(7)(C) 2 pgs	2 RIP	(b)(6), (b)(7)(C): pg 65, ¶ 121.
1F	EFF/Cardozo 954-957, 960, 966-968, 971-972, 986-987, 1002-1003, 1010-1011, 1014-1016, 1035-1042, 1045-1049, 1052-1054, 1057-1058, 1060-1061, 1063-1064, 1066-1067, and 1077-1081 (48)	4/23/2008 – 5/28/2009	Of these 48 Bates pages 4 pages (EFF/Cardozo 1016, 1067, 1079-1080) are internal FBI e-mail chains that had attachments that were not properly "married" with the email, or were inadvertently misplaced, during the original FOIA processing. They were provided to the plaintiff as part of a supplemental release. The remaining 44 Bates pages are duplicates of previously processed e-mail chains. They were inserted in front of the newly located attachments to show plaintiff where they should have been processed during the earlier FOIA releases. See the deleted page inserts between Bates pages EFF/Cardozo 954-1088 in Exhibit M to see the location of the processed originals. These e-mails w/attachments discuss the background development of various talking points, discussion papers, and slide presentations on the FBI's Science and Technology Branch's "Going Dark Initiative" (also referred to as the National Electronic Surveillance Strategy) to highlight to various internal and external audiences the surveillance challenges faced by the FBI and the law enforcement community. In addition, the e-mail participants were tasked to	(b)(6), (b)(7)(C) 2 pgs; (b)(7)(E) 1 pg	3 RIP 44 WIF [all Duplicates] 1 RIF	(b)(6), (b)(7)(C): pgs 73-74, ¶ 134. (b)(7)(E): pg 74, ¶ 135.

			<p>search for a variety of recommendations, proposals, and advice on multi-point strategies, or actions FBI should, or could, adopt, pursue, or consider in resolving such challenges. The e-mails show how the identification, analysis, and review of technical, legal, policy, and resource impediments to the FBI's electronic intercept operations led to the development of a five-prong strategic approach to address the identified lawful intercept capability gap. This five prong strategic approach includes 1) modernization/amendment of existing laws (EX: CALEA), regulations, and assistance mandates, 2) enhancing authorities to protect industry proprietary and Law Enforcement (LE) sensitive lawful intercept information, equipment and techniques, 3) enhancing LE agencies coordination leveraging technical expertise of FBI with other LE entities, 4) enhancing lawful intercept cooperation between communications industry and LEA's with a "One Voice" approach, and 5) seeking new federal funding to bolster lawful intercept capabilities. <i>Ex. 6/7C</i>: 2 Bates pages (EFF/Cardozo 1079-1080) contained the names and/or identifying information of FBI SAs and support personnel. <i>Ex. 7E</i>: 1Bates page (EFF/Cardozo 1080) detailed the difficulties law enforcement encountered in conducting ELSUR, and discussed possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.</p>			
1G	EFF/Cardozo 958-959, 961-965, 969-970, 973-985, 988-1001, 1004-1009, 1012-1013, 1018-1034, 1043-1044, 1050-1051, 1055-1056, and 1074-1076 (70)	1/31/2007 – 4/23/2009 (several undated)	<p>Of these 70 Bates pages 33 pages (EFF/Cardozo 961-965, 969-970, 973-985, 1000, 1004-1009, 1012-1013, 1021, and 1074-1076) were newly identified responsive talking point presentations that were part of the missing attachments identified from re-reviewing the Office of Technology Division ("OTD") Response, Sections 1-3. They were provided to the plaintiff as part of a supplemental release along with the emails discussed in Category 1F. The remaining 37 Bates pages are duplicates of previously processed talking point presentations. They were identified as part of the missing attachments, because we could not 'marry' them up with an e-mail during the original FOIA processing. They now have been properly identified, and the deleted page inserts between Bates pages EFF/Cardozo 954-1088 in Exhibit M will</p>	(b)(5) 33 pgs; (b)(6), (b)(7)(C) 1 pg; (b)(7)(E) 30 pgs	1 RIP 69 WIF [37 Duplicates, and 32 withheld by Exemptions]	(b)(5): pgs 72-73, ¶¶ 132-133. (b)(6), (b)(7)(C): pgs 73-74, ¶ 134. (b)(7)(E): pg 74, ¶ 135.

			detail the location of the processed originals. <i>Ex. 5:</i> 33 Bates pages contained draft deliberative talking points papers concerning the FBI's strategic policy development process related to ELSUR challenges posed by emerging technologies. <i>Ex. 6/7C:</i> 1 Bates page (EFF/Cardozo 1074) contained the names and/or identifying information of FBI SAs and support personnel. <i>Ex. 7E:</i> 30Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.			
1H	EFF/Cardozo 1082-1084 (3)	Undated	Newly identified discussion paper that was also part of the missing attachments discussed above. This discussion paper highlighted instances where technology has, or is, still impacting the ability of the FBI's Data Intercept Technology Unit (DITU) to perform lawful intercepts. They were also provided to the plaintiff as part of a supplemental release along with the emails discussed in Category 1F and Talking Points in 1G. <i>Ex. 1:</i> 3 Bates pages contained specific classified information (SECRET) on intelligence activities exempt from disclosure and properly classified under E.O. 13256, § 1.4, category (c). <i>Ex. 6/7C:</i> 1 Bates page (EFF/Cardozo 1083) contained the names and/or identifying information of FBI SAs and support personnel. <i>Ex. 7E:</i> 3Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.	(b)(1) 3 pgs; (b)(6), (b)(7)(C) 1 pg; (b)(7)(E) 3 pgs	3 WIF	(b)(1): pgs 70-72, ¶¶ 129-131. (b)(6), (b)(7)(C): pgs 73-74, ¶ 134. (b)(7)(E): pg 74, ¶ 135.
			Formulation of FBI Whitepaper: "National Lawful Intercept Strategy" and/or "Law Enforcement's Need to Preserve Lawful Intercept Capabilities."			
2A	EFF/Cardozo 479-483, 499-515, 531-542, 600-615, 617,	7/2008 – 10/28/2008	These 52 Bates pages are draft Whitepapers developed to highlight the need to preserve lawful intercept capabilities. The Whitepaper would help define the problem, detail impediments to lawful interception, and outline the development of a National Lawful	(b)(2) 43 pgs; (b)(5) 34 pgs; (b)(7)(E) 43 pgs	15 RIP 34 WIF 3 RIF	(b)(2): pgs 55 56, ¶ 106. (b)(5): pgs 56-57, ¶¶ 107-108.

	and 639 (52)		Intercept Strategy to provide solutions to the problem. <i>Ex. 2:</i> 43 Bates pages asserted “high 2” in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn. <i>Ex. 5:</i> 34 Bates pages contained draft deliberative whitepapers under development concerning defining “Going Dark,” and outlining solutions. <i>Ex. 7E:</i> 43Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.			(b)(7)(E): pgs 58-59, ¶ 111.
2B	EFF/Cardozo 475-478, 484-498, 516-530, 543-576, 596-599, 616, and 636-638 (76)	8/6/2008 – 6/16/2009	These 76 Bates pages are comprised of internal e-mail chains w/attachments between FBI personnel, and the FBI Office of General Counsel (OGC) staff, forwarding talking points and discussion papers asking for legal review and consultation related to finalizing the National Lawful Intercept Strategy Whitepaper (also referred to as “Going Dark Initiative”). <i>Ex. 2:</i> Of the 59 Bates pages 21 pages asserted in conjunction with 6/7C for FBI internal, non-public telephone numbers. Of the 59 Bates pages 45 pages asserted “high 2” in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn (b)(2) in these instances. <i>Ex. 5:</i> 54 Bates pages contained draft deliberative whitepapers under development concerning defining “Going Dark,” and outlining solutions. <i>Ex. 6/7C:</i> 52 Bates pages contained the names and/or identifying information of FBI SAs and support personnel. In addition, 3 of those Bates pages (EFF/Cardozo 477-478, and 596) also contained the names and/or identifying information of OFG employees. <i>Ex. 7E:</i> 45Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.	(b)(2) 59 pgs; (b)(5) 54 pgs; (b)(6), (b)(7)(C) 52 pgs; (b)(7)(E) 45 pgs	70 RIP 2 WIF 4 RIF	(b)(2): pgs 55-56, ¶ 106. (b)(5): pgs 56-57, ¶¶ 107-108. (b)(6), (b)(7)(C): pgs 57-58, ¶¶ 109-110. (b)(7)(E): pgs 58-59, ¶ 111.
2C	EFF/Cardozo 847-863 (17)	3/2009	This is a 17 page draft Whitepaper called, “Going Dark: Law Enforcements Need to Preserve Lawful Intercept Capabilities.” The Whitepaper was being developed to help define the problem,	(b)(1) 1 pg; (b)(2) 17 pgs; (b)(5) 17 pgs;	17 WIF	(b)(1): pgs 60-62, ¶¶ 113-115. (b)(2): pgs 62-

			detail impediments to lawful interception, and outline the development of a National Lawful Intercept Strategy to provide solutions to the problem. <i>Ex. 1:</i> 1 Bates page (EFF/Cardozo 851) contained specific classified information (SECRET) on intelligence activities exempt from disclosure and properly classified under E.O. 13256, § 1.4, category (c). <i>Ex. 2:</i> 17 Bates pages asserted “high 2” in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn. <i>Ex. 5:</i> 17 Bates pages contained a draft deliberative whitepaper under development to define “Going Dark,” and outline possible solutions. <i>Ex. 7E:</i> 17 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.	(b)(7)(E) 17 pgs		63, ¶ 117. (b)(5): pgs 63-65, ¶¶ 119-120. (b)(7)(E): pgs 68-69, ¶ 126.
2D	EFF/Cardozo 660-661, 693, 702, 710, 737, 763-764, 783-785, 796, 921, 938, and 953 (15)	1/31/2008 – 3/17/2009	These 15 Bates pages consist of e-mail chains w/attachments between FBI personnel, and the forwarding of talking points and discussion papers asking for technical input and consultation on finalizing the National Lawful Intercept Strategy Whitepaper (also referred to as “Going Dark Initiative”). <i>Ex. 2:</i> 10 Bates pages asserted in conjunction with 6/7C for FBI internal, non-public telephone numbers. <i>Ex. 6/7C:</i> 15 Bates pages contained the names and/or identifying information of FBI SAs and support personnel, and OFG employees, but 1 Bates page (EFF/Cardozo 938) also contained a name and/or identifying information of a third party individual merely mentioned.	(b)(2) 10 pgs; (b)(6), (b)(7)(C) 15 pgs	15 RIP	(b)(2): pgs 62-63, ¶ 117. (b)(6), (b)(7)(C): pgs 65-67, ¶¶ 121-123.
			Internal FBI “Going Dark” Program Evaluation and Accomplishment Reporting			
3A	EFF/Cardozo 665-677 (13)	9/2008 – 4/2009	These 13 Bates pages consists of OTD “Significant Monthly Accomplishment” reports detailing accomplishments on its work for the “Going Dark Initiative. <i>Ex. 1:</i> 7 Bates pages (EFF/Cardozo 668-671, 674-675, and 677) contained specific classified information (SECRET) on intelligence activities, and foreign relations, exempt from disclosure and properly classified	(b)(1) 7 pgs; (b)(2) 13 pgs; (b)(5) 12 pgs; (b)(6), (b)(7)(C) 6 pgs; (b)(7)(D) 5 pgs;	13 RIP	(b)(1): pgs 60-62, ¶¶ 113-116. (b)(2): pgs 62-63, ¶ 117. (b)(5): pgs 63-65, ¶¶ 119-120.

			<p>under E.O. 13256, § 1.4, categories (c) and (d). <i>Ex. 2:</i> 13 Bates pages asserted “high 2” in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn. <i>Ex. 5:</i> 12 Bates pages contained deliberative analysis and recommendations concerning the FBI’s strategic policy development process related to ELSUR challenges posed by emerging technologies. <i>Ex. 6/7C:</i> 6 Bates pages contained the names and/or identifying information of FBI SAs and support personnel, OFG employees, and third party individuals merely mentioned. <i>Ex. 7D:</i> 5 Bates pages (EFF/Cardozo 665, 668-669, 674, and 676) contained information provided by commercial/private companies and other non-government entities under an “Implied” assurance of confidentiality. <i>Ex. 7E:</i> 13 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.</p>	(b)(7)(E) 13 pgs		<p>(b)(6), (b)(7)(C): pgs 65-67, ¶¶ 121-123. (b)(7)(D): pgs 67-68, ¶¶ 124-125. (b)(7)(E): pgs 68-69, ¶ 126.</p>
3B	EFF/Cardozo 662-664, and 678-683 (9)	5/1/2009 – 6/25/2009 (1 report undated)	<p>These 9 Bates pages are internal OTD “Going Dark Campaign” status reports on how the FBI is pro-actively engaging policy and decision makers advocating enhancement of its ELSUR capabilities, and “Going Dark Initiative” status reports on the FBI’s development of its five-prong strategic approach to support the community of ELSUR stakeholders, and proposed future actions required to accomplish these tasks. <i>Ex. 2:</i> Of the 9 Bates pages 1 page (EFF/Cardozo 680) asserted in conjunction with 6/7C for FBI internal, non-public telephone numbers. 9 Bates pages asserted “high 2” in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn (b)(2) in these instances. <i>Ex. 5:</i> 9 Bates pages contained deliberative analysis and recommendations concerning the FBI’s strategic policy development process related to ELSUR challenges posed by emerging technologies. <i>Ex. 6/7C:</i> 4 Bates pages contained the names and/or identifying information of FBI SAs and support personnel. <i>Ex. 7E:</i> 9 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss</p>	(b)(2) 9 pgs; (b)(5) 9 pgs; (b)(6), (b)(7)(C) 4 pgs; (b)(7)(E) 9 pgs	9 WIF	<p>(b)(2): pgs 62-63, ¶ 117. (b)(5): pgs 63-65, ¶¶ 119-120. (b)(6), (b)(7)(C): pgs 65-67, ¶¶ 121 and 123. (b)(7)(E): pgs 68-69, ¶ 126.</p>

			possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.			
3C	EFF/Cardozo 1017, 1059, 1062, 1065, and 1068-1072 (9)	12/2008 – 4/2009	Of these 9 Bates pages 8 pages are newly identified accomplishment report ‘templates,’ and were part of the missing attachments. These monthly accomplishment report templates were being developed by OTD to highlight all significant accomplishments of the OTD Division programs, and not just the ‘Going Dark’ initiative. The remaining Bates page (EFF/Cardozo 1017) is an “ELSUR Support Provided to other LEAs” reporting form. They were also provided to the plaintiff as part of a supplemental release along with the emails discussed in Category 1F, Talking Points in 1G, and Discussion Paper in 1H. <i>Ex. 7E: 7</i> Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.	(b)(7)(E) 7 pgs	7 RIP 2 RIF	(b)(7)(E): pg 74, ¶ 135.
3D	EFF/Cardozo 1073 (1)	Undated	This 1 page “Going Dark Input for September Accomplishment Report” summarizes the input of the ELSUR National Contracts team within the ELSUR Technology Management Unit. This was also provided to the plaintiff as part of a supplemental release along with the emails discussed in Category 1F, Talking Points in 1G, Discussion Paper in 1H, and Monthly Accomplishment Report Templates in 3C. <i>Ex. 7E: 1</i> Bates page detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.	(b)(7)(E) 1 pg	1 RIP	(b)(7)(E): pg 74, ¶ 135.
3E	EFF/Cardozo 1085-1088 (4)	3/2009 – 5/2009	These 4 Bates pages consists of OTD “Significant Monthly Accomplishment” reports detailing accomplishments on its work for the “Going Dark Initiative. These were also provided to the plaintiff as part of a supplemental release along with the emails discussed in Category 1F, Talking Points in 1G, Discussion Paper in 1H, Monthly Accomplishment Report Templates in 3C, and Report Input in 3D. <i>Ex. I: 3</i> Bates pages (EFF/Cardozo 1085, 1087-1088) contained specific classified information (SECRET)	(b)(1) 3 pgs; (b)(6), (b)(7)(C) 1 pg; (b)(7)(E) 3 pgs	3 RIP 1 RIF	(b)(1): pgs 70-72, ¶¶ 129-131. (b)(6), (b)(7)(C): pgs 73-74, ¶ 134. (b)(7)(E): pg 74, ¶ 135.

			on intelligence activities exempt from disclosure and properly classified under E.O. 13256, § 1.4, category (c). <i>Ex. 6/7C</i> : 1 Bates page (EFF/Cardozo 1085) contained the names and/or identifying information of FBI SAs and support personnel. <i>Ex. 7E</i> : 3Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.			
			FBI Director Talking Points			
4	EFF/Cardozo 71-74 (4)	1/25/2008 – 1/25/2008 and 5/29/2009	These 4 Bates pages comprise 2 separate e-mail chains w/attachments between FBI personnel, forwarding talking points to prepare the FBI Director for his annual threat assessment hearing in February 2008, and a Senate Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies hearing on June 4, 2009. <i>Ex. 2</i> : 4 Bates pages asserted in conjunction with 6/7C for FBI internal, non-public telephone numbers. Of the 4 Bates pages 1 page (EFF/Cardozo 73) also asserted “high 2” in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn (b)(2) in these instances. <i>Ex. 6/7C</i> : 4 Bates pages contained the names and/or identifying information of FBI SAs and support personnel. <i>Ex. 7E</i> : 1Bates page detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.	(b)(2) 4 pgs; (b)(6), (b)(7)(C) 4 pgs; (b)(7)(E) 1 pg	4 RIP	(b)(2): pgs 45-46, ¶ 92. (b)(6), (b)(7)(C): pgs 47-48, ¶ 95. (b)(7)(E): pg 49, ¶ 97.
			FBI Draft Legislative Input and Proposals			
5A	EFF/Cardozo 75-127, 136-230, and 240-245 (154)	11/14/2008 – 5/27/2009	These 154 Bates pages are unsigned, edited “redline” versions of ELSUR and ELSUR-related legislative proposals designed to update and improve existing Federal ELSUR laws (e.g.: CALEA) and assistance mandates, and to enact new ELSUR and ELSUR-	(b)(2) 143 pgs; (b)(5) 138 pgs; (b)(6), (b)(7)(C) 3 pgs;	9 RIP 136 WIF 9 RIF	(b)(2): pgs 45-46, ¶ 92. (b)(5): pgs 46-47, ¶ 93.

			related laws to support Law Enforcement Agencies (LEAs) investigative efforts. <i>Ex. 2:</i> 143 Bates pages asserted “high 2” in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn (b)(2) in these instances. Of the 143 Bates pages 2 pages (EFF/Cardozo 75, and 126) also asserted in conjunction with 6/7C for FBI internal, non-public telephone numbers. <i>Ex. 5:</i> 138 Bates pages contained deliberative discussions between FBI and DOJ on legislative proposals. <i>Ex. 6/7C:</i> 3 Bates pages (EFF/Cardozo 75, 126, and 137) contained the names and/or identifying information of FBI SAs and support personnel. <i>Ex. 7E:</i> 143 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.	(b)(7)(E) 143 pgs		(b)(6), (b)(7)(C): pgs 47-48, ¶ 95. (b)(7)(E): pg 49, ¶ 97.
5B	EFF/Cardozo 577-595, 618-635, and 640-657 (55)	Undated, but obviously part of material outlined in 5A	These 55 Bates pages are unsigned, edited “redline” versions of ELSUR and ELSUR-related legislative proposals designed to update and improve existing Federal ELSUR laws (e.g.: CALEA) and assistance mandates, and to enact new ELSUR and ELSUR-related laws to support Law Enforcement Agencies (LEAs) investigative efforts. <i>Ex. 2:</i> 51 Bates pages asserted “high 2” in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn. <i>Ex. 5:</i> 51 Bates pages contained deliberative discussions between FBI and DOJ on legislative proposals. <i>Ex. 7E:</i> 51 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.	(b)(2) 51 pgs; (b)(5) 51 pgs; (b)(7)(E) 51 pgs	51 RIP 4 RIF	(b)(2): pgs 55-56, ¶ 106. (b)(5): pgs 56-57, ¶¶ 107-108. (b)(7)(E): pgs 58-59, ¶ 111.
			Communications Related to Legislative Branch Meetings			
6	EFF/Cardozo 129-135 (7)	5/15/2009 – 6/18/2009	These 7 Bates pages are summary briefings prepared by Office of Congressional Affairs (OCA) staff members after meetings with Congressman, Senators, and/or congressional staffers concerning	(b)(2) 5 pgs; (b)(6), (b)(7)(C) 5 pgs;	5 RIP 2 RIF	(b)(2): pgs 45-46, ¶ 92. (b)(6),

			budget discussions and sharing updates on topics such as “Going Dark Initiative.” <i>Ex. 2:</i> 5 Bates pages asserted “high 2” in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn. <i>Ex. 6/7C:</i> 5 Bates pages contained the names and/or identifying information of FBI SAs and support personnel, and OFG employees. <i>Ex. 7E:</i> 5 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.	(b)(7)(E) 5 pg		(b)(7)(C): pgs 47-49, ¶¶ 95-96. (b)(7)(E): pg 49, ¶ 97.
			Contract Related Records			
7	EFF/Cardozo 876-916 (41)	7/7/2008	These 41 Bates pages consist of contractual paperwork from the RAND Corporation detailing its contract obligations with the FBI’s Operational Technology Division (OTD) for the “FBI Going Dark Initiative Electronic Surveillance Analysis Project.” <i>Ex. 2:</i> Of the 15 Bates pages 14 pages asserted “high 2” in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn (b)(2) in these instances. Of the 15 Bates pages 1 page (EFF/Cardozo 875) also asserted in conjunction with 6/7C for FBI internal, non-public telephone numbers. <i>Ex. 4:</i> 39 pages contained confidential, proprietary draft contractual information provided by an FBI contractor, which described the scope of work they could perform and cost projections. <i>Ex. 6/7C:</i> 6 Bates pages contained the names and/or identifying information of third party individuals merely mentioned, except for 1 FBI support personal mentioned on Bates page 875, and 1 OFG employee mentioned on Bates page 916. <i>Ex. 7E:</i> 14 Bates pages detailed proposals on enhancing investigative techniques to ensure ELSUR capabilities will remain effective and productive.	(b)(2) 15 pgs; (b)(4) 39 pgs; (b)(6), (b)(7)(C) 6 pgs; (b)(7)(E) 14 pgs	2 RIP 39 WIF	(b)(2): pgs 62-63, ¶ 117. (b)(4): pg 63, ¶ 118. (b)(6), (b)(7)(C): pgs 65-67, ¶¶ 121-123. (b)(7)(E): pgs 68-69, ¶ 126.
			Formulation of Response to Media Inquiry			

<p>8</p>	<p>EFF/Cardozo 1-66 (66)</p>	<p>5/7/2009 – 7/24/2009</p>	<p>These 66 Bates pages are internal e-mail chains between FBI divisions in response to a request from a media outlet for a definition of “Going Dark.” The FBI’s Office of Technology Division (OTD) went on record as defining “Going Dark” as the program name given to the FBI’s efforts to utilize innovative technology; foster cooperation with industry; and assist our state, local, and tribal law enforcement partners in a collaborative effort to close the growing gap between lawful interception requirements and our capabilities. The term applies to the research and development of new tools, technical support and training initiatives. Ex. 2: Of the 18 Bates pages 12 pages asserted in conjunction with 6/7C for FBI internal, non-public telephone numbers. Of the 18 Bates pages 11 pages also asserted “high 2” in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn (b)(2) in these instances. Ex. 5: 11 Bates pages contained deliberative back and forth discussions about defining “Going Dark” for a media outlet. Ex. 6/7C: 65 Bates pages contained the names and/or identifying information of FBI SA’s and support personal, and third party individuals merely mentioned. Ex. 7E: 11 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.</p>	<p>(b)(2) 18 pgs; (b)(5) 11 pgs; (b)(6), (b)(7)(C) 65 pgs; (b)(7)(E) 11 pgs</p>	<p>65 RIP 1 RIF</p>	<p>(b)(2): pgs 41-42, ¶ 86. (b)(5): pg 42, ¶ 87. (b)(6), (b)(7)(C): pgs 42-44, ¶¶ 88-89. (b)(7)(E): pgs 44-45, ¶ 90.</p>
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Electronic Frontier Foundation vs. DOJ, et al

Civil Action No. 10-04892
U. S. District Court
Northern District of California

Lynch Vaughn Index

Court Order dated October 30, 2012 directs FBI to revise original Vaughn Lynch *Index* (“*Index*”) to provide for a more “adequate foundation for review of the soundness of exemptions claimed.” See February 29, 2012 “Second Hardy” MSJ filing for original Lynch *Index* released as Exhibit P. The category groupings were based on individual FBI divisions responding to a November 8, 2010, January 10, 2011, or March 2, 2011 Electronic Communication (EC) search requests for responsive records for:

“all agency records created on or after January 1, 2006 relating to: 1) any problems, obstacles or limitations that hamper the FBI’s current ability to conduct surveillance on communications systems or networks including, but not limited to, encrypted services like Blackberry (RIM), social networking sites like Facebook, peer to peer services or Voice over Internet Protocol (VoIP) services like Skype, etc.; 2) any communications or discussions with the operators of communication systems or networks, or with equipment manufactures and vendors, concerning technical difficulties the FBI has encountered in conducting authorized electronic surveillance; 3) any communications or discussions concerning technical difficulties the FBI has encountered in obtaining assistance from non-U.S. based operators of communication systems, or with equipment manufactures and vendors in the conduct of authorized electronic surveillance; 4) any communications or discussions with the operators of communication systems or networks, or with the equipment manufactures and vendors, concerning development and needs related to electronic communications surveillance-enabling technology; 5) and communications or discussions with foreign government representatives or trade groups about trade restrictions or import or export controls related to electronic communications surveillance-enabling technology; and, 6) any briefings, discussions, or other exchanges between FBI officials and members of the Senate or House of Representatives concerning implementing a requirement for electronic communications surveillance-enabling technology, including, but not limited to, proposed amendments to the Communications Assistance to Law Enforcement Act (CALEA).”

The order of groupings was based on the order responsive records were received by each FBI division, and then processed, and released to the plaintiff’s representative in the same order. See Second Hardy for Bates pages EFF/Lynch 1-275, 275a, and 276-1240 released as Exhibit N. Therefore, below is a new detailed description of FBI responsive records by category groupings for information withheld in full (“WIF”), or in part, annotated as released in part (“RIP”) for plaintiff’s Lynch FOIA 1154593. Pages released in full will be annotated as “RIF.” The responsive material has now been organized into function- and topic-based categories. In addition, a new column titled, “Declaration Cross-Reference” is added to help the Court and plaintiff pinpoint in the declaration which paragraphs describe in detail the asserted exemptions. Finally, the FBI wants to reaffirm its previously declared position that it has not applied the deliberative process privilege to withhold documents reflecting final agency positions.

In addition, pursuant to Court Order, the FBI conducted a review of information that was previously withheld from documents that also contained responsive information based on the FBI's prior determination that the information withheld was Outside the Scope ("O/S") of plaintiff's FOIA requests. As a result of that review, and pursuant to the agency's administrative discretion, all Bates pages where O/S redactions were made to pages that also contained responsive information were reprocessed for potential release. See attached Exhibit A for reprocessed Lynch Bates pages 94-97, 99-100, 102, 108-110, 112-113, 115, 121-123, 125, 130, 141, 166, 168, 170, 182, 307, 309, 313, 332, 1462-1463, and 1507. See Lynch Index category and subgroup 1A, 1C, 1F, 1H, 5B, 7A, and Category 9 for further detail.

Category/ Subgroup Number	Bates Page(s)/ (Page Count)	Date(s)	Description	Exemptions Asserted/ Pages	Disposition	Declaration Cross- Reference
			Internal FBI "Going Dark" Strategy and Policy Development			
1A	EFF/Lynch 49-61, 64- 141, and 146- 148 (94)	8/24/2009 – 6/11/2010 (several undated)	These 94 Bates pages are several internal draft FBI talking points presentations related to defining "Going Dark" and the need to preserve lawful intercept capabilities. The draft presentations were being developed for internal FBI and external law enforcement audiences. The main presentations under development were titled, "Going Dark Initiative: Closing the National Security Electronic Surveillance ("ELSUR") Gap" and "Going Dark: Preservation of Lawful Intercepts and Challenges and Solutions." Portions of presentations RIP, or slides RIF, are related to the publicly released definition of "Going Dark," and known challenges. The balance of the presentation material is either still under development, and/or related to investigative techniques used, or under consideration, as possible solutions to the ELSUR challenges. The presentations defined "Going Dark," showed how ELSUR gaps impacted national security, detailed Communications Assistance for Law Enforcement Act ("CALEA") shortfalls, and offered possible solutions to close the ELSUR gap. Of these 94 Bates pages 23 pages are exact duplicates of Going Dark presentation slides. Pursuant to Court	(b)(1) 1 pg; (b)(2) 42 pgs; (b)(3) 1 pg; (b)(5) 34 pgs; (b)(6), (b)(7)(C) 1 pgs; (b)(7)(D) 1 pgs; (b)(7)(E) 52 pgs	27 RIP 48 WIF [23 Duplicates, and 25 withheld by Exemptions] 19 RIF	(b)(1): 75-78 pgs, ¶¶ 137- 140. (b)(2): pg 78, ¶ 141. (b)(3): pg 79, ¶ 143. (b)(5): pgs 79- 80, ¶¶ 144-145. (b)(6), (b)(7)(C): pgs 82-83, ¶ 148 . (b)(7)(D): pgs 83-84, ¶ 150. (b)(7)(E): pgs 84-85, ¶ 151.

			<p>Order, the FBI conducted a review of information that was previously withheld from documents that also contained responsive information based on the FBI's prior determination that the information withheld was Outside the Scope ("O/S") of plaintiff's FOIA requests. As a result of that review, and pursuant to the agency's administrative discretion, all Bates pages where O/S redactions were made to pages that also contained responsive information were reprocessed for potential release. In this case the material originally withheld O/S pertains to "proposed remedies" to ELSUR challenges. See attached Exhibit A for reprocessed Bates pages 94-97, 99-100, 102, 108-110, 112-113, 115, 121-123, 125, 130, and 141. <i>Ex. 1:</i> 1 Bates page (EFF/Lynch 54) contained specific classified information (SECRET) on intelligence activities and foreign relations exempt from disclosure and properly classified under E.O. 13256, § 1.4, categories (c) and (d). <i>Ex. 2:</i> 42 Bates pages asserted "high 2" in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn. <i>Ex. 3:</i> 1 Bates page (EFF/Lynch 25) asserted to withhold information pursuant to 18 U.S.C. § 3123(d), the Pen Register Act. <i>Ex. 5:</i> 34 Bates pages contained draft deliberative talking point presentation concerning development of strategy and policy development. <i>Ex. 6/7C:</i> 1 Bates page (EFF/Lynch 52) contained the names and/or identifying information of a third party individual of investigative interest to the FBI. <i>Ex. 7D:</i> 1 Bates page (EFF/Lynch 130) contained information provided by a foreign government and or foreign law enforcement entity under an express assurance of confidentiality. <i>Ex. 7E:</i> 52 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.</p>			
1B	EFF/Lynch 290-304, 333-334, 343-344, and 361-362	3/12/2007 – 9/15/2010	<p>These 21 Bates pages are draft talking points papers and/or presentations on the following: 1) developing a definition of "Going Dark," collecting case examples to show how FBI ELSUR capabilities have been effected, and proposing possible</p>	(b)(2) 1 pg; (b)(5) 15 pgs; (b)(6), (b)(7)(C) 5 pgs;	21 WIF [6 Duplicates, and 15 withheld by	(b)(2): pg 126, ¶ 207. (b)(5): pgs 127-128, ¶¶ 208-

	(21)		<p>solutions to enhance lawful intercept capabilities, 2) deliberating over proposed reforms presented by members of private industry and the privacy community concerning the Electronic Communications Privacy Act of 1986 (ECPA), 3) developing possible questions and proposed answers related to “Going Dark,” and 4) reviewing the history of CALEA, summary of different Federal Communication Council (FCC) orders that helped resolve some of CALEA’s shortfalls, and developing new proposals to amend CALEA through the legislative process to enhance ELSUR capabilities. Of these 21 Bates pages 6 pages are duplicates of a 2 page draft talking points paper titled, “Going Dark” processed for partial release at Bates pages EFF/Lynch 129-130. <i>Ex. 2:</i> 1 Bates page (EFF/Lynch 304) asserted in conjunction with 6/7C for FBI internal, non-public telephone numbers. In addition, asserted “high 2” in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn (b)(2) in this instance. <i>Ex. 5:</i> 15 Bates pages contained draft deliberative talking points papers and/or presentation concerning the FBI’s strategic policy development process related to ELSUR challenges, and proposed reforms of ECPA and CALEA. <i>Ex. 6/7C:</i> 5 Bates page contained the names and/or identifying information of FBI SAs and support personnel. <i>Ex. 7E:</i> 13 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.</p>	(b)(7)(E) 13 pgs	Exemptions]	<p>209. (b)(6), (b)(7)(C): pg 129, ¶ 211. (b)(7)(E): pgs 131-132, ¶ 213.</p>
<p>1C</p>	<p>EFF/Lynch 309-313, 328-332, and 335-340 (16)</p>	<p>1/20/2009 – 3/11/2011</p>	<p>These 16 Bates pages are internal e-mail chains between FBI personnel. The internal e-mail discussions pertain to: 1) CALEA limitations, and proposed amendments that will enhance ELSUR capabilities, 2) development of internal ‘FBI Wikipedia’ proposed definitions of ‘Going Dark,’ 3) assessment and opinions related to surveillance challenges faced by the FBI, and defining ‘Going Dark,’ and 4) internal Operational Technology (OTD) discussion on their opposition to certain provisions of the COPS Improvement ACT-S167. Pursuant to Court Order, the FBI</p>	<p>(b)(5) 16 pgs; (b)(6), (b)(7)(C) 8 pgs; (b)(7)(E) 10 pgs</p>	<p>3 RIP 13 WIF</p>	<p>(b)(5): pgs 127-128, ¶¶ 208-210 (b)(6), (b)(7)(C): pg 51, ¶ 100. (b)(7)(E): pg 54, ¶ 104.</p>

			<p>conducted a review of information that was previously withheld from documents that also contained responsive information based on the FBI's prior determination that the information withheld was Outside the Scope ("O/S") of plaintiff's FOIA requests. As a result of that review, and pursuant to the agency's administrative discretion, all Bates pages where O/S redactions were made to pages that also contained responsive information were reprocessed for potential release. In this case the material originally withheld O/S pertains to the identities of FBI personnel. See attached Exhibit A for reprocessed Bates pages 309, 313, and 332. <i>Ex. 5:</i> 16 Bates pages contained deliberative e-mail chains between FBI personnel exchanging ideas on proposed solutions to FBI ELSUR shortfalls, and defining 'Going Dark' for an internal informational database. Of these 16 Bates pages 2 pages (EFF/Lynch 339-340) covered material that is protected by attorney-client privilege. These pages detailed an internal legal discussion as the FBI and DOJ developed an opposition statement against certain provisions of the COPS Improvement ACT-S167. <i>Ex. 6/7C:</i> 8 Bates page contained the names and/or identifying information of FBI SAs and support personnel. <i>Ex. 7E:</i> 10 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.</p>			
ID	EFF/Lynch 367-648, 663-664, 672-726, and 744-754 (350)	12/2009 – 6/2010 (several drafts undated)	<p>These 350 Bates pages are multiple draft talking points papers and/or presentations titled: 1) "Law Enforcement's Need for Lawful Intercept Capabilities," 2) "Government's Need to Preserve Lawful Intercept Capabilities," 3) "Preservation of Lawful Intercepts: Challenges and Potential Solutions," 4) "Going Dark: Problems and Proposals," 5) "Closing the National Security ELSUR Gap," and 6) "Going Dark: Talking Points." These draft presentations present the FBI's strategic policy development process concerning surveillance challenges posed by emerging technologies. The presentations were being developed to highlight to various internal and external audiences the surveillance challenges faced by the FBI and the law</p>	(b)(5) 348 pgs; (b)(7)(D) 1 pg; (b)(7)(E) 127 pgs	350 WIF [2 Duplicates, and 348 withheld by Exemptions]	(b)(5): pgs 133-134, ¶¶ 215-216. (b)(7)(D): pgs 137-138, ¶ 220. (b)(7)(E): pgs 138-139, ¶ 221.

			<p>enforcement community, as well as various recommendations, proposals, legislative initiatives (i.e., amending CALEA), and advice on multi-point strategies, or actions FBI should, or could, adopt, pursue, or consider to resolve such challenges. Of these 350 Bates pages 2 pages (EFF/Lynch 663-664) are duplicate presentation slides processed for partial release at EFF/Lynch Bates pages 129-130. <i>Ex. 5:</i> 348 Bates pages contained draft deliberative talking points and discussion papers concerning the FBI's strategic policy development process related to ELSUR challenges posed by emerging technologies. <i>Ex. 7D:</i> 1 Bates page (EFF/Lynch 648) contained information provided by a foreign government and or foreign law enforcement entity under an express assurance of confidentiality. <i>Ex. 7E:</i> 127 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.</p>			
1E	EFF/Lynch 803-988, 1107-1123, 1142-1169, 1176-1188, 1192-1198, 1203-1205, 1207-1220, and 1233-1240 (276)	1/1/2009 – 9/29/2010 (several drafts undated)	<p>These 276 Bates pages are multiple partly classified draft talking points papers and/or presentations titled: 1) "Going Dark Initiative: Closing [Minimizing] the National Security ELSUR Gap," 2) "Preservation of Lawful Intercepts: Challenges and Potential Solutions," 3) "National Security Proposal for NSA," 4) "Going Dark: Strengthening National Security by Minimizing the Electronic Surveillance Gap," 5) "Challenges With Emerging Technologies," 6) "Going Dark: Law Enforcement's Need to Preserve Lawful Intercept Capabilities," 7) "Make CALEA Implementation Easier for Service Providers," 8) "Basics of CALEA: Who is Covered? Who is Not?" 9) "Going Dark: Q/A," 10) "FBI Efforts to Protect Title III and FISA Capabilities," 11) "FBI Efforts to Preserve Electronic Surveillance (ELSUR) Capabilities, 12) "Continued Problems with CALEA Implementation Despite the FCC's Initial Efforts," 13) "Going Dark: Technology Gaps," and 14) "Governments Need to Preserve Lawful Intercept Capabilities." These presentations present the FBI's strategic policy development process concerning surveillance challenges posed by emerging</p>	(b)(1) 57 pgs; (b)(5) 276 pgs; (b)(6), (b)(7)(C) 22 pgs; (b)(7)(A) 89 pgs; (b)(7)(D) 12 pgs; (b)(7)(E) 178 pgs	276 WIF	(b)(1): pgs 141-144, ¶¶ 223-226. (b)(5): pgs 145-146, ¶¶ 230-231. (b)(6), (b)(7)(C): pgs 146, and 148-149, ¶¶ 232, and 234. (b)(7)(A): pgs 149-150, ¶ 235. (b)(7)(D): pg 150, ¶ 236. (b)(7)(E): pgs 150-151, ¶ 237.

		<p>technologies. The presentations were being developed to highlight to various internal FBI and external law enforcement audiences the surveillance challenges faced by the FBI and the law enforcement community, as well as various recommendations, proposals, legislative initiatives (i.e., amending CALEA), and advice on multi-point strategies, or actions FBI should, or could, adopt, pursue, or consider to resolve such challenges. Ex. 1: 57 Bates pages (EFF/Lynch 807, 816-818, 834-835, 837, 842-844, 847, 851-852, 854-855, 858, 861-863, 865-866, 869, 872-874, 877, 879, 884-885, 887-888, 895-896, 898, 937-939, 945-947, 953-955, 961-963, 969-971, 977-979, 985-987, and 1147) contained specific classified information (SECRET) on intelligence activities, and foreign relations, exempt from disclosure and properly classified under E.O. 13256, § 1.4, categories (c) and (d). Ex. 5: 276 Bates pages contained draft deliberative talking points and discussion papers concerning the FBI’s strategic policy development process related to ELSUR challenges posed by emerging technologies. Ex. 6/7C: Of these 22 Bates page 1 page (EFF/Lynch 1159) contained the names and/or identifying information of FBI SAs and support personnel, and 21 Bates pages contained the names and/or identifying information of third party individuals of investigative interest to the FBI. Ex. 7A: 89 Bates pages (EFF/Lynch 814, 816-818, 830, 832-837, 847, 849-855, 858, 860-866, 869, 871-877, 880, 882-888, 891, 893-898, 904, 911, 918, 921, 923-925, 928, 930-932, 935, 937-939, 943, 945-947, 951, 953-955, 958, 961-963, 967, 969-971, 975, 977-979, 983, and 985-987), within these draft presentations, contained case summaries, or discussed and or related details of FBI criminal investigations that remain in an open or active status. Ex. 7D: 12 Bates pages (EFF/Lynch 808, 819, 835, 852, 863, 874, 885, 896, 904, 910, 918, and 988) contained information provided by commercial/private companies and other non-government entities under an “Implied” assurance of confidentiality. Ex. 7E: 178 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of,</p>			
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			investigative techniques to ensure ELSUR capabilities will remain effective and productive.			
1F	EFF/Lynch 1350-1368, and 1398- 1464 (86)	6/2008 – 3/2010	These 86 Bates pages are talking points papers and/or presentations titled: 1) “Going Dark: Preservation of Lawful Intercept’s Challenges and Potential Solutions,” and 2) “Going Dark: Law Enforcement’s Need to Preserve Lawful Intercept Capabilities.” There is also an untitled Power Point presentation on electronic intercept challenges, and solutions. Of these 86 Bates pages 2 pages (EFF/Lynch 1455-1456) are duplicate presentation slides withheld in full at Bates pages 1351, and 1354. These presentations present the FBI’s strategic policy development process concerning surveillance challenges posed by emerging technologies. The presentations were being developed to highlight to various internal and external audiences the surveillance challenges faced by the FBI and the law enforcement community, as well as various recommendations, proposals, legislative initiatives (i.e., amending CALEA), and advice on multi-point strategies, or actions FBI should, or could, adopt, pursue, or consider to resolve such challenges. Pursuant to Court Order, the FBI conducted a review of information that was previously withheld from documents that also contained responsive information based on the FBI’s prior determination that the information withheld was Outside the Scope (“O/S”) of plaintiff’s FOIA requests. As a result of that review, and pursuant to the agency’s administrative discretion, all Bates pages where O/S redactions were made to pages that also contained responsive information were reprocessed for potential release. In this case the material originally withheld O/S pertains to “proposed remedies” to ELSUR challenges. See attached Exhibit A for reprocessed Bates pages 1462-1463. <i>Ex. 2:</i> 75 Bates pages asserted “high 2” in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn. <i>Ex. 5:</i> 69 Bates pages contained draft deliberative talking points papers and presentations concerning the FBI’s strategic policy development process related to ELSUR challenges posed by emerging	(b)(2) 75 pgs; (b)(5) 69 pgs; (b)(7)(E) 81 pgs	3 RIP 81 WIF [2 Duplicates, and 79 withheld by Exemptions] 2 RIF	(b)(2): pg 153, ¶ 239. (b)(5): pgs 153- 155, ¶¶ 240- 241. (b)(7)(E): pg 160, ¶ 247.

			technologies. <i>Ex. 7E</i> : 81 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.			
1G	EFF/Lynch 1369-1397, and 1484-1499 (45)	1/19/2009 (1 draft undated)	These 45 Bates pages contained a draft discussion paper titled: 1) "Going Dark: Problems and Potential Solutions," This discussion paper presented the FBI's strategic policy development process concerning surveillance challenges posed by emerging technologies. It was being developed to highlight to various internal FBI and external law enforcement audiences the surveillance challenges faced by the FBI and the law enforcement community, as well as various recommendations, proposals, legislative initiatives (i.e., amending CALEA), and advice on multi-point strategies, or actions FBI should, or could, adopt, pursue, or consider to resolve such challenges. These 45 pages also contained an unnamed draft discussion paper (EFF/Lynch 1484-1499), which is protected under both deliberative process and the attorney-client privilege, concerning possible litigation proposals over ELSUR challenges over the proprietary algorithm developed by Research In Motion Limited (RIM). <i>Ex. 2</i> : 28 Bates pages asserted "high 2" in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn. <i>Ex. 5</i> : Of these 45 Bates pages all 45 were either a draft deliberative discussion paper on "Going Dark," or a discussion paper on a litigation proposal. Both papers concerned the FBI's strategic policy development process related to ELSUR challenges posed by emerging technologies. In addition, of these 45 Bates pages 16 pages (Bates pages 1484-1499) were also protected under the attorney-client privilege, since this documents purpose is to discuss and advice the FBI on the legal procedure by which RIM could be compelled to provide assistance pursuant to 18 U.S.C. § 2518(4). <i>Ex. 7E</i> : 44 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR	(b)(2) 28 pgs; (b)(5) 45 pgs; (b)(7)(E) 44 pgs	45 WIF	(b)(2): pg 153, ¶ 239. (b)(5): pgs 153-155, ¶¶ 240-242. (b)(7)(E): pg 160, ¶ 247.

			capabilities will remain effective and productive.			
IH	EFF/Lynch 1504-1522, and 1533-1573 (60)	8/24/2009 – 11/2010	<p>These 60 Bates pages 32 pages (EFF/Lynch 1504-1522, and 1561-1573) are draft talking points papers and/or presentations titled: 1) “Going Dark: Preservation of Lawful Intercept, Challenges and Potential Solutions,” 2) “Going Dark: Law Enforcement’s Need to Preserve Lawful Intercept Capabilities,” 3) “FBI Efforts to Preserve Electronic Surveillance (ELSUR) Capabilities,” and 4) “The Going Dark Problem.” Of these 32 Bates pages 1 page (EFF/Lynch 1504) is a duplicate presentation cover page. Of these 60 Bates pages 27 pages (EFF/Lynch 1533-1560) are 2 draft congressional presentations on the “Going Dark” problem titled: 1) “Going Dark: The Going Dark Problem, Congressional Briefing, Office of Hon. Lamar Smith (HJC),” and 2) “Going Dark: The Going Dark Problem, Congressional Briefing, House and Senate Intelligence Committee Staff.”</p> <p>These presentations present the FBI’s strategic policy development process concerning surveillance challenges posed by emerging technologies. The presentations were being developed to highlight to various internal FBI, external law enforcement, and congressional audiences the surveillance challenges faced by the FBI and the law enforcement community, as well as various recommendations, proposals, legislative initiatives (i.e., amending CALEA), and advice on multi-point strategies, or actions FBI should, or could, adopt, pursue, or consider to resolve such challenges. Pursuant to Court Order, the FBI conducted a review of information that was previously withheld from documents that also contained responsive information based on the FBI’s prior determination that the information withheld was Outside the Scope (“O/S”) of plaintiff’s FOIA requests. As a result of that review, and pursuant to the agency’s administrative discretion, all Bates pages where O/S redactions were made to pages that also contained responsive information were reprocessed for potential release. In this case the material originally withheld O/S pertains to “Uncoordinated / AD hoc legislative agenda.” See attached</p>	(b)(1) 8 pgs; (b)(5) 57 pgs; (b)(6), (b)(7)(C) 12 pgs; (b)(7)(A) 13 pgs (b)(7)(E) 41 pgs	3 RIP 57 WIF [1 Duplicate, and 56 withheld by Exemption]	(b)(1): pgs 162-163, ¶¶ 249-250. (b)(5): pg 164, ¶ 252. (b)(6), (b)(7)(C): pg 167, ¶ 255. (b)(7)(A): pgs 167-168, ¶ 256. (b)(7)(E): pgs 168-169, ¶ 257.

			<p>Exhibit A for reprocessed Bates page 1507. <i>Ex. 1:</i> 8 Bates pages (EFF/Lynch 1543-1544, 1552, 1557-1558, 1566, and 1571-1572) contained specific classified information (SECRET) on intelligence activities exempt from disclosure and properly classified under E.O. 13256, § 1.4, category (c). <i>Ex. 5:</i> 57 Bates pages contained draft deliberative talking points papers and presentations concerning the FBI’s strategic policy development process related to ELSUR challenges posed by emerging technologies. <i>Ex. 6/7C:</i> 12 Bates pages contained the names and/or identifying information of a third party individual of investigative interest to the FBI. <i>Ex. 7A:</i> 13 Bates pages (EFF/Lynch 1535, 1537-1539, 1544, 1549-1551, 1558, 1563-1565, and 1572), within these draft presentations, contained case summaries, or discussed and or related details of FBI criminal investigations that remain in an open or active status. <i>Ex. 7E:</i> 41 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.</p>			
			<p>Formulation of Whitepaper Titled, “Going Dark: Law Enforcement’s Need to Preserve Lawful Intercept Capabilities”</p>			
2A	EFF/Lynch 768-802 (35)	3/2009	<p>These 35 Bates pages are 2 redline draft Whitepapers titled, “Going Dark: Law Enforcements Need to Preserve Lawful Intercept Capabilities.” The Whitepaper was being developed to help define the problem, detail impediments to lawful interception, and outline the development of a National Lawful Intercept Strategy to provide solutions to the problem. <i>Ex. 5:</i> 35 Bates pages contained several draft deliberative whitepapers under development to help define “Going Dark,” and outline possible solutions. <i>Ex. 7E:</i> 11 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure</p>	(b)(5) 35 pgs; (b)(7)(E) 11 pgs	35 WIF	(b)(5): pgs 133-134, ¶¶ 215-216. (b)(7)(E): pgs 138-139, ¶ 221.

			ELSUR capabilities will remain effective and productive.			
2B	EFF/Lynch 1333-1349 (17)	3/2009	These 17 Bates pages is a draft Whitepaper titled, "Going Dark: Law Enforcements Need to Preserve Lawful Intercept Capabilities." The Whitepaper was being developed to help define the problem, detail impediments to lawful interception, and outline the development of a National Lawful Intercept Strategy to provide solutions to the problem. <i>Ex. 2:</i> 17 Bates pages asserted "high 2" in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn. <i>Ex. 5:</i> 17 Bates pages contained several draft deliberative whitepapers under development to help define "Going Dark," and outline possible solutions. <i>Ex. 7E:</i> 17 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.	(b)(2) 17 pgs; (b)(5) 17 pgs; (b)(7)(E) 17 pgs	17 WIF	(b)(2): pg 153, ¶ 239. (b)(5): pgs 153-155, ¶¶ 240-241. (b)(7)(E): pg 160, ¶ 247.
			Internal FBI Discussion Pertaining to Technological Challenges on Preserving Lawful ELSUR Intercept Capabilities			
3A	EFF/Lynch 3-17, 25-48, and 62-63 (41)	1/28/2009 – 9/15/2010	These 41 Bates pages are internal e-mail chains between FBI divisions. These e-mails summarize meetings concerning legal, technical, legislative, and communication industry challenges that are limiting the effectiveness of lawful ELSUR intercept capabilities. Some of the e-mails discuss proposed legislative amendments to CALEA to improve intercept capabilities, and to make industry compliance easier. <i>Ex. 2:</i> Of these 37 Bates pages 27 pages asserted in conjunction with 6/7C for FBI internal, non-public telephone numbers. Of these 37 Bates pages 37 pages asserted "high 2" in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn (b)(2) in these instances. <i>Ex. 3:</i> Of these 13 Bates pages 9 pages (EFF/Lynch 5-11, 13, and 33)	(b)(2) 37 pgs; (b)(3) 13 pgs; (b)(5) 13 pgs; (b)(6), (b)(7)(C) 35 pgs; (b)(7)(A) 9 pgs; (b)(7)(D) 4 pgs; (b)(7)(E) 37 pgs	28 RIP 9 WIF 4 RIF	(b)(2): pg 78, ¶ 141. (b)(3): pgs 78-79, ¶¶ 142-143. (b)(5): pgs 79-80, ¶¶ 144-145. (b)(6), (b)(7)(C): pgs 80-83, ¶¶ 146-148. (b)(7)(A): pg 83, ¶ 149. (b)(7)(D): pgs

			<p>asserted to withhold information pursuant to 18 U.S.C. § 3123(d), the Pen Register Act. Of these 13 Bates pages 7 pages (EFF/Lynch 5, 8, 13-14, 16-17, and 40) asserted to withhold information pursuant to 18 U.S.C. § 2516. <i>Ex. 5:</i> 13 Bates pages contained deliberative e-mail discussions concerning legal, technical, legislative, and communication industry challenges that are limiting the effectiveness of lawful ELSUR intercept capabilities. Some of the e-mails detail proposals to amend CALEA to improve intercept capabilities, and to make ELSUR intercept compliance easier to fulfill for industry providers. <i>Ex. 6/7C:</i> 35 Bates pages contained the names and/or identifying information of FBI SAs and support personnel, Other Federal Government employees (“OFG”), and third party individuals of investigative interest to the FBI. <i>Ex. 7A:</i> 9 Bates pages (EFF/Lynch 5-13), within these email chains, contained case summaries, or discussed and or related details of FBI criminal investigations that remain in an open or active status. <i>Ex. 7D:</i> 4 Bates page (EFF/Lynch 44-47) contained information provided by a foreign government and or foreign law enforcement entity under an express assurance of confidentiality. <i>Ex. 7E:</i> 37 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.</p>			<p>83-84, ¶ 150. (b)(7)(E): pgs 84-85, ¶ 151.</p>
3B	EFF/Lynch 18-24 (7)	4/14/2010	<p>These 7 Bates pages are a compilation of internal summary meeting notes taken by several FBI employees during a presentation given by OTD titled, “Preservation of Lawful Intercepts: Challenges and Potential Solutions” that was presented for the Information Technology Study Group (ITSG). <i>Ex. 2:</i> 7 Bates pages asserted “high 2” in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn. <i>Ex. 5:</i> 5 Bates pages contained internal FBI summary meeting notes, which are the interpretation of the employees own observations. <i>Ex. 6/7C:</i> 5 Bates pages contained the names and/or identifying information of FBI SAs and support personnel, and OFG</p>	<p>(b)(2) 7 pgs; (b)(5) 5 pgs; (b)(6), (b)(7)(C) 5 pgs; (b)(7)(E) 7 pgs</p>	7 WIF	<p>(b)(2): pg 78, ¶ 141. (b)(5): pgs 79-80, ¶¶ 144-145. (b)(6), (b)(7)(C): pgs 80-82, ¶ 146-147. (b)(7)(E): pgs 84-85, ¶ 151.</p>

			employees. <i>Ex. 7E</i> : 7 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.			
3C	EFF/Lynch 142-145 (4)	8/26/2010	These 4 Bates pages are part of a discussion paper titled, "Going Dark: Evolution in Mobile Technology and Potential Collection Issues," which was prepared by the Cyber Intelligence Section, Technology Cyber Intelligence Unit. The paper was prepared for FBI internal use only, and highlights how new services and technology advancements in the wireless communications industry are developing faster than law enforcement can develop lawful technical intercept solutions. <i>Ex. 2</i> : 4 Bates pages asserted "high 2" in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn. <i>Ex. 6/7C</i> : 1 Bates page (EFF/Lynch 144) contained the names and/or identifying information of FBI SAs and support personnel. <i>Ex. 7E</i> : 4 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.	(b)(2) 4 pgs; (b)(6), (b)(7)(C) 1 pg; (b)(7)(E) 4 pgs	1 RIP 3 WIF	(b)(2): pg 78, ¶ 141. (b)(6), (b)(7)(C): pgs 80-81, ¶ 146. (b)(7)(E): pgs 84-85, ¶ 151.
3D	EFF/Lynch 223-224, 241-242, and 247-248 (6)	12/19/2006	Of these 6 Bates pages 2 pages (EFF/Lynch 223-224) is a discussion paper prepared by the Cyber Division that summarizes new technological advances in the Voice-over-IP network (VoIP) services that limit ELSUR capabilities. The paper was prepared for FBI internal use only, and highlights how new services and technology advancements in the wireless communications industry are developing faster than law enforcement can develop lawful technical intercept solutions. Of these 6 Bates pages the remaining 4 pages are 2 duplicate sets of this same discussion paper. <i>Ex. 2</i> : 2 Bates pages asserted "high 2" in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn. <i>Ex. 7E</i> : 2 Bates pages detailed the difficulties law enforcement would encounter in conducting ELSUR, because of	(b)(2) 2 pgs; (b)(7)(E) 2 pgs	6 WIF [4 Duplicates, 2 withheld by Exemptions]	(b)(2): pgs 102-103, ¶ 176. (b)(7)(E): pgs 109-110, ¶ 185.

			the new technological advancement. The paper suggests possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.			
3E	EFF/Lynch 989-992, 999-1009, 1061-1079, 1084-1103, 1124-1131, 1170-1175, and 1221 (69)	12/22/2009 – 9/28/2010 (several undated)	These 69 Bates pages are mostly draft discussion papers titled: 1) “AnonTalk.com Anonymous Chat Forum Used by Child Predators” prepared by Cyber Division, Innocent Images Intelligence Unit, 2) “Giga Tribe File-Sharing Software Utilized by Child Pornography” prepared by Cyber Division, Innocent Images Operations Unit, 3) several untitled draft documents that outline the ELSUR gaps dealing with internet service providers and social networks, 4) multiple redline draft copies of “Challenges with Emerging Technologies,” and 5) several draft copies of “Make CALEA Implementation Easier for Service Providers.” The discussion papers were prepared for FBI internal use only, and highlights how new services and technology advancements in the wireless communications industry are developing faster than law enforcement can develop lawful technical intercept solutions. Ex. 1: 27 Bates pages (EFF/Lynch 1007, 1063-1064, 1067-1069, 1071-1073, 1075-1077, 1085-1087, 1090-1091, 1095-1096, 1100-1101, 1124-1126, and 1128-1130) contained specific classified information (SECRET) on intelligence activities, and foreign relations, exempt from disclosure and properly classified under E.O. 13256, § 1.4, categories (c) and (d). Ex. 3: 6 Bates pages (EFF/Lynch 1124-1126, and 1128-1130) asserted to withhold information pursuant to 18 U.S.C. § 2516. Ex. 5: 47 Bates pages contained draft deliberative internal FBI discussion papers concerning the FBI’s strategic policy development process related to ELSUR challenges posed by emerging technologies. Ex. 6/7C: 12 Bates pages contained the names and/or identifying information of third party individuals of investigative interest to the FBI. Ex. 7A: 16 Bates pages (EFF/Lynch 1063-1064, 1067-1069, 1071-1072, 1075-1077, 1085-1086, 1090, 1095, and 1100), within these discussion papers, contained case summaries, or discussed and or related details of FBI criminal investigations that remain in an open or active status. Ex. 7D: 8 Bates pages (EFF/Lynch 1064,	(b)(1) 27 pgs; (b)(3) 6 pgs; (b)(5) 47 pgs; (b)(6), (b)(7)(C) 12 pgs; (b)(7)(A) 16 pgs; (b)(7)(D) 8 pgs; (b)(7)(E) 61 pgs	69 WIF	(b)(1): pgs 141-144, ¶¶ 223-226. (b)(3): pg 144, ¶ 228. (b)(5): pgs 145-146, ¶¶ 230-231. (b)(6), (b)(7)(C): pgs 148-149, ¶ 234. (b)(7)(A): pgs 149-150, ¶ 235. (b)(7)(D): pg 150, ¶ 236. (b)(7)(E): pgs 150-151, ¶ 237.

			1069, 1073, 1078, 1087, 1092, 1097, and 1102) contained information provided by commercial/private companies and other non-government entities under an "Implied" assurance of confidentiality. <i>Ex. 7E</i> : 61 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.			
3F	EFF/Lynch 1503, 1523-1524, and 1529 (4)	7/23/2009 – 9/28/2010	These 4 Bates pages are e-mails between FBI personnel, and contacts at DEA, and OLP seeking deliberative input on ELSUR compliance issues with communication service providers, and technical issues with private networks and access point entry. <i>Ex. 5</i> : 3 Bates pages contained deliberative email discussions between FBI, DEA, and OPL concerning ELSUR challenges posed by emerging technologies. <i>Ex. 6/7C</i> : 4 Bates pages contained the names and/or identifying information of FBI SAs and support personnel, and OFG employees. <i>Ex. 7E</i> : 4 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.	(b)(5) 3 pgs; (b)(6), (b)(7)(C) 4 pgs; (b)(7)(E) 4 pgs	4 RIP	(b)(5): pg 164, ¶ 252. (b)(6), (b)(7)(C): pgs 164-167, ¶¶ 253-254. (b)(7)(E): pgs 168-169, ¶ 257.
3G	EFF/Lynch 1530-1532 (3)	Undated	These 3 Bates pages pertain to a draft discussion paper titled, "FBI Transnational Threat Priorities" that details Cyber Crime Groups, Criminal Enterprises, Drug Trafficking Organizations, and Violent Gangs use of new wireless communication technology to hide their activities. The discussion paper was prepared for FBI internal use only, and highlights how new services and technology advancements in the wireless communications industry are developing faster than law enforcement can develop lawful technical intercept solutions. <i>Ex. 5</i> : 3 Bates pages contained deliberative internal FBI discussions concerning the FBI's strategic policy development process related to ELSUR challenges posed by emerging technologies. <i>Ex. 6/7C</i> : 1 Bates page contained the names and/or identifying information of third party individuals of investigative interest to the FBI. <i>Ex. 7E</i> : 3 Bates pages detailed	(b)(5) 3 pgs; (b)(6), (b)(7)(C) 1 pgs; (b)(7)(E) 3 pgs	3 WIF	(b)(5): pg 164, ¶ 252. (b)(6), (b)(7)(C): pg 167, ¶ 255. (b)(7)(E): pgs 168-169, ¶ 257.

			the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.			
			FBI Draft Legislative Input and Proposals			
4A	EFF/Lynch 1473-1483 (11)	Undated	These 11 Bates pages are unsigned, edited “redline” versions of ELSUR and ELSUR-related legislative proposals designed to update and improve existing Federal ELSUR laws (e.g.: CALEA) and assistance mandates, and to enact new ELSUR and ELSUR-related laws to support Law Enforcement Agencies (LEAs) investigative efforts. <i>Ex. 5:</i> 11 Bates pages contained deliberative discussions between FBI and DOJ on legislative proposals. <i>Ex. 7E:</i> 11 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.	(b)(5) 11 pgs; (b)(7)(E) 11 pgs	11 WIF	(b)(5): pgs 153-155, ¶¶ 240-241. (b)(7)(E): pg 160, ¶ 247.
4B	EFF/Lynch 1500-1502, and 1525-1528 (7)	Undated	These 7 Bates pages are unsigned, edited “redline” versions of ELSUR and ELSUR-related legislative proposals designed to update and improve existing Federal ELSUR laws (e.g.: CALEA) and assistance mandates, and to enact new ELSUR and ELSUR-related laws to support Law Enforcement Agencies (LEAs) investigative efforts. <i>Ex. 5:</i> 7 Bates pages contained deliberative discussions between FBI and DOJ on legislative proposals. <i>Ex. 7E:</i> 7 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.	(b)(5) 7 pgs; (b)(7)(E) 7 pgs	7 WIF	(b)(5): pg 164, ¶ 252. (b)(7)(E): pgs 168-169, ¶ 257.
			Examples of ELSUR Intercept Challenges Hampering FBI Investigations			

<p>5A</p>	<p>EFF/Lynch 184-212 (29)</p>	<p>5/27/2008 – 11/12/2010</p>	<p>These 29 Bates pages are internal e-mail chains between FBI divisions. These e-mails summarize meetings concerning legal, technical, legislative proposals, and communication industry challenges that are limiting the effectiveness of lawful ELSUR intercept capabilities. A majority of the e-mails discuss challenges working with foreign based communication service providers, how peer to peer applications will continue to erode the FBI's ELSUR capabilities due to the level of encryption, and exchange process that is very secure, and how expanding technological advancements and multiple communication service platforms have highlighted CALEA shortfalls. <i>Ex. 1:</i> 12 Bates pages (EFF/Lynch 184, 186-188, 192-194, 198, and 207-210) contained specific classified information (SECRET) on intelligence activities, and foreign relations, exempt from disclosure and properly classified under E.O. 13256, § 1.4, categories (c) and (d). <i>Ex. 2:</i> Of these 28 Bates pages 10 pages asserted in conjunction with 6/7C for FBI internal, non-public telephone numbers. In addition, all 28 Bates pages asserted "high 2" in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn (b)(2) in these instances. <i>Ex. 5:</i> 27 Bates pages contained deliberative e-mail chains between FBI personnel exchanging ideas concerning legal, technical, legislative proposals, and communication industry challenges that are limiting the effectiveness of lawful ELSUR intercept capabilities. <i>6/7C:</i> 22 Bates pages contained the names and/or identifying information of FBI SAs and support personnel, and third party individuals of investigative interest to the FBI. <i>Ex. 7A:</i> 2 Bates pages (EFF/Lynch 209-210), within these e-main chains, contained case summaries, or discussed and or related details of FBI criminal investigations that remain in an open or active status. <i>Ex. 7D:</i> Of these 9 Bates pages 2 pages (EFF/Lynch 201-202) contained information provided by commercial/private companies and other non-government entities under an "Implied" assurance of confidentiality. Of these 9 Bates pages 7 pages (EFF/Lynch 184, 186-188, 200, and 207-208) contained information provided by a foreign government and or</p>	<p>(b)(1) 12 pgs; (b)(2) 28 pgs; (b)(5) 27 pgs; (b)(6), (b)(7)(C) 22 pgs; (b)(7)(A) 2 pgs; (b)(7)(D) 9 pgs; (b)(7)(E) 28 pgs</p>	<p>26 RIP 2 WIF 1 RIF</p>	<p>(b)(1): pgs 99-102, ¶¶ 172-175. (b)(2): pgs 102-103, ¶ 176. (b)(5): pgs 103-105, ¶¶ 178-179. (b)(6), (b)(7)(C): pgs 105-107, ¶¶ 180-181. (b)(7)(A): pgs 107-108, ¶ 182. (b)(7)(D): pgs 108-109, ¶¶ 183-184. (b)(7)(E): pgs 109-110, ¶ 185.</p>
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			foreign law enforcement entity under an express assurance of confidentiality. <i>7E</i> : 28 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.			
5B	EFF/Lynch 149, and 166-167 (3)	4/30/2010 – 11/26/2010	These 3 Bates pages are 2 internal e-mail chains between FBI divisions. The 1st e-mail seeks information from a recently issued pen trap and trace order. The 2 nd e-mail chain mentions that the Going Dark Working Group (GDWG) is seeking examples of investigations where CALEA shortfalls and communication service companies' technological advances have hampered the collection of lawful intercepts. Pursuant to Court Order, the FBI conducted a review of information that was previously withheld from documents that also contained responsive information based on the FBI's prior determination that the information withheld was Outside the Scope ("O/S") of plaintiff's FOIA requests. As a result of that review, and pursuant to the agency's administrative discretion, all Bates pages where O/S redactions were made to pages that also contained responsive information were reprocessed for potential release. In this case the material originally withheld O/S pertains to the identities of FBI personnel. See attached Exhibit A for reprocessed Bates page 166. <i>Ex. 2</i> : Of these 3 Bates pages 2 pages asserted in conjunction with 6/7C for FBI internal, non-public telephone numbers. In addition, of these 3 Bates pages 2 pages asserted "high 2" in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn (b)(2) in these instances. <i>Ex. 3</i> : 1 Bates page (EFF/Lynch 149) asserted to withhold information pursuant to 18 U.S.C. § 3123(d), the Pen Register Act. <i>Ex. 5</i> : 1 Bates page discusses proposals to solve ELSUR and encryption shortfalls, and deciding criteria for an Intelligence Assessment Report under development. <i>6/7C</i> : 3 Bates pages contained the names and/or identifying information of FBI SAs and support personnel, OFG employees, and third party individuals merely mentioned. <i>7E</i> : 2 Bates pages detailed	(b)(2) 3 pgs; (b)(3) 1 pg; (b)(5) 1 pg; (b)(6), (b)(7)(C) 3 pgs; (b)(7)(E) 2 pgs	3 RIP	(b)(2): pgs 87-88, ¶ 156. (b)(3): pgs 88-89, ¶ 157. (b)(5): pgs 89-90, ¶¶ 159-160. (b)(6), (b)(7)(C): pgs 90-93, ¶¶ 161-163. (b)(7)(E): pgs 93-94, ¶ 164.

			the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.			
5C	EFF/Lynch 219-222, 225-240, 243-246, 249-274, and 286-289 (54)	3/5/2008 – 11/5/2010	These 54 Bates pages are internal e-mail chains (many classified) between FBI divisions, and/or FBI field offices that are involved in mostly pending investigations. The internal discussions summarize meetings concerning technical ELSUR and legal challenges that are limiting the effectiveness of lawful ELSUR intercept capabilities, and proposed legislative solutions. The investigations outlined in the e-mails highlight ELSUR limitations and the need to preserve lawful intercept capabilities by amending CALEA, improving cooperation and assistance from communication service providers, and developing advanced investigative techniques. <i>Ex. 1:</i> 44 Bates pages (EFF/Lynch 219-220, 222, 225-226, 229, 231-233, 235-237, 239, 244-245, 249-274, and 286-288) contained specific classified information (SECRET) on intelligence activities exempt from disclosure and properly classified under E.O. 13256, § 1.4, category (c). <i>Ex. 2:</i> Of these 49 Bates pages 24 pages asserted in conjunction with 6/7C for FBI internal, non-public telephone numbers. In addition, of these 49 Bates pages 47 pages asserted “high 2” in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn (b)(2) in these instances. <i>Ex. 3:</i> 20 Bates pages (EFF/Lynch 251, 253, 256, 258-259, 261-262, 264-269, 271-274, 286-287, and 289) asserted to withhold information pursuant to 18 U.S.C. § 2516. <i>Ex. 5:</i> 20 Bates pages pertained to internal FBI meetings where participants discussed technical ELSUR and legal challenges that are limiting the effectiveness of lawful ELSUR intercept capabilities. <i>6/7C:</i> 49 Bates pages contained the names and/or identifying information of FBI SAs and support personnel, OFG employees, third party individuals merely mentioned, and third party individuals that are of investigative interest to the FBI. <i>Ex. 7A:</i> 29 Bates pages (EFF/Lynch 250-274, and 286-289), within these e-main chains, contained case	(b)(1) 44 pgs; (b)(2) 49 pgs; (b)(3) 20 pgs; (b)(5) 20 pgs; (b)(6), (b)(7)(C) 49 pgs; (b)(7)(A) 29 pgs; (b)(7)(D) 26 pgs; (b)(7)(E) 47 pgs	24 RIP 25 WIF 5 RIF	(b)(1): pgs 111-113, ¶¶ 187-189. (b)(2): pgs 113-114, ¶ 190. (b)(3): pg 114, ¶ 191. (b)(5): pgs 114-115, ¶¶ 192-193. (b)(6), (b)(7)(C): pgs 116-119, ¶¶ 194-197. (b)(7)(A): pg 121, ¶ 200. (b)(7)(D): pgs 121-122, ¶ 201. (b)(7)(E): pgs 122-123, ¶ 202.

			summaries, or discussed and or related details of FBI criminal investigations that remain in an open or active status. Ex. 7D: 26 Bates pages (EFF/Lynch 250-270, and 288) contained information provided by commercial/private companies and other non-government entities under an "Implied" assurance of confidentiality. 7E: 47 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.			
5D	EFF/Lynch 275, 275a, and 276-285 (12)	5/4/2009	These 12Bates pages is an Electronic Communication (EC) sent to participants involved in a classified investigation that involved issues concerning Voice-over Internet Protocol (VoIP) involving foreign entities. Ex. 1: 11 Bates pages (EFF/Lynch 275a-285) contained specific classified information (SECRET) on intelligence activities exempt from disclosure and properly classified under E.O. 13256, § 1.4, category (c). Ex. 2: Of these 10 Bates pages 1 page asserted in conjunction with 6/7C for FBI internal, non-public telephone numbers. In addition, all 10 Bates pages asserted "high 2" in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn (b)(2) in these instances. Ex. 3: 2 Bates pages (EFF/Lynch 278-279) asserted to withhold information pursuant to 18 U.S.C. § 2516. 6/7C: 5 Bates pages contained the names and/or identifying information of FBI SAs and support personnel, third party individuals merely mentioned, and third party corporate personnel working in the communication industry that were merely mentioned. 7E: 10 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.	(b)(1) 11 pgs; (b)(2) 10 pgs; (b)(3) 2 pgs; (b)(6), (b)(7)(C) 5 pgs; (b)(7)(E) 10 pgs	7 RIP 5 WIF	(b)(1): pgs 111-113, ¶¶ 187-189. (b)(2): pgs 113-114, ¶ 190. (b)(3): pg 114, ¶ 191. (b)(6), (b)(7)(C): pgs 116-117, and 119-120, ¶¶ 194-195, and 198-199. (b)(7)(E): pgs 122-123, ¶ 202.
5E	EFF/Lynch 993-998, 1010-1011, 1028-1036,	Case studies undated, but memorandum dated	Of these 46 Bates pages 35 pages are case studies under development that summarize the technological issues and impediments that hampered, or are hampering, specific FBI investigations. In addition, of these 46 Bates pages 11 pages	(b)(1) 23 pgs; (b)(3) 6 pgs; (b)(5) 40 pgs; (b)(6), (b)(7)(C)	46 WIF	(b)(1): pgs 141-144, ¶¶ 223-226. (b)(3): pgs 144-

1041-1042, 1055-1060, 1080-1083, 1132-1137, and 1222- 1232 (46)	6/22/2010	<p>(EFF/Lynch 1222-1232) are several partly classified internal draft memorandum that outline the ELSUR challenges law enforcement are encountering with regard to emerging technologies, the development of the definition of 'Going Dark,' and gives several FBI investigation case examples showing how ELSUR limitations have hampered these investigations. <i>Ex. 1:</i> 23 Bates pages (EFF/Lynch 1030-1036, 1080-1081, 1132-1135, 1137, and 1222-1230) contained specific classified information (SECRET) on intelligence activities, and foreign relations, exempt from disclosure and properly classified under E.O. 13256, § 1.4, categories (c) and (d). <i>Ex. 3:</i> Of these 6 Bates pages 4 pages (EFF/Lynch 1132-1133, and 1136-1137) asserted to withhold information pursuant to 18 U.S.C. § 3123(d), the Pen Register Act. Of these 6 Bates pages 5 pages (EFF/Lynch 1132-1135, and 1137) asserted to withhold information pursuant to 50 U.S.C. § 1806. Of these 6 Bates pages 2 pages (EFF/Lynch 1135-1136) asserted to withhold information pursuant to 18 U.S.C. § 2510, et. seq., Title III of the Omnibus Crime Control and Safe Street Act. <i>Ex. 5:</i> 40 Bates pages concerned development of case studies on surveillance and ELSUR challenges that were hampering FBI investigations, and proposing possible solutions, and development of a memorandum outlining ELSUR challenges, defining 'Going Dark' and reviewing FBI investigations that were hampered by ELSUR shortfalls. <i>6/7C:</i> 21 Bates pages contained the names and/or identifying information of FBI SAs and support personnel, and third party individuals that were of investigative interest to the FBI. <i>Ex. 7A:</i> 25 Bates pages (EFF/Lynch 994-998, 1010-1011, 1033-1036, 1041-1042, 1055-1059, 1080, and 1132-1137), within these case studies, contained case summaries, or discussed and or related details of FBI criminal investigations that remain in an open or active status. <i>Ex. 7D:</i> Of these 2 Bates pages 1 page (EFF/Lynch 1082) contained information provided by commercial/private companies and other non-government entities under an "Implied" assurance of confidentiality. Of these 2 Bates pages 1 page (EFF/Lynch 1232) contained information provided by a foreign government and or foreign law enforcement entity</p>	21 pgs; (b)(7)(A) 25 pgs; (b)(7)(D) 2 pgs; (b)(7)(E) 45 pgs		145, ¶¶ 227-229. (b)(5): pgs 145-146, ¶¶ 230-231. (b)(6), (b)(7)(C): pgs 146-149, ¶¶ 232 and 234. (b)(7)(A): pgs 149-150, ¶ 235. (b)(7)(D): pg 137, and 150, ¶¶ 220, and 236. (b)(7)(E): pgs 150-151, ¶ 237.
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			under an express assurance of confidentiality. 7E: 45 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.			
SF	EFF/Lynch 1012-1027, 1037-1040, 1104-1106, 1138-1141, 1189-1191, 1199-1202, and 1206 (35)	11/6/2009 – 9/29/2010	These 35Bates pages are partly classified internal e-mail chains between FBI division personnel. The internal e-mail discussions pertained to: 1) collecting multiple FBI investigation case examples where communication industry technical issues, and compliance questions are hampering implementing of lawful intercept orders, 2) difficulties with VoIP communication services, 3) drafting suggestions concerning ‘Going Dark’ talking point slide presentations, and 3) meeting preparation, and subsequently follow-up meeting summary discussion. The meeting was with the Capabilities Gaps Working Group, where Going Dark legislative and institutional proposals under consideration, and ELSUR technological gaps were discussed. Ex. 1: 13 Bates pages (EFF/Lynch 1015-1018, 1021-1024, 1037-1040, and 1104-1105) contained specific classified information (SECRET) on intelligence activities, and foreign relations, exempt from disclosure and properly classified under E.O. 13256, § 1.4, categories (c) and (d). Ex. 3: 2 Bates pages (EFF/Lynch 1139-1140) asserted to withhold information pursuant to 18 U.S.C. § 3123(d), the Pen Register Act. Ex. 5: 33 Bates pages pertained to internal FBI discussions pertaining to ‘Going Dark’ legislative initiative to develop proposals on updating CALEA, compliance questions that are hampering implementing of lawful intercept orders, institutional proposals under consideration, and ELSUR technological gaps and potential ways to solve the weakening of FBI’s capabilities to obtain lawful intercepts. 6/7C: 33 Bates pages contained the names and/or identifying information of FBI SAs and support personnel, OFG employees, and third party individuals that were of investigative interest to the FBI. Ex. 7A: 6 Bates pages (EFF/Lynch 1016-1017, and 1037-1040), within these internal emails, contained case summaries, or discussed and or related	(b)(1) 13 pgs; (b)(3) 2 pgs; (b)(5) 33 pgs; (b)(6), (b)(7)(C) 33 pgs; (b)(7)(A) 6 pgs; (b)(7)(E) 34 pgs	9 RIP 26 WIF	(b)(1): pgs 141-144, ¶¶ 223-226. (b)(3): pg 144, ¶ 227. (b)(5): pgs 145-146, ¶¶ 230-231. (b)(6), (b)(7)(C): pgs 146-149, ¶¶ 232 and 234. (b)(7)(A): pgs 149-150, ¶ 235. (b)(7)(E): pgs 150-151, ¶ 237.

			details of FBI criminal investigations that remain in an open or active status. 7E: 34 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.			
			Internal FBI Intelligence Assessment Report			
6A	EFF/Lynch 150-165 (16)	9/10/2010	These 16 Bates pages are a redline draft internal FBI Intelligence Assessment report titled, "Going Dark: Encryption and the Associated Issues Facing Law Enforcement." The report was being developed by the Directorate of Intelligence, Cyber Intelligence Section, to detail software- and hardware-based encryption deployment challenges that hinder both authorized collection and analysis. Ex. 1: 2 Bates pages (EFF/Lynch 155, and 162) contained specific classified information (SECRET) on intelligence activities exempt from disclosure and properly classified under E.O. 13256, § 1.4, category (c). Ex. 2: 16 Bates pages asserted "high 2" in conjunction with 7E, to protect investigative techniques and procedures. With Milner decision narrowing Exemption 2, FBI has withdrawn. Ex. 3: 2 Bates pages (EFF/Lynch 155, and 162) asserted to withhold information pursuant to 50 U.S.C. § 1806. Ex. 5: 16 Bates page discusses proposals to solve ELSUR and encryption shortfalls, and developing criteria for an Intelligence Assessment Report. 7E: 16 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.	(b)(1) 2 pgs; (b)(2) 16 pgs; (b)(3) 2 pgs; (b)(5) 16 pgs; (b)(7)(E) 16 pgs	16 WIF	(b)(1): pgs 85-87, ¶¶ 153-155. (b)(2): pgs 87-88, ¶ 156. (b)(3): pg 89, ¶ 158. (b)(5): pgs 89-90, ¶¶ 159-160. (b)(7)(E): pgs 93-94, ¶ 164.
6B	EFF/Lynch 1043-1054 (12)	7/23/2010	These 12 Bates pages are a draft internal FBI Intelligence Assessment report titled, "Challenges Posed by Malicious Use of Voice over Internet Protocol." The report was being developed by the Directorate of Intelligence, FBI Cyber Intelligence Section, to report that the FBI's ability to collect and analyze intelligence for national and international security cases is	(b)(1) 6 pgs; (b)(3) 3 pgs; (b)(5) 12 pgs; (b)(7)(A) 1 pg; (b)(7)(E) 11 pgs	12 WIF	(b)(1): pgs 141-144, ¶¶ 223-226. (b)(3): pg 144, ¶ 228. (b)(5): pgs 145-

			<p>threatened when malicious actors use Voice over Internet Protocol (VoIP) services to communicate or facilitate criminal activity. The paper discusses the challenges and intelligence gaps that occur. <i>Ex. 1:</i> 6 Bates pages (EFF/Lynch 1047, and 1049-1053) contained specific classified information (SECRET) on intelligence activities exempt from disclosure and properly classified under E.O. 13256, § 1.4, category (c). <i>Ex. 3:</i> 3 Bates pages (EFF/Lynch 1049-1050, and 1053) asserted to withhold information pursuant to 50 U.S.C. § 1806. <i>Ex. 5:</i> 12 Bates pages discuss the development of an Assessment Report on ELSUR challenges, and intelligence collect gaps. <i>Ex. 7A:</i> 1 Bates page (EFF/Lynch 1050), within this Intelligence Assessment Report, contained case summaries, or discussed and or related details of FBI criminal investigations that remain in an open or active status. <i>7E:</i> 11 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.</p>			<p>146, ¶¶ 230-231. (b)(7)(A): pgs 149-150, ¶ 235. (b)(7)(E): pgs 150-151, ¶ 237.</p>
			<p>Collection, Interpretation and Preservation of Intelligence Data Obtained with a NSL/Subpoena</p>			
7A	EFF/Lynch 168-172, and 180-183 (9)	6/3/2009 – 2/3/2011	<p>These 9 Bates pages are 4 separate internal e-mail chains between FBI divisions. 3 of these 4 e-mail chains pertain to a discussion concerning a talking points presentation on the most frequently asked questions relating to the collection, interpretation, and preservation of intelligence data provided by an Internet Service Provider (ISP) in response to a FISA order, NSL, and/or search warrant. The 4th e-mail chain discusses the difficulty the FBI was having with a certain cellular communications provider concerning a lawful intercept order. Pursuant to Court Order, the FBI conducted a review of information that was previously withheld from documents that also contained responsive information based on the FBI's prior determination that the information withheld was Outside the Scope ("O/S") of plaintiff's FOIA requests. As a result of that</p>	<p>(b)(2) 8 pgs; (b)(6), (b)(7)(C) 8 pgs; (b)(7)(E) 7 pgs</p>	<p>8 RIP 1 RIF</p>	<p>(b)(2): pg 95, ¶ 166. (b)(6), (b)(7)(C): pgs 96-97, ¶¶ 167-169. (b)(7)(E): pg 98, ¶ 170.</p>

			<p>review, and pursuant to the agency's administrative discretion, all Bates pages where O/S redactions were made to pages that also contained responsive information were reprocessed for potential release. In this case the material originally withheld O/S pertains to the identities of FBI personnel, and imbedded PDF's concerning presentations that were outside the scope of plaintiff's FOIA request. See attached Exhibit A for reprocessed Bates pages 168, 170, and 182. <i>Ex. 2:</i> Of these 8 Bates pages 6 pages asserted in conjunction with 6/7C for FBI internal, non-public telephone numbers. In addition, of these 8 Bates pages 6 pages asserted "high 2" in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn (b)(2) in these instances. <i>6/7C:</i> Of these 8 Bates pages all 8 pages contained the names and/or identifying information of FBI SAs and support personnel. In addition, of these 8 pages 1 page (EFF/Lynch 168) also contained the name and identifying information of a corporate legal officer in the communication industry that was merely mentioned. <i>7E:</i> 7 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.</p>			
7B	EFF/Lynch 173-179 (7)	4/22/2010 (2 of 3 talking points undated)	<p>Of these 7 Bates pages 2 pages are a talking points "User Guide" on how to read User, History, and Messaging Shorthand provided by a certain Internet Service Provider (ISP). Of these 7 Bates pages 1 page is a talking points summary report defining what a social networking company is, and what can or cannot be obtained with a NSL/Subpoena. Finally, of these 7 Bates pages 4 pages are talking points from a paper on the most frequently asked questions and answers concerning the collection, interpreting, and preservation of data provided by ISP's in response to a FISA order, NSL, and/or search warrant. <i>Ex. 2:</i> 7 Bates pages asserted "high 2" in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn. <i>7E:</i> 7 Bates pages detailed the difficulties law enforcement encountered in</p>	(b)(2) 7 pgs; (b)(7)(E) 7 pgs	7 WIF	(b)(2): pg 95, ¶ 166. (b)(7)(E): pg 98, ¶ 170.

			conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.			
			FBI Director Talking Points and Congressional Testimony			
8A	EFF/Lynch 213-218 (6)	11/12/2010 – 11/15/2010	Of these 6 Bates pages 2 pages are an email chain that details deliberative work on development of a talking points paper for Director Mueller concerning cooperation and assistance efforts provided by Internet Service Providers (ISP’s) and legal and technological issues that have effected FBI investigations. Of these 6 Bates pages 4 pages are a draft talking points paper being developed for Director Mueller concerning the cooperation and assistance provided by ISP’s and how legal and technical issues have effected FBI Investigations (several case examples provided). <i>Ex. 1:</i> 1Bates page (EFF/Lynch 215) contained specific classified information (SECRET) on intelligence activities exempt from disclosure and properly classified under E.O. 13256, § 1.4, category (c). <i>Ex. 2:</i> Of these 5 Bates pages 1 page asserted in conjunction with 6/7C for FBI internal, non-public telephone numbers. In addition, all 5 Bates pages asserted “high 2” in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn (b)(2) in these instances. <i>Ex. 3:</i> 1 Bates page (EFF/Lynch 213) asserted to withhold information pursuant to 18 U.S.C. § 3123(d), the Pen Register Act. <i>Ex. 5:</i> 5 Bates pages contained deliberative discussion in an email chain, and deliberative process privilege work in the development of talking points related to the FBI’s strategic policy development process concerning surveillance challenges posed by emerging technologies. <i>6/7C:</i> 2 Bates pages contained the names and/or identifying information of FBI SAs and support personnel. <i>7E:</i> 5 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR	(b)(1) 1 pg; (b)(2) 5 pgs; (b)(3) 1 pgs; (b)(5) 5 pgs; (b)(6), (b)(7)(C) 2 pgs; (b)(7)(E) 5 pgs	6 RIP	(b)(1): pgs 99-101, ¶¶ 172-174. (b)(2): pgs 102-103, ¶ 176. (b)(5): pgs 103-105, ¶¶ 178-179. (b)(6), (b)(7)(C): pgs 105-106, ¶ 180. (b)(7)(E): pgs 109-110, ¶ 185.

			capabilities will remain effective and productive.			
8B	EFF/Lynch 341-342, and 345-360 (18)	1/26/2010 – 3/24/2010	Of these 18 Bates pages 1 Bates page (EFF/Lynch 341) pertained to upcoming testimony at a closed March 24, 2010 HPSCI Committee hearing on the DOJ/Intel programs and budget, 3 pages (EFF/Lynch 342, and 345-346) concerned an internal FBI discussion on the development of a ‘Going Dark’ briefing statement for the Director’s upcoming Annual Threat Assessment Hearing, and 14 Bates pages (EFF/Lynch 347-360) pertained to a partly classified March 28, 2010 draft transcript of Director Mueller’s April 22, 2010 testimony before the Senate Committee on Intelligence. <i>Ex. 1:</i> 9 Bates pages (EFF/Lynch 348, and 350-357) contained specific classified information (SECRET) on intelligence activities exempt from disclosure and properly classified under E.O. 13256, § 1.4, category (c). <i>Ex. 5:</i> 18 Bates pages contained several deliberative e-mail chains concerning developing a ‘Going Dark’ briefing statement for a future Congressional hearing, and a redline draft of testimony for Director Mueller’s appearance at a future Senate hearing. <i>Ex. 6/7C:</i> 4 Bates page contained the names and/or identifying information of FBI SAs and support personnel. <i>Ex. 7E:</i> 14 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.	(b)(1) 9 pgs; (b)(5) 18 pgs; (b)(6), (b)(7)(C) 4 pgs; (b)(7)(E) 14 pgs	3 RIP 15 WIF	(b)(1): pgs 124-126, ¶¶ 204-206. (b)(5): pgs 127-128, ¶¶ 208-209. (b)(6), (b)(7)(C): pg 129, ¶ 211. (b)(7)(E): pgs 131-132, ¶ 213.
			Communications Related to Legislative Branch Meetings			
9	EFF/Lynch 307-308 (2)	8/11/2006 – 5/28/2009	These 2 Bates pages are internal congressional contact briefing summaries that summarize 2 meetings between OCA personnel and congressional offices where proposed legislative amendments to CALEA were discussed. Pursuant to Court Order, the FBI conducted a review of information that was previously withheld from documents that also contained responsive information based on the FBI’s prior determination that the information withheld was Outside the Scope (“O/S”) of plaintiff’s FOIA requests. As a result of that review, and	(b)(5) 1 pg; (b)(6), (b)(7)(C) 2 pgs; (b)(7)(E) 1 pg	1 RIP 1 WIF	(b)(5): pgs 127-128, ¶¶ 208-209. (b)(6), (b)(7)(C): pgs 129-131, ¶¶ 211-212. (b)(7)(E): pgs 131-132, ¶ 213.

			pursuant to the agency's administrative discretion, all Bates pages where O/S redactions were made to pages that also contained responsive information were reprocessed for potential release. In this case the material originally withheld O/S pertained to other discussion topics not within the scope of plaintiffs FOIA request. See attached Exhibit A for reprocessed Bates page 307. <i>Ex. 5:</i> 1 Bates page contained deliberative exchange on proposed legislative solutions to enhance ELSUR capabilities. <i>Ex. 6/7C:</i> 2 Bates pages contained the names and/or identifying information of FBI SAs and support personnel, and OFG employees. <i>Ex. 7E:</i> 1 Bates page detailed the difficulties law enforcement encountered in conducting ELSUR, and discusses possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.			
			Discussions Pertaining to Media Articles			
10A	EFF/Lynch 1-2 (2)	4/16/2010	This 2 page e-mail chain outlines a recent article in Communication Daily concerning cable roaming agreements between interconnecting Wi-Fi services, and how this might relate to "Going Dark." <i>Ex. 2:</i> 1 Bates page asserted in conjunction with 6/7C for FBI internal, non-public telephone numbers. In addition, asserted "high 2" in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn (b)(2) in this instance. <i>Ex. 6/7C:</i> 1 Bates page contained the names and/or identifying information of FBI SAs and support personnel, and OFG employees. <i>Ex. 7E:</i> 1 Bates page detailed how lawful intercept capabilities would be affected by the new cable roaming agreements.	(b)(2) 1 pg; (b)(6), (b)(7)(C) 1 pg; (b)(7)(E) 1 pg	2 RIP	(b)(2): pg 78, ¶ 141. (b)(6), (b)(7)(C): pgs 80-82, ¶¶ 146-147. (b)(7)(E): pgs 84-85, ¶ 151.
10B	EFF/Lynch 305-306 (2)	Undated	These 2 Bates pages contained discussion on proposed FBI responses to inaccuracies located in an undated Wired Magazine article titled, " <i>Point, Click...Eavesdrop: How the FBI Wiretap Net Operates.</i> " The talking point discussion also outlines CALEA gaps that may have to be addressed. <i>Ex. 5:</i> 2 Bates pages contained draft deliberative talking points concerning the	(b)(5) 2 pgs; (b)(7)(E) 2 pgs	2 WIF	(b)(5): pgs 127-128, ¶¶ 208-209. (b)(7)(E): pgs 131-132, ¶ 213.

			FBI's proposed responses to inaccuracies located within a media article. <i>Ex. 7E</i> : 2 Bates pages detailed proposed legislative changes to CALEA, which would enhance investigative techniques to ensure ELSUR capabilities will remain effective and productive.			
10C	EFF/Lynch 649, 662, 665-671, 755, and 761-767 (17)	6/4/2010 – 9/27/2010	These 17 Bates pages are internal e-mail chains between FBI and DOJ personnel. The first internal e-mail discussion pertained to proposing potential responses to an imminent New York Times story on 'Going Dark.' The second email discussion pertained to approving talking points about the released New York Times article about the FBI seeking new law enforcement regulations for the Internet, telecommunications carriers having technical difficulties implementing lawful intercept court orders. The third email chain pertained to developing talking points for FBI leadership to answer questions about a Washington Post article titled, "Administration seeks ways to monitor Internet communication." A fourth email chain, which was mostly referred to DOJ for their direct response, pertained to a discussion over the New York Times article titled, "U.S. is Working to Ease Wiretaps on the Internet." A fifth email dealt with an internal discussion about an announcement made by service provider. Finally, several email chains (mostly referred to DOJ) discussed criminal case examples in the news, which showed how technological advances are out pacing law enforcement's ability to perform lawful intercepts. Of these 17 Bates pages 2 pages (EFF/Lynch 667-668) were referred to DOJ for direct response to plaintiff. Additionally, of these 17 Bates pages 7 pages (EFF/Lynch 669-670, 761-762, and 765-767) were partly referred to DOJ after consultation on FBI material. <i>Ex. 5</i> : 5 Bates pages contained deliberative discussion between FBI and DOJ personnel on developing talking points concerning proposed FBI responses media articles. <i>Ex. 6/7C</i> : 11 Bates page contained the names and/or identifying information of FBI SAs and support personnel, third party individuals merely mentioned, and OFG employees. <i>Ex. 7E</i> : 9 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to	(b)(5) 5 pages; (b)(6), (b)(7)(C) 11 pgs; (b)(7)(E) 9 pgs	14 RIP [7 partly referred to DOJ] 2 WIF [Referred to DOJ] 1 RIF	(b)(5): pgs 133- 134, ¶¶ 215- 216. (b)(6), (b)(7)(C): pgs 134-137, ¶¶ 227-219. (b)(7)(E): pgs 138-139, ¶ 221.

			the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.			
10D	EFF/Lynch 1465-1467 (3)	5/11/2009	These 3 Bates pages is an internet article titled: "FBI 'Going Dark' with New Advanced Surveillance Program" released in full.		3 RIF	
			CALEA ELSUR Non-Compliance Report			
11	EFF/Lynch 1324-1326 (3)	Undated	These 3 Bates pages are 2 internal FBI sample CALEA reporting forms titled, 1) "ELSUR Noncompliance Incident Report," and 2) "Provider Noncompliance with Retrieval of Communication Records." <i>Ex. 2:</i> All 3 Bates pages asserted "high 2" in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn. <i>Ex. 7E:</i> All 3 Bates pages were internal CALEA compliance reporting forms that outline specific problems the FBI may encounter during retrieval of ELSUR information in compliance with CALEA.	(b)(2) 3 pgs; (b)(7)(E) 3 pgs	3 WIF	(b)(2): pg 153, ¶ 239. (b)(7)(E): pg 160, ¶ 247.
			FBI FY 2010 Budget Details			
12	EFF/Lynch 1468-1472 (5)	FY 2010 Budget Request [undated]	These 5 Bates pages, released in full, is a copy of the "FBI FY 2010 Budget Request at a Glance."		5 RIF	
			Law Enforcement Executive Forum (LEEF) Presentations			
13	EFF/Lynch 1241-1323, and 1327- 1332 (89)	5/18/2009 – 6/25/2009	These 89 Bates pages are an executive summary of the FBI sponsored Law Enforcement Executive Forum ("LEEF") prepared for FBI leadership. The summary included a list of attendees, a copy of the invitation to the event, and several attachments, which included 4 of the 6 presentations given at the forum. The included presentations were titled: 1) "Going Dark: Law Enforcement's Need to Preserve Lawful Intercept Capabilities," 2) "State and Local Law Enforcement Challenges,"	(b)(2) 84 pg; (b)(5) 89 pgs; (b)(6), (b)(7)(C) 15 pgs; (b)(7)(E) 81 pgs	89 WIF	(b)(2): pg 153, ¶ 239. (b)(5): pgs 153- 155, ¶¶ 240- 241. (b)(6), (b)(7)(C): pgs 156-160, ¶¶

			<p>3) "Technology Transfer Program: Office of National Drug Control Policy, Counterdrug Technology Assessment Center," and 4) "Going Dark: An Update." The other 2 presentations not included with the summary were titled, "Impact on Local Law Enforcement," and "The DEA Perspective." The purpose of the meeting was for the law enforcement attendees to gain more familiarity with the National Lawful Intercept Strategy under development, and to share their thoughts, opinions and provide input into proposed steps the LEEF needs to take to facilitate the Going Dark Initiative. <i>Ex. 2:</i> Of these 84 Bates pages 3 pages asserted in conjunction with 6/7C for FBI internal, non-public telephone numbers. In addition, of these 84 Bates pages 75 pages asserted "high 2" in conjunction with 7E, to protect investigative techniques and procedures. With <u>Milner</u> decision narrowing Exemption 2, FBI has withdrawn (b)(2) in these instances. <i>Ex. 5:</i> 89 Bates pages contained deliberative executive summary meeting notes that detailed various law enforcement sensitive presentations concerning the National Lawful Intercept Strategy under development, and discussed opinions, options, and the sharing of ideas on how to facilitate the Going Dark Initiative. The FBI solicited the views and opinions on the development of the Bureau's ELSUR policy, and these law enforcement partners were acting as consultants. <i>Ex. 6/7C:</i> 15 Bates page contained the names and/or identifying information of FBI SAs and support personnel, third party individuals merely mentioned, and OFG employees. <i>Ex. 7E:</i> 81 Bates pages detailed the difficulties law enforcement encountered in conducting ELSUR, and discuss possible operational, legal, and procedural changes to the use, or enhancement of, investigative techniques to ensure ELSUR capabilities will remain effective and productive.</p>			<p>243-246. (b)(7)(E): pg 160, ¶ 247.</p>
			<p>Referrals to DOJ, DHS, or DEA for Direct Response to Plaintiff</p>			
<p>14A</p>	<p>EFF/Lynch 314-327, and 363-366 (18)</p>	<p>Document 1 dated 12/8/2009,</p>	<p>These 18 Bates pages pertain to 2 documents that were prepared by, and/or obtained from the DOJ, and the FBI subsequently referred the documents to the DOJ on March 31, 2011, for direct</p>		<p>18 WIF</p>	

		and second document undated	response to the plaintiff. See DOJ declaration and Index for direct response details.			
14B	EFF/Lynch 650-661, 727-743, and 756-760 (34) [Note: also see 10C discussion above]	DHS material dated 4/1/2008 – 8/20/2009, DOJ material undated, and DEA material undated	These 34 Bates pages pertain to documents and/or information that were prepared by and/or obtained from the DHS (EFF/Lynch 650-661), DOJ (EFF/Lynch 727-743), or DEA (EFF/Lynch 756-760), and the FBI subsequently referred the documents and/or information to the DOJ, DHS, and DEA on March 31, 2011, for direct response to the plaintiff. In addition, as previously discussed in above Category 10C, 2 Bates pages (EFF/Lynch 667-668) were referred to DOJ for direct response to plaintiff, and 7 pages (EFF/Lynch 669-670, 761-762, and 765-767) were partly referred to DOJ after consultation on FBI material. See DHS, DOJ, and DEA declarations and Indices for direct response details.		34 WIF	

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ELECTRONIC FRONTIER FOUNDATION

Plaintiff,

v.

Civil Action No. 10-CV-04892-RS

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Exhibit B



Legislative and Policy Challenge Scope of CALEA



Issue:

- CALEA requires "telecommunications carriers" to develop and deploy intercept solutions in their networks to ensure that lawfully-authorized electronic surveillance could be performed
- Since CALEA's enactment in 1994, communications services have evolved beyond the traditional telecommunications platforms that existed at the time of passage
- A growing number of providers and emerging services that offer alternatives to traditional telephony may no longer meet CALEA's definition of a "telecommunications carrier"
 - P2P Services [redacted] and Third Party Applications [redacted]
- Even those providers that are covered by CALEA frequently introduce new services before they have developed techniques for assisting the government in conducting intercepts

b2
b7E

b5
b7E

10



Legislative and Policy Challenge On Premises Interception/Monitoring



Issue:

- [Redacted]
- [Redacted]

b2
b7E

- Recent examples

[Redacted]

b5
b7E



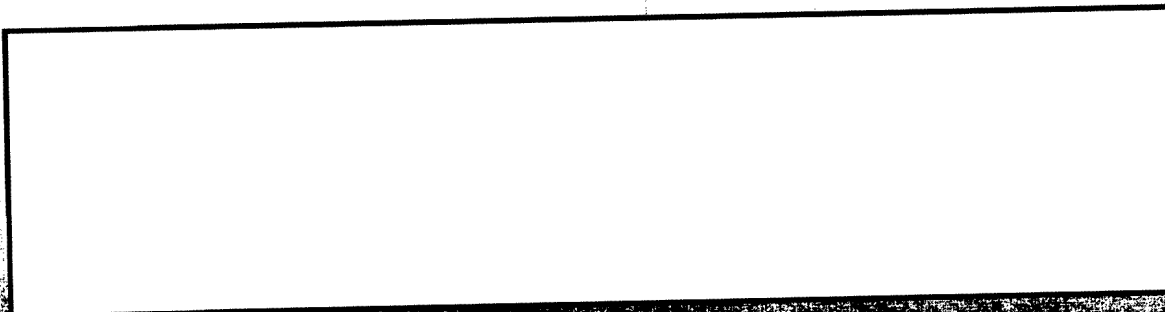


Legislative and Policy Challenge CALEA Safe Harbor



Issue:

- Carriers using industry standards are granted “safe harbor” under CALEA
- Industry standards bodies are industry-controlled, often to the detriment of law enforcement
- “Safe harbor” for deficient industry standards affords unwarranted protection
- Process of challenging standards before the FCC is burdensome and lengthy
- Recent examples



b5
b7E

12

EFF/Lynch-96

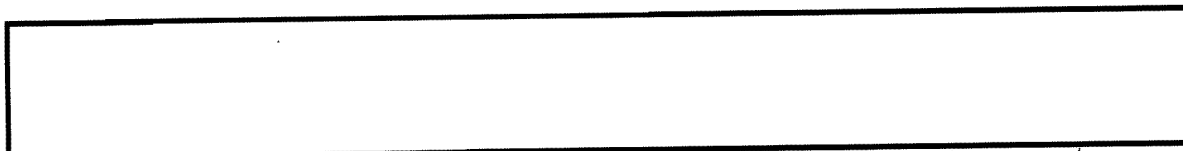


Legislative and Policy Challenge Delivery of Data

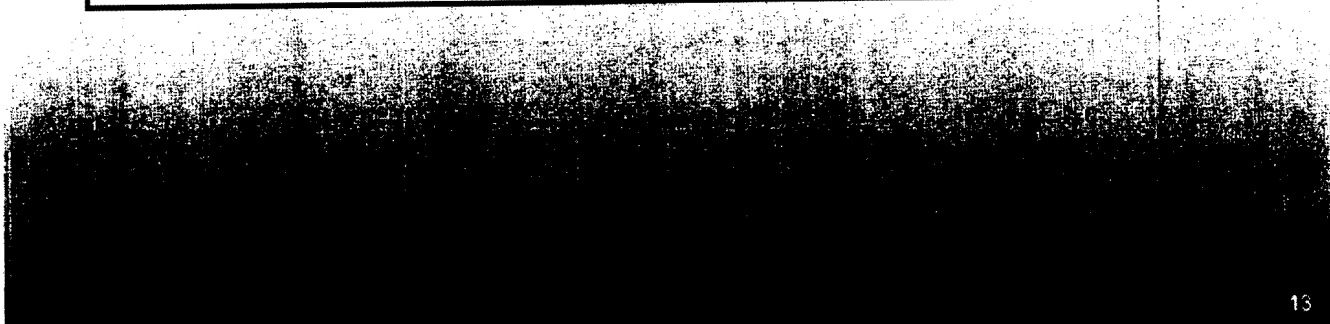


Issue:

- Carriers often fail to deliver data in a secure, reliable and time-efficient manner
- Carriers utilize methods that do not ensure the intercepted communications are received at the law enforcement collection facility
- Delivery mechanisms that are cost-prohibitive for law enforcement and cannot be established in time-efficient manner
- Recent examples



b5
b7E



13

EFF/Lynch-97

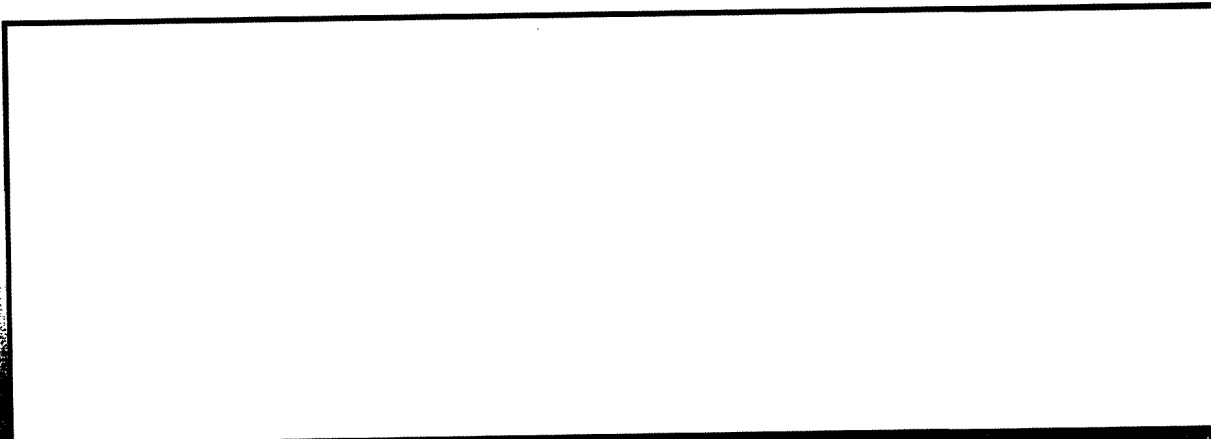


Legislative and Policy Challenge Enforcement



Issue:

- Non-compliance with CALEA for emerging service occurs often
- CALEA's current enforcement provisions present insurmountable hurdles that make even the threat of enforcement non-credible
- CALEA places the government in a "Catch-22" position
- Recent examples



b5
b7E



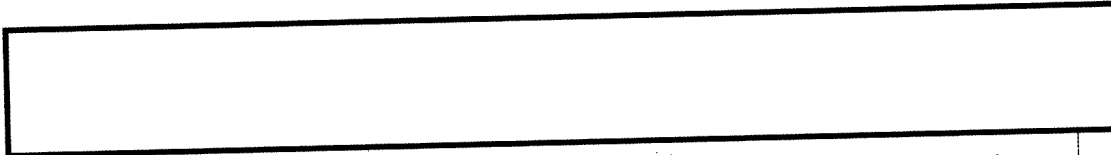
Legislative and Policy Challenge Encryption



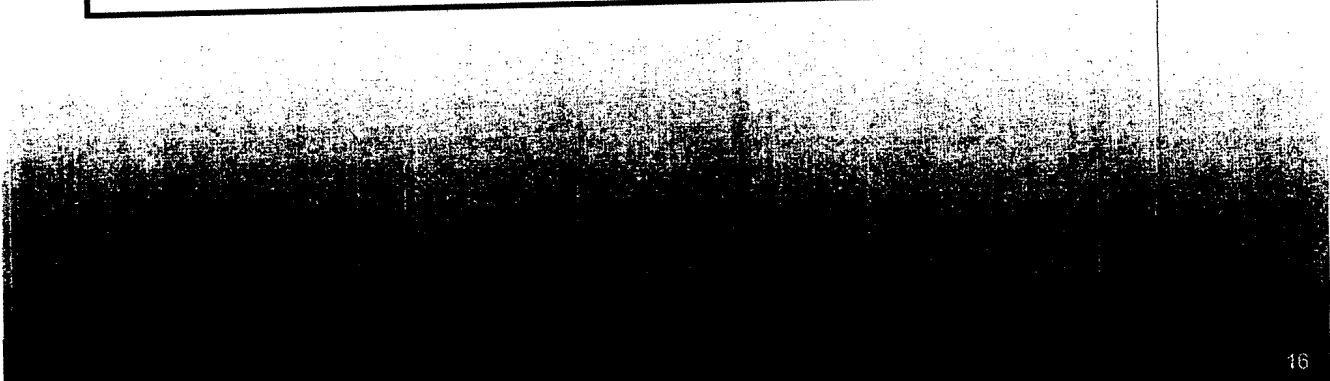
Issue:

• Many modern communication services and devices use encryption as a means to protect subscriber communications and data

- Data "in transit," such as VoIP and e-mail communications
- Data "at rest," such as the data stored on a hard drive or USB device



b5
b7E



16

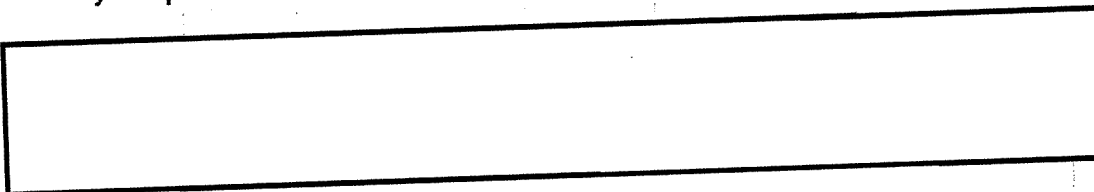


Legislative and Policy Challenge Data Retention



Issue:

•Many modern communications services no longer utilize or store in a standardized manner detailed service and billing records, eliminating previously easily acquired subscriber records



b5
b7E

Legislative and Policy Challenge On Premises Interception/Monitoring

Issue:

- [Redacted]
- [Redacted]

b2
b7E

- Recent examples

[Redacted]

b2
b7E



Going Dark

FOR OFFICIAL USE ONLY

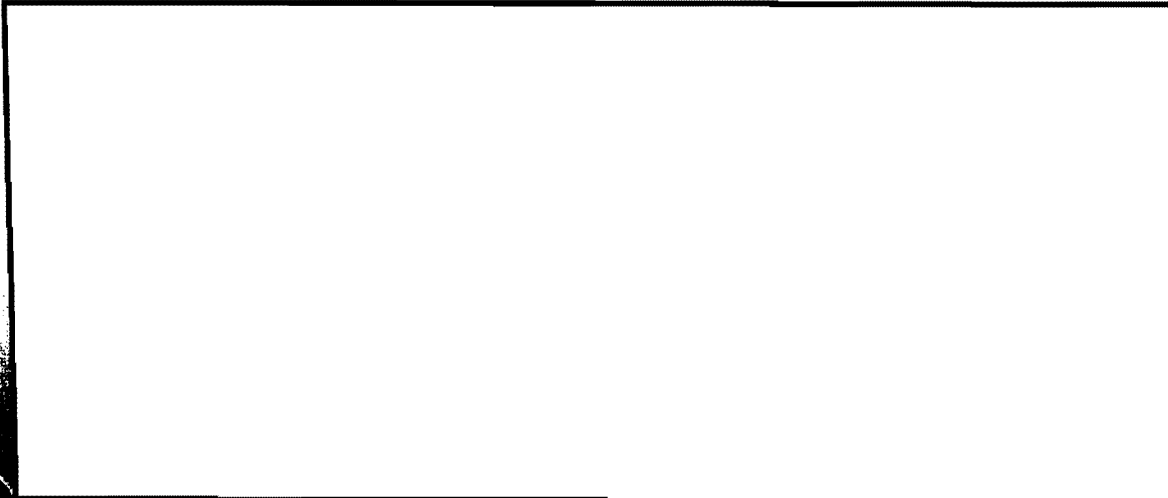
11

EFF/Lynch-108

Legislative and Policy Challenge CALEA Safe Harbor

Issue:

- Carriers using industry standards are granted "safe harbor" under CALEA
- Industry standards bodies are industry-controlled, often to the detriment of law enforcement
- "Safe harbor" for deficient industry standards affords unwarranted protection
- Process of challenging standards before the FCC is burdensome and lengthy
- Recent examples



b5
b7E

Going Dark

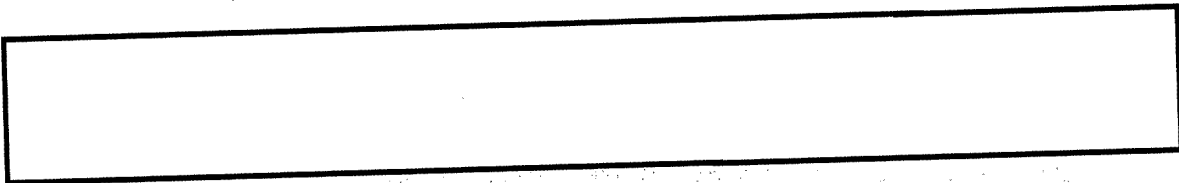
FOR OFFICIAL USE ONLY

EFF/Lynch-109

Legislative and Policy Challenge Delivery of Data

Issue:

- Carriers often fail to deliver data in a secure, reliable and time-efficient manner
- Carriers utilize methods that do not ensure the intercepted communications are received at the law enforcement collection facility
- Delivery mechanisms that are cost-prohibitive for law enforcement and cannot be established in time-efficient manner
- Recent examples



b5
b7E



Going Dark

*** FOR OFFICIAL USE ONLY ***

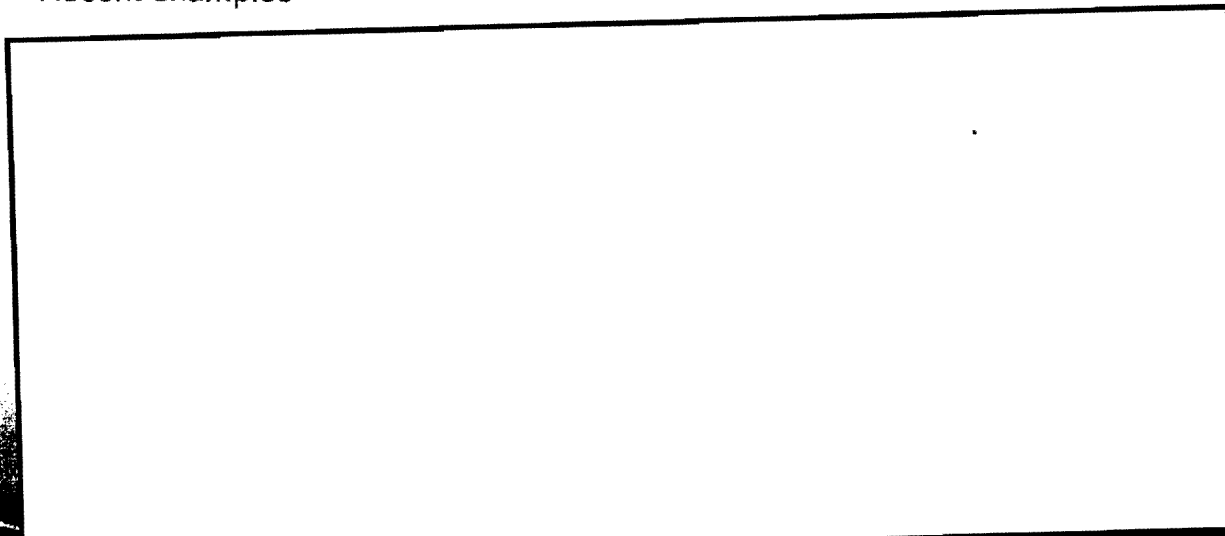
13

EFF/Lynch-110

Legislative and Policy Challenge Enforcement

Issue:

- Non-compliance with CALEA for emerging service occurs often
- CALEA's current enforcement provisions present insurmountable hurdles that make even the threat of enforcement non-credible
- CALEA places the government in a "Catch-22" position
- Recent examples



b5
b7E

Going Dark

*** FOR OFFICIAL USE ONLY ***

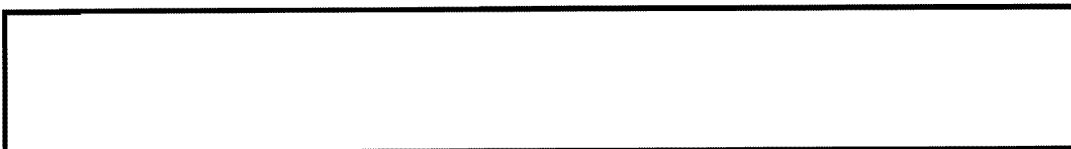
EFF/Lynch-112

Legislative and Policy Challenge Encryption

Issue:

•Many modern communication services and devices use encryption as a means to protect subscriber communications and data

- Data "in transit," such as VoIP and e-mail communications
- Data "at rest," such as the data stored on a hard drive or USB device



b5
b7E



"Going Dark"

*** FOR OFFICIAL USE ONLY ***

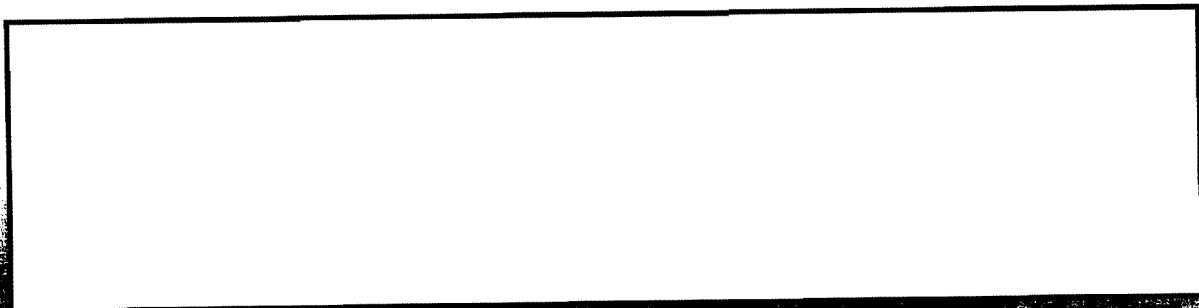
16

EFF/Lynch-113

Legislative and Policy Challenge Data Retention

Issue:

•The migration of traditional telephony (e.g., land-line and cellular telephone service) to flat-rate nationwide calling services, and away from toll-based services, together with the migration of users to Internet-based telephony (as well as other communications options), has substantially eroded the availability of non-content transactional communications records through which investigative agencies have traditionally identified offenders and their victims.



b5
b7E



Going Dark

*** FOR OFFICIAL USE ONLY ***

16

EFF/Lynch-115

Legislative and Policy Challenge On Premises Interception/Monitoring

Issue:

- [Redacted]
- [Redacted]

b2
b7E

• Recent examples:

[Redacted]

[Redacted]

b5
b7E



Legislative and Policy Challenge CALEA Safe Harbor

Issue:

- Carriers using industry standards are granted "safe harbor" under CALEA
- Industry standards bodies are industry-controlled, often to the detriment of law enforcement
- "Safe harbor" for deficient industry standards affords unwarranted protection
- Process of challenging standards before the FCC is burdensome and lengthy
- Recent examples: [redacted] lack of time stamp capability; [redacted] is not afforded safe harbor despite having a solution that meets law enforcement's needs

b2
b7E



b5
b7E



"Going Dark"

*** FOR OFFICIAL USE ONLY ***

12

EFF/Lynch-122

Legislative and Policy Challenge Delivery of Data

Issue:

- Carriers often fail to deliver data in a secure, reliable and time-efficient manner
- Carriers utilize methods that do not ensure the intercepted communications are received at the law enforcement collection facility
- Delivery mechanisms that are cost-prohibitive for law enforcement and cannot be established in time-efficient manner
- Recent examples:

b2
b7E

b5
b7E



Legislative and Policy Challenge Enforcement

Issue:

- Non-compliance with CALEA for emerging service occurs often
- CALEA's current enforcement provisions present insurmountable hurdles that make even the threat of enforcement non-credible
- CALEA places the government in a "Catch-22" position
- Recent examples: [redacted] down for months [redacted]

b2
b3
b7E

[redacted]

[redacted]

b5
b7E



- Child Pornography and Exploitation

In Operation Achilles, we broke up an international online child porn and exploitation ring in 2008 that used anonymizers and encryption services to conceal their activities.

- [REDACTED]
- Together with our foreign partners, we:
 - Arrested/convicted 14 defendants in the U.S., two in the U.K., and two in Germany; and
 - Identified over 12 victims of molestation, and seized 400,000 images and 1,200 videos.

b2
b7D
b7E

- [REDACTED]

[REDACTED] we investigated [REDACTED] that used a [REDACTED] in a conspiracy to transport cocaine from [REDACTED]

- [REDACTED] they are difficult to intercept.
- [REDACTED]
- Eventually, we obtained an indictment [REDACTED] but the absence of an ELSUR solution in this particular case created delays and prevented the interception of pertinent communications.

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b7E

[REDACTED]

b5
b7E

UNCLASSIFIED // FOUO



What threatens Law Enforcement and the Intelligence Community's ability to intercept targets' communication?

Competing interests of the Intelligence Community and Law Enforcement

[Redacted]

Uncoordinated efforts between LE and IC, as well as within LE

[Redacted]

[Redacted]

b2
b7E

b5
b7E

Lack of coordination leads to duplication of effort, fractured industry liaison and competing entities, increasing the risk of lost capabilities

EFF/Lynch-141

From: [redacted] (CyD) (FBI) b6
Sent: Friday, November 26, 2010 3:18 PM b7C
To: [redacted] (CYD)(FBI)
Subject: Pusuant to your FOIA request
FOIA request

From: [redacted] (CyD) (FBI)
Sent: Friday, July 30, 2010 6:55 PM b6
To: [redacted] (CyD) (FBI); [redacted] (CyD)(FBI) b7C
Subject: RE: Going Dark Working Group

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

[redacted]

b2
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b7E

One other issue I've been made aware of is [redacted]
[redacted]

[redacted]

b6
b7C

From: [redacted] (CyD) (FBI)
Sent: Thursday, July 29, 2010 9:08 AM
To: [redacted] (CyD)(FBI); [redacted] (CyD) (FBI)
Subject: FW: Going Dark Working Group

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

b2
b5
b7E

Can you all address [redacted]

From: [redacted] (DI)(FBI)
Sent: Wednesday, July 28, 2010 4:29 PM
To: [redacted] (CyD)(FBI); [redacted] (CyD) (FBI); [redacted] (CyD) (FBI);
[redacted] (CYD) (FBI); [redacted] (DI)(FBI); [redacted] (CyD)(FBI);
[redacted] (CyD) (FBI)
Cc: [redacted] (CyD) (FBI); [redacted] (CyD)(FBI)
Subject: Going Dark Working Group

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b7E

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

The Going Dark Working Group (GDWG) continues to ask for examples from Cyber investigations where investigators have had problems with [redacted]

b6
b7C

[redacted] RMD)(FBI)

From: [redacted] (CTD)(FBI)
Sent: Thursday, February 03, 2011 1:01 PM
To: [redacted] (CTD)(FBI)
Subject: FW: [redacted]

DECLASSIFIED BY 65179/DMH/BAW/STP/bls
ON 02-17-2011

b6
b7C
b7E

Regarding the FOIA request

[redacted]
CTD/ITOS-1/CONUS-5
[redacted]

b2
b6
b7C

From: [redacted] (CTD) (FBI)
Sent: Wednesday, June 03, 2009 3:53 PM
To: [redacted] (WF) (FBI); [redacted] (SU) (FBI); [redacted] (SU) (FBI)
Cc: [redacted] (CTD) (FBI); [redacted] (CTD)(OGA); [redacted] (CTD) (FBI); [redacted] (OGC) (FBI)
Subject: RE: [redacted]

b2
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b7C
b7E

~~SECRET~~
RECORD 415

Not sure who is the source, but it may be. I wouldn't be surprised to find that it is all a ruse to cover the fact that they are not CALEA compliant!

From: [redacted] (WF) (FBI)
Sent: Wednesday, June 03, 2009 1:21 PM
To: [redacted] (CTD) (FBI); [redacted] (SU) (FBI); [redacted] (SU) (FBI)
Cc: [redacted] (CTD) (FBI); [redacted] (CTD)(OGA); [redacted] (CTD) (FBI); [redacted] (OGC) (FBI)
Subject: RE: [redacted]

b2
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~~SECRET~~
RECORD 415

Wow. That's all I can say, wow. Not that it will help much, but would you like me to reach out to [redacted] legal counsel? Or is this subpoena nonsense coming from her?

[redacted]
Investigative Operations Analyst
Northern VA RA Squad A-2
[redacted] Desk
[redacted] Blackberry
[redacted]

From: [redacted] (CTD) (FBI)
Sent: Wednesday, June 03, 2009 9:28 AM
To: [redacted] (SU) (FBI); [redacted] (SU) (FBI)
Cc: [redacted] (CTD) (FBI); [redacted] (CTD)(OGA); [redacted] (CTD) (FBI); [redacted] (OGC) (FBI)

b6
b7C

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ON 02-17-2011

[Redacted] RMD)(FBI)

b6
b7C

From: [Redacted] (CTD)(FBI)
Sent: Wednesday, September 22, 2010 3:25 PM
To: HQ-DIV13-CONUS 5
Subject: FW: New Information: NSL / V&P (from [Redacted] Presentation 09.17)

Attachments: [Redacted]
SFFISA.SEPTEMBER.2010.pptx; faq.update

b7E

~~SECRET//NOFORN~~
~~RECORD 415~~

Here are the PowerPoint slides from the presentation (if you're interested); I have the full copy of the briefing book from Friday if you see there's something else you need.

[Redacted]

b7E



SFFISA.SEPTEMBERfaq.update (25 KB)
.2010.pptx (20...

[Redacted] mentioned that although [Redacted] are not responding to NSLs, other companies (i.e. [Redacted]) are still honoring and producing decent results.

b2
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b7C
b7E

[Redacted]
Staff Operations Specialist
Counterterrorism Division
ITOS 1 / CONUS V / Team 2

Internal
Office [Redacted]

From: [Redacted] (CTD)(FBI)
Sent: Tuesday, September 21, 2010 1:09 PM
To: HQ-DIV13-CONUS 5
Subject: New Information: NSL / V&P (from [Redacted] Presentation 09.17)

b6
b7C

~~SECRET//NOFORN~~
~~RECORD 415~~

Good afternoon!!

Here is some of the information from the Friday presentation by SIOA [Redacted] (San Francisco Division) regarding obtaining information from Internet Service Providers and social networking sites. I will send out an electronic copy of the powerpoint slides as soon as I receive one!

EFF/Lynch-170

DECLASSIFIED BY 65179/DMH/BAW/STP/bls
ON 02-17-2011

[Redacted]

From: [Redacted] (CTD)(FBI)
Sent: Wednesday, September 22, 2010 3:08 PM
To: [Redacted] (SF) (FBI)
Subject: RE: Questions Regarding LX-1 09/17 Presentation

~~SECRET~~
RECORD 415

b2
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b7C

Thanks [Redacted]

Have a wonderful rest of the week,

[Redacted]
Staff Operations Specialist
Counterterrorism Division
ITOS 1 / CONUS V / Team 2
LX-1, 4s-112
Internal: [Redacted]
Office: [Redacted]

From: [Redacted] (SF) (FBI)
Sent: Wednesday, September 22, 2010 2:24 PM
To: [Redacted] (CTD)(FBI)
Subject: RE: Questions Regarding LX-1 09/17 Presentation

b6
b7C

~~SECRET~~
RECORD 415

[Redacted]

Yes, everyone else stills honors and produces decent results in response to NSLs.

[Redacted]

b7E

SFFISA.SEPTEMBER.2010.pptx >> << File: faq.update >>

This is not everything, as you can tell by the table of contents, but it is the lion's portion.

SIOA [Redacted]
Supervisor, Squad IS-6
San Francisco Division/San Jose RA
[Redacted] (office)
[Redacted] (STE)
[Redacted] (Blackberry)

b2
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b7C

EFF/Lynch-182

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 04-07-2011 BY 65179/DNR/BAW/STP/bls



Congressional Affairs Office Congressional Contacts

Classification Level: _____

Date Entered: 05/28/2009 2009-154 Proactive Reactive

Briefing Hearing SAC CV HQ CV FOC Other # of SAC CV Visits: _____

Event Date: 5/28/2009 Entered By: _____ Unit: _____

Subject: HAC-SIOP briefing Division: _____

OCA Contact Person: _____

DOJ Notification: _____ Date: _____ Attended: _____

FBI Participants: See narrative

Other Participants: _____

Committees /Subcommittees: House Select Intelligence Oversight Panel

Members/Staff: Staffer

Summary of Event:

The briefing began with a short overview by AD Rich Haley regarding _____
Following AD Haley the following topics were discussed:

Cyber - SC Gordon Snow and UC _____ discussed _____ questions revolved around _____

Intel - AD Kevin Fayreau and _____ discussed _____

CT - A/SC _____ discussed the shift of FBI resources to combat terrorism. He discussed the current threats and strategies in combating them. _____ asked _____ She also had questions on _____ She also wanted to know _____

CI - _____ discussed intel targets and the FBI battle plan. He mentioned the FBI's comprehensive strategy and fight for counter proliferation. _____ ask there was not enough importance placed on CI from the se outside the IC.

_____ Advanced Electronic Surveillance - EAD Grever discussed the success with CALEA and future gaps we must overcome in these areas.

WMD - SC John Fraga led this discussion regarding the threats, training and response capabilities of our WMD division. He also discussed ERT, HAZMAT _____

Surveillance - A/SC _____ discussed the merger of all surveillance programs under CIRG. _____ had a few questions regarding _____

Note: Multiple people attended each portion. I was only able to get the names of the main briefers.

Follow Up Action: _____

EFF/Lynch-307

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b7c

b6
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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 04-07-2011 BY 65179/DMM/BAW/STP/bls

[Redacted]

From: [Redacted]
Sent: Friday, March 11, 2011 5:58 PM
To: [Redacted]
Subject: FW: [Redacted]
Importance: High

b5
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b7E

From: [Redacted]
Sent: Tuesday, September 28, 2010 1:04 PM
To: [Redacted]
Cc: [Redacted]
Subject: [Redacted]
Importance: High

[Redacted]
[Redacted] believe they give you a good overview of the situation.

Thanks

[Redacted]

[Large Redacted Area]

b5
b6
b7C
b7E

EFF/Lynch-309

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 04-07-2011 BY 65179/DKH/BAW/STP/b1a-

[Redacted]

From: [Redacted]
Sent: Friday, March 11, 2011 5:58 PM
To: [Redacted]
Subject: FW: [Redacted]
Attachments: [Redacted]
Importance: High

b5
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b7C
b7E

From: [Redacted]
Sent: Tuesday, September 28, 2010 1:08 PM
To: [Redacted]
Cc: [Redacted]
Subject: FW: [Redacted]
Importance: High

b5
b6
b7C
b7E

[Redacted]

But again, a good view of the issue.

EFF/Lynch-313

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 04-08-2011 BY 65179/DNH/BAM/STP/bls

[Redacted] (RMD)(FBI)
From: [Redacted] (DO)(FBI)
Sent: Friday, March 11, 2011 6:53 PM
To: [Redacted] (DO) (FBI)
Subject: FW: [Redacted] Background Info
Attachments: [Redacted]

b5
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b7E

From: [Redacted] (OCA) (FBI)
Sent: Tuesday, September 28, 2010 1:45 PM
To: [Redacted] (DO) (FBI); [Redacted] (DO) (FBI); [Redacted] (DO)(FBI); [Redacted] (DO)(FBI); [Redacted] (DO)(FBI)
Subject: FW: [Redacted] - Background Info

UNCLASSIFIED
NON-RECORD

[Redacted]
[Redacted]
Unit Chief
FBIHQ, Office of Congressional Affairs
[Redacted]

b5
b6
b7C
b7E

From: [Redacted] (OCA) (FBI)
Sent: Monday, September 27, 2010 10:43 AM
To: [Redacted] (OCA) (FBI); [Redacted] (DO)(FBI)
Cc: [Redacted] (DO) (FBI); [Redacted] (DO)(FBI)
Subject: [Redacted] - Background Info

UNCLASSIFIED
NON-RECORD

Following up on [Redacted]



[Redacted]

UNCLASSIFIED

UNCLASSIFIED

EFF/Lynch-332

Legislative and Policy Challenge Enforcement

Issue:

- Non-compliance with CALEA for emerging service occurs often
- CALEA's current enforcement provisions present insurmountable hurdles that make even the threat of enforcement non-credible
- CALEA places the government in a "Catch-22" position
- Recent examples

b5
b7E

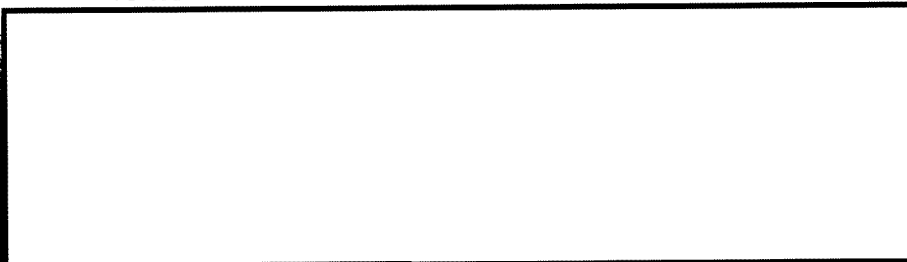
EFF/LYNCH-1462

Legislative and Policy Challenge Encryption

Issue:

-Many modern communication services and devices use encryption as a means to protect subscriber communications and data

- Data "in transit," such as VoIP and e-mail communications
- Data "at rest," such as the data stored on a hard drive or USB device



b5
b7E

UNCLASSIFIED // FOUO

What threatens Law Enforcement and the Intelligence Community's ability to intercept targets' communication?



- 1. Competing interests of the Intelligence Community and Law Enforcement

[Redacted]

- 2. Uncoordinated efforts between LE and IC, as well as within LE

[Redacted]

[Redacted]

b5
b7E

Lack of coordination leads to duplication of effort, fractured industry liaison and competing entities, increasing the risk of lost capabilities

EFF/LYNCH-1507