

Demers, John

From: Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov]
Sent: Wednesday, January 23, 2008 8:59 PM
To: Demers, John
Subject: RE: POCs for FISA floor action

B2

Thanks for all your help. Keep your fingers crossed.

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

From: Demers, John [mailto:[REDACTED]@usdoj.gov]
Sent: Wednesday, January 23, 2008 8:37 PM
To: Livingston, J (Intelligence)
Cc: Rice, K (Intelligence); Jaffer, Jamil N. (NSD)
Subject: Re: POCs for FISA floor action

Exemption 6

He is cc'ed here.

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

From: Livingston, J (Intelligence) <[REDACTED]@ssci.senate.gov>
To: Demers, John
Cc: Rice, K (Intelligence) <[REDACTED]@ssci.senate.gov>
Sent: Wed Jan 23 20:34:19 2008
Subject: RE: POCs for FISA floor action

What's his email address or could you have him send me a test e-mail? Thanks.

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

From: Demers, John [mailto:[REDACTED]@usdoj.gov]
Sent: Wednesday, January 23, 2008 7:57 PM
To: Livingston, J (Intelligence)
Cc: Rice, K (Intelligence)
Subject: Re: POCs for FISA floor action

Jack and Kathleen,

Jamil Jaffer will be in the VP suite. I will also be reachable at DOJ.

Thanks.

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

From: Livingston, J (Intelligence) <[REDACTED]@ssci.senate.gov>
To: [REDACTED] <[REDACTED]>; Ben Powell <[REDACTED]>; Demers, John; Vito Potenza (work) <[REDACTED]>
Cc: Rice, K (Intelligence) <[REDACTED]@ssci.senate.gov>
Sent: Tue Jan 22 22:35:16 2008
Subject: POCs for FISA floor action

Could you please identify the persons that you believe will act as primary and secondary points of contacts during the FISA amendments debate for the White House, ODNI, DOJ, and NSA. If they're not going to be in the Vice President's suite, could you please identify their location, phone number, and e-mail address. We want to prepare a list for Senator Bond's floor binder. Thanks.

Jack

NSD

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Demers, John

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From: Kim, Harold H. [REDACTED]@who.eop.gov
Sent: Saturday, February 09, 2008 8:44 AM
To: [REDACTED]@ssci.senate.gov; [REDACTED]@ssci.senate.gov; [REDACTED]@SSCI.senate.gov
Cc: Demers, John; Eisenberg, John; [REDACTED]; Burck, William A.; Stewart, Margaret B.; Emling, John G.; Meyer, Daniel P.; [REDACTED]@mcconnell.senate.gov
Subject: Whitehouse Assessment Compliance Modification (Revised)

Exemption 6

Louis, Jack and Kathleen: Please find below a revised version of the Whitehouse Assessment Compliance modification that incorporates comments from DNI and DOJ. Sorry that I can't send changes in redline since I'm on my blackberry.

Also, it is our understanding that acceptance of this language is predicated on Whitehouse's agreement to be with us on cloture and final passage. Please confirm. As always, don't hesitate to contact us with questions.

["Nothing in this Act shall be considered to reduce or contravene the inherent authority of the FISA Court to determine, or enforce, compliance with its orders, rules and court-approved procedures."

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Demers, John

From: Tucker, L (Intelligence) [REDACTED]@SSCI.Senate.Gov]
Sent: Saturday, February 09, 2008 10:45 AM
To: [Harold_H._Kim@who.eop.gov] Livingston, J (Intelligence); Rice, K (Intelligence)
Cc: Demers, John; Eisenberg, John; [REDACTED] William_A._Burck@who.eop.gov;
Margaret_B._Stewart@ovp.eop.gov; John_G._Emling@who.eop.gov;
Daniel_P._Meyer@who.eop.gov; Abegg, John (McConnell)
Subject: Re: Whitehouse Assessment Compliance Modification (Revised)

EXEMPTION 6

[That's correct, the deal was to take the language on the court with compliance for support of the overall bill.

De
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418

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Demers, John

From: Tucker, L (Intelligence) [REDACTED]@SSCI.Senate.Gov

Sent: Saturday, February 09, 2008 10:54 AM

To: Harold_H._Kim@who.eop.gov; Livingston, J (Intelligence); Rice, K (Intelligence)

Cc: Demers, John; Eisenberg, John; [REDACTED]; William_A._Burck@who.eop.gov; Margaret_B._Stewart@ovp.eop.gov; John_G._Emling@who.eop.gov; Daniel_P._Meyer@who.eop.gov; Abegg, John (McConnell)

Subject: Re: Whitehouse Assessment Compliance Modification (Revised)

Exemption 6

So on language in comparing the two we're looking at a slight tweak at the end, correct? [REDACTED] I believe DOJ never got back officially to Pelofsky on this, correct? [REDACTED] if that's right, give us the reasons for the change and the concerns you have, we'll work with his staff on Monday and if need be later in the day we'll ask DOJ to get back to Pelofsky directly with the concerns.]

HP

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Demers, John

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From: Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov]
Sent: Saturday, February 09, 2008 11:09 AM
To: Tucker, L (Intelligence); [REDACTED] Harold_H._Kim@who.eop.gov; Rice, K (Intelligence)
Cc: Demers, John; Eisenberg, John; [REDACTED] William_A._Burck@who.eop.gov; Margaret_B._Stewart@ovp.eop.gov; John_G._Emling@who.eop.gov; Daniel_P._Meyer@who.eop.gov; [REDACTED] Abegg, John (McConnell)
Subject: Re: Whitehouse Assessment Compliance Modification (Revised)

Exemption 6

Minor suggestions. [We should strike "FISA" and insert Foreign Intelligence Surveillance" to make it consistent with the way that term is used in the bill and in the FISA statute. Also, there should be a comma after the word "rules" since it's in a list.

The change to "court-approved" procedures makes sense, because it's more understandable than the proposed "approved procedures by agencies acting pursuant thereto." That makes it clear that we are only talking about targeting and minimization procedures submitted by the government to the the court for approval and not any other agency procedures that have applicability to FISA or collection, but no FISC involvement, e.g., the AG National Security Investigative Guidelines.

Sent from my BlackBerry Wireless Device

DW
[Handwritten mark]

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Demers, John

From: Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov]
Sent: Saturday, February 09, 2008 12:43 PM
To: [Harold_H_Kim@who.eop.gov]; Tucker, L (Intelligence); Rice, K (Intelligence)
Cc: Demers, John; Eisenberg, John; [REDACTED]; William_A_Burck@who.eop.gov;
Margaret_B_Stewart@ovp.eop.gov; John_G_Emling@who.eop.gov;
Daniel_P_Meyer@who.eop.gov; Abegg, John (McConnell)
Subject: Re: Whitehouse Assessment Compliance Modification (Revised)

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Exemption 6

Is there any concern that the new language might have an adverse impact on the carriers since we've deleted the reference to "agencies"?

Sent from my BlackBerry Wireless Device

DJE

9/25/2008

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Demers, John

1 page

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From: Demers, John
Sent: Saturday, February 09, 2008 3:57 PM
To: [redacted]@ssci.senate.gov; Harold_H._Kim@who.eop.gov; [redacted]@ssci.senate.gov;
[redacted]@ssci.senate.gov
Cc: Eisenberg, John; [redacted]; William_A._Burck@who.eop.gov; Margaret_B.
Stewart@ovp.eop.gov; John_G._Emling@who.eop.gov; Daniel_P._Meyer@who.eop.gov;
[redacted]@mcconnell.senate.gov
Subject: Re: Whitehouse Assessment Compliance Modification (Revised)

Exemption 6

[Not on my end anyway.]

The idea of deleting the language is that it's understood that court orders are directing someone to do something. So, to the the extent that there's inherent authority to enforce them, the courts can enforce them against whomever the order was directed. If the purpose of the language is just to restate existing inherent authority, it's not clear why the language would specify a class of people this inherent authority applies against.

DM

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Demers, John

From: Rice, K (Intelligence) [REDACTED]@SSCI.senate.gov
Sent: Monday, February 11, 2008 1:54 PM **Exemption 6**
To: [Kim, Harold H] Demers, John; [REDACTED] Ben Powell; [John_G._Emling@who.eop.gov];
Margaret_B._Stewart@ovp.eop.gov
Cc: Livingston, J (Intelligence); Tucker, L (Intelligence)
Subject: exclusive means
Attachments: Feinstein 3910.pdf

FYI: [It's our understanding that Senator Feinstein is going back to her original exclusive means (3910, attached), not the modified version with expanded declaration of war/AUMF/national emergency authority.] Will you be giving us an official position on this?] Thanks. Kathleen

Demers, John

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From: Tucker, L (Intelligence) [REDACTED]@SSCI.Senate.Gov]
Sent: Monday, February 11, 2008 6:57 PM
To: [Harold_H._Kim@who.eop.gov] Livingston, J (Intelligence); Rice, K (Intelligence)
Cc: Demers, John; Eisenberg, John; [REDACTED] William_A._Burck@who.eop.gov; **Exemption 6**
Margaret_B._Stewart@ovp.eop.gov; John_G._Emling@who.eop.gov;
Daniel_P._Meyer@who.eop.gov; Abegg, John (McConnell)
Subject: Re: Whitehouse Assessment Compliance Modification (Revised)

Here is new language [agreed to by Senator Whitehouse. Please give us official Admin position asap.] Thanks.

[Nothing in this Act shall be considered to reduce or contravene the inherent authority of the Foreign Intelligence Surveillance Court to determine, or enforce, compliance with an order or a rule of the Court or with a procedure approved by the Court.

Demers, John

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From: Tucker, L (Intelligence) [REDACTED]@SSCI.Senate.Gov]
Sent: Tuesday, February 12, 2008 8:47 AM
To: [Harold_H._Kim@who.eop.gov]; Livingston, J (Intelligence); Rice, K (Intelligence)
Cc: Demers, John; Eisenberg, John; [REDACTED]; William_A._Burck@who.eop.gov; Margaret_B._Stewart@ovp.eop.gov; John_G._Erling@who.eop.gov; Daniel_P._Meyer@who.eop.gov; Abegg, John (McConnell)
Subject: Re: Whitehouse Assessment Compliance Modification (Revised)

Exemption 6

[Margaret] John, need to hear back from you with Admin position on this now.] It's first amdt up at 10am.

De

Demers, John

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From: [Kim, Harold H. [Harold_H_Kim@who.eop.gov]] **Exemption 6**
Sent: Tuesday, February 12, 2008 8:54 AM
To: [redacted]@ssci.senate.gov; [redacted]@ssci.senate.gov; [redacted]@SSCI.senate.gov;
[redacted]@mcconnell.senate.gov; [redacted]@mcconnell.senate.gov
Cc: Demers, John; Eisenberg, John; [redacted] Burck, William A.; Stewart, Margaret B.;
Erling, John G.; Meyer, Daniel P.
Subject: Re: Whitehouse Assessment Compliance Modification (Revised)

Assuming this is the language we are looking at below, [we can live with it provided that Whitehouse is voting cloture and final passage. We would also recommend that the "the" before "Court" is replaced with "such" or "that" to clarify that we are talking about the FISA court.

Nothing in this Act shall be considered to reduce or contravene the inherent authority of the Foreign Intelligence Surveillance Court to determine, or enforce, compliance with an order or a rule of the Court or with a procedure approved by the Court.]

D

D4

USD (page)

Demers, John

From: Livingston, J (Intelligence) [redacted]@ssci.senate.gov]
Sent: Friday, February 15, 2008 5:12 PM
To: Demers, John; Ben Powell; Kim, Harold H.
Subject: FW: FISA

Exemption 6

FYI. A "successful resolution" is in the eye of the beholder I guess.

From: Davidson, M (Intelligence)
Sent: Friday, February 15, 2008 5:07 PM
To: Livingston, J (Intelligence)
Cc: Healey, C (Intelligence); Rice, K (Intelligence); Starzak, Alissa (Intelligence); Tucker, L (Intelligence)
Subject: RE: FISA

Jack,

Let me urge that the direction of higher authority be sought.

The interest in, and benefit from, a discussion does not presume that there will be a conference. There is a good chance that what will occur is a House message back to the Senate with an amendment, followed by a decision of the Senate whether to agree to the House amendment or to return the bill to the House with a further amendment. Understanding the respective positions, and discussing (even without necessarily agreeing) whether solutions exist to any items in disagreement, could lead to more informed actions. All of us, of course, will be reporting back to Members concerning decisions that they might make after the recess.

The interest of HPSCI and House Judiciary Democrats to engage in this process is, I believe, a real plus that portends well for a successful resolution. I truly hope that we all find ourselves in the same room next Thursday and Friday.

Mike

DP

✓

DUP

Demers, John

From: Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov]
Sent: Friday, February 15, 2008 3:40 PM
To: Demers, John; Ben Powell; [Kim, Harold H.]
Subject: FW: FISA

FYI. [We'd appreciate it if you declined to participate as well.]

Exemption 6

From: Livingston, J (Intelligence)
Sent: Friday, February 15, 2008 3:38 PM
To: Davidson, M (Intelligence)
Cc: Healey, C (Intelligence); Rice, K (Intelligence); Starzak, Alissa (Intelligence); Tucker, L (Intelligence)
Subject: RE: FISA

Mike,

The Senate did not ask for a conference on the FISA bill and the House hasn't even taken it up for consideration. It seems inappropriate and premature for staff to engage in pseudo conference-style negotiations during recess when this has so clearly been elevated to a Member/Leadership issue. This is well above our pay grade at this point. It's too bad that the House never engaged in a bipartisan process like the one you led over here. If they had, they probably would have been more inclined to act on the bill that the Senate sent over. If the FISA bill ever becomes subject to conference, my guess is that any conference discussions will be member directed, not staff directed. Therefore, we won't be participating in staff "discussions" next week unless directed to do so by higher authority.

Jack

From: Davidson, M (Intelligence)
Sent: Friday, February 15, 2008 1:13 PM
To: Livingston, J (Intelligence)
Cc: Healey, C (Intelligence); Rice, K (Intelligence); Starzak, Alissa (Intelligence)
Subject: FISA

Jack,

To launch the discussions mentioned yesterday, there is an interest in beginning with a congressional discussion – bipartisan, bicameral (Intelligence and Judiciary, and leadership staff, both Houses), as an opportunity for both Houses to spend a couple of hours identifying questions and exploring issues – next Thursday, February 21, 1 pm, Senate Judiciary to host in their hearing room. We can have our hearing room available if we need to have a classified component.

To be followed the following morning, ODNI/NSA/DOJ invited – next Friday, February 22, 10 am, House Judiciary to host, with HPSCI to provide space if we need to have a classified component. I previewed with Ben yesterday the idea of bicameral, bipartisan plus ODNI/DNI/DOJ discussions next week. I'll send Ben, et al., a note with this specific time proposal.

Could you invite Senator McConnell's staff? I'll do the same with Senator Reid's staff. I've given Nick a heads

9/25/2008

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up.

Mike

Demers, John

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From: Tucker, L (Intelligence) [REDACTED]@SSCI.Senate.Gov
 Sent: Tuesday, March 11, 2008 12:56 PM
 To: Kim, Harold H.; [REDACTED]@mail.house.gov; Hawkins, Tom (McConnell); Abegg, John (McConnell); Soderstrom, Sharon (McConnell); [REDACTED]@mail.house.gov; Rossi, Nick (Judiciary-Rep); Emling, John G.; [REDACTED] Demers, John
 Cc: Livingston, J (Intelligence); Rice, K (Intelligence); Russell, J (Intelligence)
 Subject: RE: FISA

Attachments: Side by Side with 2nd House Version.doc

Exemption 6



Side by Side with 2nd House Ve...

Noting Donesa's wise word of caution to wait until what was disseminated is in fact what they come out with, attached is a corrected side by side you could use (we only checked what it says about the Senate bill, can't verify what it says about the new House bill). Some examples of their mistakes on the Senate bill descriptions were: no WMD provision, 'full immunity', 'general' vice 'explicit' prohibition on reverse targeting, etc.

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

From: Tucker, L (Intelligence)
 Sent: Tuesday, March 11, 2008 12:34 PM
 To: Kim, Harold H.; [REDACTED]@mail.house.gov; Hawkins, Tom (McConnell); Abegg, John (McConnell); Soderstrom, Sharon (McConnell); [REDACTED]@mail.house.gov; Rossi, Nick (Judiciary-Rep); Emling, John G.; [REDACTED]@usdoj.gov
 Subject: RE: FISA

Regarding the two docs attached that are being circulated around right now. [Be advised that the side by side has inaccuracies and misrepresents what is in the Senate bill. DO NOT accept it as accurate and forward it around. We are making corrections and will disseminate a corrected version shortly.]

Louis Tucker
 Republican Staff Director
 Senate Select Committee on Intelligence
 [REDACTED]

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Demers, John

From: Tucker, L (Intelligence); [REDACTED]@SSCI.Senate.Gov] }
Sent: Tuesday, March 11, 2008 1:32 PM **Exemption 6**
To: Tucker, L (Intelligence); Harold_H._Kim@who.eop.gov; [REDACTED]@mail.house.gov] Hawkins, Tom (McConnell); Abegg, John (McConnell); Soderstrom, Sharon (McConnell); [REDACTED]@mail.house.gov] Rossi, Nick (Judiciary-Rep); John_G._Emling@who.eop.gov; [REDACTED] Demers, John
Cc: Livingston, J (Intelligence); Rice, K (Intelligence); Russell, J (Intelligence)
Subject: Re: FISA

I am told by rockefeller staff that they haven't seen House language yet (hard to believe) but that he will most likely NOT be supporting as DNI support is crucial and he committed to immunity provision as is

Demers

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Demers, John

From: Rice, K (Intelligence) [redacted@SSCI.senate.gov] **Exemption 6**
Sent: Tuesday, March 11, 2008 4:15 PM
To: Kim, Harold H; Demers, John [redacted@mail.house.gov];
[redacted@mail.house.gov]; [redacted] Hawkins, Tom (McConnell); Abegg, John
(McConnell); Rossi, Nick (Judiciary-Rep); [John_G._Emling@who.eop.gov]
Cc: Tucker, L (Intelligence); Livingston, J (Intelligence); Russell, J (Intelligence)
Subject: FW: House draft, etc.
Attachments: H3773AMD_002_xml.pdf; bill summary 11Mar08.doc; side by side 10Mar08.doc

FYI: House bill attached—still in draft

From: Davidson, M (Intelligence)
Sent: Tuesday, March 11, 2008 4:12 PM
To: Livingston, J (Intelligence); Rice, K (Intelligence)
Subject: House draft, etc.

The caveat that we've been asked to convey is that it is still in draft.

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Demers, John

From: Tucker, L (Intelligence) [REDACTED]@SSCI.Senate.Gov] **Exemption 6**

Sent: Saturday, April 19, 2008 1:16 PM

To: Livingston, J (Intelligence); Davidson, M (Intelligence); Ben Powell; Demers, John; [REDACTED] Rice, K (Intelligence); Eisenberg, John; Nichols, Carl (CIV); Potenza, Vito; [REDACTED] DeRosa, Mary (Judiciary-Dem); Rossi, Nick (Judiciary-Rep); Espinel, Zulima (Judiciary-Dem); Solomon, Matthew (Judiciary-Dem); [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; Johnson, A (Intelligence); [REDACTED]@mail.house.gov; Abegg, John (McConnell); Hawkins, Tom (McConnell); [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; Lettre, Marcel (Reid); daniel.p.meyers@who.eop.gov; harold_h.kim@who.eop.gov; joel_d.kaplan@who.eop.gov; [REDACTED]@mail.house.gov; Healey, C (Intelligence); Starzak, Alissa (Intelligence); [REDACTED]@mail.house.gov; Weich, Ron (Reid); Wolfe, J (Intelligence)

Subject: FISA

Staff: Congressman Hoyer and Senator Bond have been in contact regarding a possible way forward with respect to FISA. Senator Bond expressed to Congressman Hoyer that because the Senate bill has bipartisan support with a supermajority in the Senate and an apparent simple majority in the House and is supported by the DNI/DOJ/Administration, he believed the most helpful way forward would be to hear from the House Democratic Leadership what specific modifications to the Senate bill the House Democrats require to allow a version of that bill a vote on the House floor, while retaining bipartisan Senate/House and DNI/DOJ/Administration support. Congressman Hoyer conveyed to Senator Bond that he will respond with such specifics to Senator Bond this week, and with that understanding he asked him to send staff to (and to ask his respective colleagues to send staff to, and to encourage the Administration to participate in) a bicameral, bipartisan and Administration staff meeting on Monday to hear from House Democrat staff the primary concerns of their principals and their ideas on possible ways forward. Senator Bond agreed and has asked me to convey that Republican staff from the following offices (House/Senate Leadership, House/Senate Intelligence and Judiciary Committees, as well as representatives from the DNI/DOJ/White House) are planning to attend a meeting with Democrat staff from those respective offices. The meeting will be held in the Senate Intelligence Committee space, Senate Hart Building Room 219 at 10am on Monday morning. I would ask that offices send only necessary staff (preferably 2-3) as the room will fill up rather quickly. If we are to hear/discuss classified matters (as I imagine we will) then staff will need to send their clearances to [REDACTED]@ssci.senate.gov (the SSCI's security manager) first thing Monday morning. If staff without clearances are necessary then we can hold an unclassified portion first and then a classified discussion thereafter. I look forward to seeing you all Monday morning.

Louis Tucker
 Republican Staff Director
 Senate Select Committee on Intelligence

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Demers, John

3.

From: Livingston, J (Intelligence) [redacted]@ssci.senate.gov]
Sent: Thursday, May 08, 2008 4:41 PM
To: Tucker, L (Intelligence); Demers, John; Meyer, Daniel P.; Kim, Harold H.; [redacted]
Cc: Rice, K (Intelligence)
Subject: RE: FISA Draft
Attachments: H3773_EAS_XML(Protected).doc

Exemption 6

You can use the above file to make your changes. It will automatically show all changes made to the Senate bill.

From: Tucker, L (Intelligence)
Sent: Thursday, May 08, 2008 4:40 PM
To: 'Demers, John'; Meyer, Daniel P.; Kim, Harold H.; [redacted]
Cc: Livingston, J (Intelligence); Rice, K (Intelligence)
Subject: RE: FISA Draft

[Needs to be the Senate language tweaked to include those items.] Another item too, wherever you guys are who's drafting this, call me in my office [redacted]

From: Demers, John [mailto:[redacted]@usdoj.gov]
Sent: Thursday, May 08, 2008 4:01 PM
To: Meyer, Daniel P.; Tucker, L (Intelligence); Kim, Harold H.; [redacted]
Cc: Livingston, J (Intelligence); Rice, K (Intelligence)
Subject: RE: FISA Draft

We've got it. Ben will send us language on the IG piece.

What we've done is, with respect to those three provisions only, started with Congressman Hoyer/Senator Rockefeller text and made our changes to that. The benefit of this approach is that it allows them to see how we have taken their structure and to identify quickly the changes off their text. We think that they will appreciate then the benefit to our tightening of the language and see quickly where we have conceptual differences (e.g., going to the FISA court for Title II). If we start with the Senate text for these provisions, it will be a comparison nightmare.

Or, if everyone prefers, we can plunk these sections then into the Senate text. They will show up as entirely changed though as opposed to showing the differences between the Democrats' approach and ours. Instead, we would suggest not recirculating the entire Senate bill with these provisions in it, but rather sending back only these sections and saying that this is our complete counterproposal. This will avoid the strike-out problem.

From: Meyer, Daniel P. [mailto:Daniel_P._Meyer@who.eop.gov]
Sent: Thursday, May 08, 2008 3:08 PM
To: Tucker, L (Intelligence); Kaplan, Joel; Kim, Harold H.; Demers, John; [redacted]
Cc: Livingston, J (Intelligence); Rice, K (Intelligence)
Subject: RE: FISA Draft

John and Ben have the pen. [We agree on using the Senate bill as base text.] that is the plan. Thanks.

From: Tucker, L (Intelligence) [mailto:[redacted]@SSCI.Senate.Gov]
Sent: Thursday, May 08, 2008 3:07 PM

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To: Kaplan, Joel; Kim, Harold H.; Meyer, Daniel P.; [REDACTED]@usdoj.gov; [REDACTED]
Cc: Livingston, J (Intelligence); Rice, K (Intelligence)
Subject: FISA Draft

Gents,

Who is actually putting the pen to paper on this? [We believe anything sent back should be with the Senate bill as base text (adding in the 3 items), not the latest Rockefeller snowflake with strike-outs.]

Louis Tucker
Republican Staff Director
Senate Select Committee on Intelligence
[REDACTED]

9/25/2008

Demers, John

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From: Demers, John
Sent: Friday, May 09, 2008 11:45 AM
To: Tucker, L (Intelligence); Livingston, J (Intelligence)
Cc: Gerry, Brett; 'Kaplan, Joel'; [redacted] Burck, William A.; Meyer, Daniel P.; Frech, Christopher W.; [redacted]
Subject: FISA

Exemption 6

Louis and Jack,

I already talk this through with Jack, but now our email seems to be working so here it is in writing.

We started with the Senate bill. In section 703, the court approval is effectuated by adding the clause in (a), and then the exception language in (f)(B). The exigent circumstances language is taken from Congressman Hoyer but the phrase "will be lost" was changed to "may be lost." The timing section makes clear that the DNI and AG can make this determination even while court review is pending. If you jump back to the transition procedures (page 21 in the version I sent you), you will see a new section on timing that says that once we file a certification to replace the authorizations in effect, those authorizations and directives will remain in effect until the court has ruled. Once the court rules, the stay and fix-or-go-down provisions kick in as they do under the Senate bill.

Time limits for court action. We have tried to strike a middle ground between "good cause" and "due process" on page 9, lines 15-18. With respect to court review of the procedures and certification, it doesn't matter if it gets invoked (in fact if the matter is getting complicated, it may be a good thing if it is) because we can go up pretty easily, but this same standard applied to challenges as well so I think we want to keep the language stronger than "good cause."

Liability Protection. We adopted the Davidson approach of merging the prospective and retrospective immunity sections, but we sent the retrospective part to the FISC and used the language that you've seen before. We also beefed up the role of the parties section so that it was clear that they could not get classified material. Finally, we did keep Davidson's reporting provision to Congress but cut the language about telling the Court why we had to begin immediately. It was clear to me why the Court needs to know this if they will not be reviewing that determination.

Please call if you have any questions.

John

Tracking:

Recipient	Read
Tucker, L (Intelligence)	
Livingston, J (Intelligence)	
Gerry, Brett	Read: 5/9/2008 11:55 AM
'Kaplan, Joel'	
[redacted]	
Burck, William A.	
Meyer, Daniel P.	
Frech, Christopher W.	
[redacted]	Read: 5/9/2008 11:59 AM

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Demers, John

From: Demers, John
Sent: Sunday, May 11, 2008 7:47 PM
To: [REDACTED]@SSCI.senate.gov
Cc: [REDACTED]@SSCI.senate.gov
Subject: Re: FISA Call

Exemption 6

Thanks. Let me know if you want to chat tomorrow.

By the way, I will be out of town Wed-Tues. I'll be on bb and cell most of the time (headed to Denver). George will be leading NSD effort, and Brett may make a come-back appearance for those days depending on what's happening.

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

From: Rice, K (Intelligence) <[REDACTED]@SSCI.senate.gov>
To: Demers, John
Cc: Livingston, J (Intelligence) <[REDACTED]@SSCI.senate.gov>
Sent: Sun May 11 19:41:33 2008
Subject: Re: FISA Call

Yup. [I think we may be looking at another way to get around that.]

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

From: Demers, John <[REDACTED]@usdoj.gov>
To: Demers, John <[REDACTED]@usdoj.gov>
Cc: Rice, K (Intelligence); Livingston, J (Intelligence)
Sent: Sun May 11 18:33:04 2008
Subject: Re: FISA Call

Who was the staffer with the email question on exigent circumstances? Was it Caroline Lynch?

Thanks.

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

From: Frech, Christopher W. <Christopher_W._Frech@who.eop.gov>
To: Kim, Harold H. <Harold_H._Kim@who.eop.gov>; [REDACTED]@mail.house.gov
[REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov <[REDACTED]@mail.house.gov>;
[REDACTED]@mail.house.gov <[REDACTED]@mail.house.gov>; [REDACTED]@mail.house.gov
<[REDACTED]@mail.house.gov>; [REDACTED] <[REDACTED]>; [REDACTED]
<[REDACTED]>; Demers, John
Cc: Meyer, Daniel P. <Daniel_P._Meyer@who.eop.gov>; [REDACTED]@ssci.senate.gov
<[REDACTED]@ssci.senate.gov>; [REDACTED]@mccconnell.senate.gov
<[REDACTED]@mccconnell.senate.gov>; [REDACTED]@mccconnell.senate.gov
<[REDACTED]@mccconnell.senate.gov>; [REDACTED]@SSCI.senate.gov <[REDACTED]@SSCI.senate.gov>;
<[REDACTED]@ssci.senate.gov <[REDACTED]@ssci.senate.gov>; [REDACTED]@judiciary-
rep.senate.gov <[REDACTED]@judiciary-rep.senate.gov>; Kaplan, Joel <Joel_D.
_Kaplan@who.eop.gov>; Burck, William A. <William_A._Burck@who.eop.gov>; Emling, John G.
<John_G._Emling@who.eop.gov>
Sent: Sat May 10 10:33:49 2008
Subject: Re: FISA Call

Here is the call-in info for the 2 pm call today. I believe everyone is included in this email but let us know if someone is missing.

(b)(2) [Conf call [REDACTED]
Passcode: [REDACTED]

465

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

From: Frech, Christopher W.
To: Kim, Harold H.; [redacted]@mail.house.gov' <[redacted]@mail.house.gov>;
[redacted]@mail.house.gov' <[redacted]@mail.house.gov>; [redacted]@mail.house.gov'
[redacted]@mail.house.gov>; [redacted]@mail.house.gov'
Cc: Meyer, Daniel P.; [redacted]@ssci.senate.gov' <[redacted]@ssci.senate.gov>;
[redacted]@mcconnell.senate.gov' <[redacted]@mcconnell.senate.gov>;
[redacted]@mcconnell.senate.gov' <[redacted]@mcconnell.senate.gov>;
[redacted]@SSCI.senate.gov' <[redacted]@SSCI.senate.gov>; [redacted]@ssci.senate.gov'
[redacted]@ssci.senate.gov>; [redacted]@judiciary-rep.senate.gov'
<[redacted]@judiciary-rep.senate.gov>
Sent: Sat May 10 07:23:39 2008
Subject: Re: FISA Call

Yes this call should be the entire group House and Senate. Looping in everyone into this thread.

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

From: Kim, Harold H.
To: [redacted]@mail.house.gov' <[redacted]@mail.house.gov>;
[redacted]@mail.house.gov' <[redacted]@mail.house.gov>; Frech, Christopher W.
Cc: Meyer, Daniel P.; [redacted]@ssci.senate.gov' <[redacted]@ssci.senate.gov>;
[redacted]@mcconnell.senate.gov' <[redacted]@mcconnell.senate.gov>;
[redacted]@mcconnell.senate.gov' <[redacted]@mcconnell.senate.gov>;
[redacted]@SSCI.senate.gov' <[redacted]@SSCI.senate.gov>; [redacted]@ssci.senate.gov'
<[redacted]@ssci.senate.gov>; [redacted]@judiciary-rep.senate.gov'
<[redacted]@judiciary-rep.senate.gov>
Sent: Sat May 10 00:02:15 2008
Subject: FISA Call

Looping in the Senate folks. Can you all do a FISA call at 2 on Saturday to discuss with Ben and Demers any issues or questions you may have regarding the recent DNI/DOJ draft?

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

From: Diffell, Brian <[redacted]@mail.house.gov>
To: Donesa, Chris <[redacted]@mail.house.gov>; Frech, Christopher W.
Cc: Meyer, Daniel P.; Kim, Harold H.
Sent: Fri May 09 22:41:09 2008
Subject: Re: FISA Call

Donesa - are you able to do this 2pm?

Frech - Is it your intention that this call needs only to be House staff? We need to reach out to Jen and Caroline. If 2pm works for Donesa I'd appreciate you composing the msg inviting the two of them.

Obviously if you want to expand to Senate, the grp grows a lot larger.

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

From: Donesa, Chris
To: Diffell, Brian; 'Christopher_W._Frech@who.eop.gov' <Christopher_W._Frech@who.eop.gov>
Cc: Daniel_P._Meyer@who.eop.gov' <Daniel_P._Meyer@who.eop.gov>; 'Harold_H._Kim@who.eop.gov' <Harold_H._Kim@who.eop.gov>
Sent: Fri May 09 22:35:25 2008
Subject: Re: FISA Call

I'm happy to do it. My own questions, however, are fairly limited and straightforward and may be better presented as part of a broader discussion of issues raised on today's Republican staff call.

Jack Livingston has taken the lead in reviewing and compiling suggestions on those issues and should probably be part of the call. Broadly stated, I think there were concerns by

several folks that elements of the judicial review provisions weren't tight enough, as well as other more discrete items.

I have some concern that 30 days is too long of a deadline to give the FISA court, and too short of a minimum duration for a certification, but that's fairly clearcut. There's also a classified issue I'll need to discuss at some point on a secure call re: "will/may be lost", but I can reserve that so long as that stays "may".

Let me know how you want to proceed - thanks.

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

From: Diffell, Brian
To: 'Christopher W. Frech@who.eop.gov' <Christopher_W._Frech@who.eop.gov>, Donesa, Chris
Cc: 'Daniel P. Meyer@who.eop.gov' <Daniel_P._Meyer@who.eop.gov>; 'Harold H. Kim@who.eop.gov' <Harold_H._Kim@who.eop.gov>
Sent: Fri May 09 21:37:26 2008
Subject: Re: FISA Call

Can do any time. Up to Chris. You are right we will need to reach out more broadly. Let's do afternoon to make sure we have time to get buy-in from everyone. 2pm.

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

From: Frech, Christopher W. <Christopher_W._Frech@who.eop.gov>
To: Donesa, Chris; Diffell, Brian
Cc: Meyer, Daniel P. <Daniel_P._Meyer@who.eop.gov>; Kim, Harold H. <Harold_H._Kim@who.eop.gov>
Sent: Fri May 09 21:07:50 2008
Subject: FISA Call

Hey guys sorry for the late night Friday email. I know Dan has talked to both Pete and Roy this evening. While we want to expedite this process and review of the language we also want to make sure everyone is on the same page and has the same understanding of the operational impact. Along those lines, we wanted to offer and setup a call with DNI-DOJ tomorrow to walk through the current language and answer questions. Realize we need a broader group to participate, including both House and Senate Rs but wanted to start with you all and build from there.

Let me know what may work and look to you all on who should be included.

Frech.

Demers, John**From:** Davidson, M (Intelligence) [REDACTED]@ssci.senate.gov]**Sent:** Saturday, June 14, 2008 2:16 PM**Exemption 6****To:** Demers, John; Starzak, Alissa (Intelligence); [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; Tucker, L (Intelligence); Livingston, J (Intelligence); Johnson, A (Intelligence); [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; Healey, C (Intelligence)**Cc:** Christopher W. Frech@who.eop.gov; Daniel_P_Meyer@who.eop.gov; [REDACTED]; [REDACTED]; Joel_D_Kaplan@who.eop.gov; [REDACTED]**Subject:** Re: Follow up

(1) First, a question/thought about the proposed construction paragraph (section 703(g) – page 46 of yesterday morning's draft, page 47 of the evening draft).

Perhaps there is an additional reason why "Nothing in this Act" section 703 does not raise the concern I had about the use of that phrase elsewhere, and particularly in section 702 (which, per John's note can now remain as it is – with a reference to Title I only).

Section 703 is an individual "warrant"/order section – for acquisition inside the US against US persons outside the US, under which the AG is required to show, and the FISC is required to find, probable cause.

Thus, even if an AG/DNI wanted to use section 703 to obtain electronic (Title IV) or business record (Title V) metadata (and I recognize there is no intent to supplant those titles), by its own terms section 703 would require individual probable cause determinations by the FISC.

So (together with the point that John makes about the jurisdictional limit in section 703(a)(1)), "Nothing in this Act" in 703(g) doesn't present the concern that was on my mind yesterday. As always, the thoughts of others would be appreciated.

I do have one question about the proposed language in John's note for 703(g). We don't want the "Nothing in this Act shall be construed to require an application for a court order" phrase to negate the court order requirement in section 703 itself (which is, of course, part of the Act). I imagine that the phrase "targeted in accordance with this section" is what prevents that from happening. Is everyone satisfied with that, or should section 703(g) begin with something like – "Nothing in this Act other than this section shall be construed"?

(2) A couple of miscellaneous items.

(a) Page 27 (yesterday evening's draft, line 1, insert "reauthorize or" before "replace" to be parallel with language in (B) – page 26, line 14.

(b) Page 27, lines 7-9, beginning with "at which" through "apply." I understand why that phrase is in the transition provision. But with respect to reauthorization under the FISA amendments, paragraphs (3) and (4) have already kicked in. The point of the "shall remain in effect" provision is fully made by ending on line 7 after "paragraph (3)". If there is a reason why the additional language on lines 7-9 is necessary, help in understanding would be appreciated.

(c) Page 98 (also yesterday evening draft), line 15, conforming amendment – add "Department of Defense."

(d) Our intention is that "covered civil action" is a subset of "civil action" under Title II, so that everything applies generally to "civil actions" would apply to "covered civil actions," beginning with "a civil action may not lie....". On re-reading the title this morning, I wonder whether we should be explicit about that, rather than leaving it to inference, by inserting in the definition section (801), immediately ahead of (4), which defines a covered civil action: "(4) The term 'civil action' includes a covered civil action."

Present (4) would then become (5), etc.

(e) John will be letting us know the Civil Division's thoughts on the use of "in camera," "ex parte," and "under seal" with respect to district order's under Title II (page 91 of yesterday evening's draft). John – in putting that question, could you ask them to look at how Congress, in other legislation, uses those terms? An example is CIPA, Title 18, App. 3. "In camera and ex parte" appears to be used for process – see CIPA, section 6(c)(1) (hearing in camera) or (2) (court to examine affidavit in camera and ex parte). But I hadn't thought that in camera and ex parte fit the Court's ultimate classified product, the issuance of its orders, which are protected together with the complete record of a classified proceeding by sealing.

Looking forward to what the Civil Division says. (But the mere fact that we're down to such lofty questions as the use of "in camera" and "sealing" certainly means that we're about done.)

(e) I suspect there will be some further discussion about page 6.

(3) House/Senate rules, resolutions on committee access. If there needs to be a phrase in Title VII, the phrase in yesterday evening's draft is probably OK (I should speak with the Senate Legal Counsel Monday morning). But, although I wouldn't spend more than another 10 minutes discussing this, let me urge that the advocates of the phrase agree that it be dropped.

Among other things, we will be making FISA internally inconsistent. There are reporting provisions in other titles, and an omnibus provision in Title VI. Are we suggesting that the handling of those reports are not governed by rules and resolutions?

Indeed, there are reporting provisions throughout the US Code, including on other sensitive intelligence matters. Is there any inference for them about silence concerning rules and resolutions?

The added phrase is connected to the AG's obligation to report to the committees. The carrying out of the obligation is to be "consistent with" House and Senate rules, etc. Will we thus be requiring the AG to construe House and Senate rules? Would he want to do so? And how would that be consistent with the separation of powers?

Lastly, exactly what problem, in the Congress's 30 year experience in receiving FISA reports is being addressed?

Mike

Sent from my BlackBerry Wireless Handheld

From: Demers, John

To: Starzak, Alissa (Intelligence); Bash, Jeremy ; Sixkiller, Mariah ; Tucker, L (Intelligence); Livingston, J (Intelligence); Davidson, M (Intelligence); Johnson, A (Intelligence); Sheehy, Mike ; Onek, Joe ; DeBaca, Lou ; Dones, Chris ; Stewart, Jen ; Lynch, Caroline ; Diffell, Brian ; Parker, Wyndee ; Greenwald, Eric ; Delaney, Mike
Cc: Frech, Christopher W. ; Daniel_P_Meyer@who.eop.gov ; [REDACTED] ; [REDACTED] ; Potenza, Vito ; Joel_D_Kaplan@who.eop.gov ; [REDACTED]

Sent: Fri Jun 13 18:25:17 2008

Subject: RE: Follow up

We have looked at the various construction and savings clauses and suggest the following. I have included an explanation when the reason may be unclear. Please note that for several here, the goal is to make sure that we stay within the bounds of foreign intelligence surveillance and do not need to cite criminal statutes or other authorities. The thought is that there will be less danger of negative implications about criminal tools, especially those the draft did not include (e.g., search warrants that are authorized under the federal rules), if we just stay away from the criminal authority world.

P. 6, line 6-12. Leave the main construction provision as is.

The rest relate to more specific language in the draft:

9/25/2008

P. 34, at the end of line 3. Add "Nothing in this section shall be construed to limit the authority of the Government to seek an order or authorization under, or otherwise engage in any activity that is authorized under, any other title of this Act."

P. 46, "Nothing in this Act shall be construed to require an application for a court order for an acquisition that is targeted in accordance with this section at a person reasonably believed to be located outside the United States and that constitutes electronic surveillance or the acquisition of stored electronic communications or stored electronic data that requires a court order under this Act."

Although this language contains the broader "Nothing in this Act" language, used in this section it should not give anyone any pause. The section's jurisdictional provision is limited to electronic surveillance and the acquisition of stored electronic communications or stored electronic data so there is no danger that this construction language will be read to authorize anything that doesn't fall within those parts of the Act. As noted today, we do not want to cite Title III.

P. 48, lines 1-8. Insert for "foreign intelligence purposes" after "If an acquisition" and before "is to be conducted" and delete the language on lines 6-8 so that the sentence ends with "another provision of this Act other than this section." so that it reads "If an acquisition for foreign intelligence purposes is to be conducted inside the United States and could be authorized under section 703, the acquisition may only be conducted if authorized by section 703 or in accordance with another provision of this Act other than this section." Unlike the other provisions, which operate to ensure that the relevant section is not construed in an unintended manner, this provision is expressly a provision of limitation. Thus it must be especially clear in what it covers. We believe that the best way to deal with unintended consequence of this language is to keep this expressly to foreign intelligence and have accordingly inserted "for foreign intelligence purposes." The other alternative would be to refer to "other authority" (I don't think even "other statutory authority" would do here) but we doubt this would be acceptable to you.

P. 61, lines 10-14. delete "or chapter 119, 121, or 206 of title 18, United States Code." so that it reads: "Nothing in this title shall be construed to limit the authority of the Government to seek an order or authorization under, or otherwise engage in any activity that is authorized under, any other title of this Act."

Thanks,

John

9/25/2008

3

Demers, John

From: Lynch, Caroline [redacted]@mail.house.gov]

Exemption 6

Sent: Monday, June 16, 2008 4:51 PM

To: Donesa, Chris; Greenwald, Eric [redacted] Bash, Jeremy; Christopher W. Frech; Daniel P Meyer; Demers, John; [redacted] Vito Potenza; Joel D Kaplan; [redacted] Bash, Jeremy; Sixkiller, Mariah; L Tucker (Intelligence); J Livingston (Intelligence); M Davidson (Intelligence); A Johnson (Intelligence); Sheehy, Mike; Onek, Joe; DeBaca, Lou; Stewart, Jen; Diffell, Brian; Parker, Wyndee; Alissa Starzak (Intelligence); Delaney, Mike; [redacted]@ssci.senate.gov; Lettre, Marcel (Reid)

Subject: RE: technical edits

[I think we want this to say paragraph (1), although now under the [Thuma] draft, it appears to have been replaced with paragraph (a) – although that should be subsection (a)]

[702(c)(2) (Page 6, line 12) – strike “paragraph (1)” and replace with “paragraph (2)”]

478

Demers, John

3

From: Donesa, Chris [REDACTED]@mail.house.gov]

Exemption 6

Sent: Monday, June 16, 2008 4:04 PM

To: Greenwald, Eric; [REDACTED] Bash, Jeremy; Christopher W. Frech; Daniel P Meyer; Demers, John; [REDACTED] Vito Potenza; Joel D Kaplan; [REDACTED] Bash, Jeremy; Sixkiller, Mariah; L Tucker (Intelligence); J Livingston (Intelligence); M Davidson (Intelligence); A Johnson (Intelligence); Sheehy, Mike; Onek, Joe; DeBaca, Lou; Stewart, Jen; Lynch, Caroline; Diffell, Brian; Parker, Wyndee; Alissa Starzak (Intelligence); Delaney, Mike; [REDACTED]@ssci.senate.gov; Lettre, Marcel (Reid)

Subject: RE: technical edits

I have concerns that these two changes can be read to change the substance of the provisions in question and would strongly prefer to stick to the original language. Given the extensive discussion that has taken place with respect to these issues, I will assume that the potential change in interpretation will be evident, but please let me know if that isn't the case.

Title II

802(c)(1) & (2) (Page 90, line 9 and line 12) – strike “the supplemental materials” and replace with “such supplemental materials”.

Title III

301(b)(2)(B) (Page 97, line 16) – strike “its review” and replace with “the review of the Inspector General”.

480

Demers, John

NSD
1/2/02

From: Livingston, J (Intelligence) [redacted]@ssci.senate.gov] 3

Sent: Monday, June 16, 2008 5:42 PM

Exemption 6

To: Greenwald, Eric; [redacted] Bash, Jeremy; Christopher W. Frech; Daniel P Meyer; Demers, John; [redacted] Vito Potenza; Joel D Kaplan; [redacted] Bash, Jeremy; Sixkiller, Mariah; Tucker, L (Intelligence); Davidson, M (Intelligence); Johnson, A (Intelligence); Sheehy, Mike; Onek, Joe; DeBaca, Lou; Donesa, Chris; Stewart, Jen; Lynch, Caroline; Diffell, Brian; Parker, Wyndee; Starzak, Alissa (Intelligence); Delaney, Mike; Healey, C (Intelligence); Lettre, Marcel (Reid); Rice, K (Intelligence)

Subject: RE: technical edits

Agree with Caroline that page 6, line 12 should be "subsection (a)" and not "paragraph (2)"

Page 24, lines 8-11: Shouldn't it be "an order under this subsection" rather than "an order under this section"? Also, if this text is replacing lines 8-9, you probably don't need to bother with the change immediately above at line 9.

Page 29, line 21, since we have a plural subject (DOJ IG and the IGs of each element), it seems like the verb should remain as "are" vice "is". Also, I'm not sure if we need to insert a comma after "subsection (a)."

Page 35, lines 7-9 and Page 49, lines 16-18. We prefer the current text to "A federal officer may make an application." The revised text leaves one asking "what can he make an application for?" The current text answers that question, "for an order."

Page 62, line 1 and Page 62, line 13. The problem with changing the "or" to an "and" is that it could be read as "the total number of such orders granted; modified; and denied." My guess is that the answer to that question will always be zero. While "or" could be interpreted that they get to pick one category, we thought that was an unreasonable interpretation (as did our leg counsel) and would allow us to get the totals for each category.

Page 77, line 4, if we're going to change it to a paragraph, then we need to strike "subparagraph" and insert "paragraph":

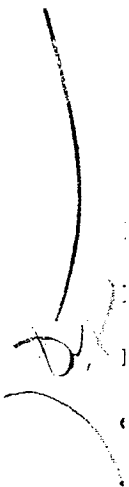
Page 91, lines 13-16. We prefer to keep this subsection.

Page 92, line 7. We prefer the original language of "shall have authority to".

D

9/25/2008

481



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L
D

A small, curved handwritten mark, possibly a checkmark or a flourish, located below the text 'technical edits'.A large, vertical, curved handwritten mark, possibly a checkmark or a flourish, extending from the top left towards the middle of the page.Handwritten initials or a signature, possibly 'DF', located in the lower left quadrant of the page.

DR

✓

3

Demers, John

Exemption 6

From: Diffell, Brian [REDACTED]@mail.house.gov
Sent: Tuesday, June 17, 2008 4:38 PM
To: Donesa, Chris; Lynch, Caroline; Stewart, Jen; Benjaap; [REDACTED]; christopher; Frech, Christopher W.; Daniel P Meyer; Demers, John; Vito Potenza
Subject: Message about this evening's meeting

****PLEASE NOTE: DUE TO VOTES IT IS IMPORTANT THAT THIS MEETING BEGIN PROMPTLY AT 6:20. MEMBERS WILL HAVE TO LEAVE TO VOTE BY 6:50. PLEASE PLAN TO ARRIVE ON TIME****

Today at 6:20pm Mr Blunt will convene a meeting in H-307. Participants will include Blunt, Smith, and Hoekstra (along with staffs), White House staff, and senior DNI and senior Justice representatives, along with appropriate counsels. The DNI and AG have been invited and may attend.

The purpose of the meeting is to discuss the current draft bill, the resolution of key issues important to members, and process going forward toward getting a bill done.

Thanks.

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

485

3

Demers, John

From: Demers, John
Sent: Tuesday, June 17, 2008 4:58 PM
To: 'Greenwald, Eric'; Starzak, Alissa (Intelligence); [REDACTED] Bash, Jeremy;
[REDACTED]; [REDACTED] Bash, Jeremy; Livingston, J (Intelligence)
Subject: RE: 6/15/08 7:34 PM draft

Exemption 6

Eric (and others),

Further to our conversation today, we would like the nondelegation provision in 802 to reference the Acting Attorney General to be clear that there will always be someone in this building who can perform the certifying function. This is especially important as we head into a period of possible transition when the Department may be without a confirmed AG or DAG for some time. Although the general principle is that the Acting AG can exercise the authorities of the AG, here the language proposed by leg counsel might create a question whether this general principle would apply. The provision is expressly restricted it to the two named positions and will appear as part of FISA, which has a definition that expressly speaks of the Acting AG. The juxtaposition will raise the question whether Congress meant anything different when it enacted this provision without expressly mentioning the Acting AG.

So, as amended today and with the addition above, I would suggest, "Nondelegation--The authority and duties of the Attorney General under this section shall be performed by the Attorney General (or Acting Attorney General) or the Deputy Attorney General."

Let me know if you'd like to discuss.

Thanks,
John

From: Greenwald, Eric [mailto:[REDACTED]@mail.house.gov]
Sent: Monday, June 16, 2008 10:28 PM
To: Starzak, Alissa (Intelligence); Lynch, Caroline; Dones, Chris; [REDACTED]; Bash, Jeremy; Christopher W. Frech; Daniel P Meyer; Demers, John; [REDACTED]; Vito Potenza; Joel D Kaplan; [REDACTED] Bash, Jeremy; Sixkiller, Mariah; Tucker, L (Intelligence); Livingston, J (Intelligence); Davidson, M (Intelligence); Johnson, A (Intelligence); Sheehy, Mike; Onek, Joe; DeBaca, Lou; Stewart, Jen; Diffell, Brian; Parker, Wyndee; Delaney, Mike; Healey, C (Intelligence); Lettre, Marcel (Reid)
Subject: 6/15/08 7:34 PM draft

Please find attached the latest draft of the FISA bill. (The track changes version will follow, but it may not be available until tomorrow morning. We will send it along as soon as it is ready.)

This draft incorporates the following:

- The changes from the draft that [REDACTED] circulated yesterday.
- The changes that were agreed to at today's meeting.
- The technical edits that did not receive any objections.
- The list of edits appended below (which includes a listing of those technical edits that did receive objections and that have not been incorporated into this draft).

Please review this version carefully and let us know whether there are any questions or problems.

We are awaiting further guidance from our respective leaderships on roll-out, floor process, and timing.

Thanks.

486

Eric

Modifications to technical edits and additional edits:

702(c)(2) (Page 6, line 12) -- strike "paragraph (1)" and replace with "subsection (a)"

702(i)(3)(C) (Page 24, line 2) --strike "its orders" and replace with "an order" [this should have been included in the original list]

702(i)(4)(A) (Page 24, line 9) -- strike "section" and replace with "subsection"

702(i)(4)(A) (Page 24, line 15) -- strike "the reasons for the order" and replace with "the reasons for the decision" [the original edit had the incorrect word]

STRIKING THIS EDIT -- 702(i)(5)(A) (Page 25, line 23) -- insert "reauthorize or" immediately before "replace" [this section covers only PAA authorizations, which are never going to be reauthorized, only replaced]

STRIKING THIS EDIT -- 702(i)(5)(A) & (B) (Page 26, lines 6-7 & 18-19) -- strike "prepared in accordance with" and replace with "in accordance with"

702(i)(5)(C) (Page 27, line 1) -- insert "reauthorize or" immediately following "to"

STRIKING THIS EDIT -- 702(l)(2)(A) (Page 29, line 21) -- strike "are" and replace with "is"

STRIKING THIS EDIT -- 703(b)(1) (Page 35, lines 7-9) -- strike "Each application for an order under this section shall be made by a Federal officer" and replace "A Federal officer may make an application,"

STRIKING THIS EDIT -- 703(b)(1) (Page 35, line 10) -- strike "a judge having jurisdiction under subsection (a)(1)" and replace with "the Foreign Intelligence Surveillance Court"

STRIKING THIS EDIT -- 704(b) (Page 49, lines 16-18) -- strike "Each application for an order under this section shall be made by a Federal officer" and replace "A Federal officer may make an application,"

STRIKING THIS EDIT -- 704(b) (Page 49, lines 18-19) -- strike "a judge having jurisdiction under subsection (a)(1)" and replace with "the Foreign Intelligence Surveillance Court"

703(f) (Page 47, lines 2-3) -- strike "appeal" and replace with "petition" [this should have been included in the original list]

704(e)(1) (Page 57, line 24) -- strike "appeal" and replace with "petition" [this should have been included in the original list]

707(b)(2)(B)(ii) (Page 62, line 1) -- strike "or" and replace with "and"

107 (Page 77, line 4) -- strike "subparagraph" and replace with "paragraph"

STRIKING THIS EDIT -- 802(a)(4)(B) (Page 89, line 7) -- strike "such person" and replace with "such head of an element"

STRIKING THIS EDIT -- 802(c)(1) & (2) (Page 90, line 9 and line 12) -- strike "the supplemental materials" and replace with "such supplemental materials"

STRIKING THIS EDIT -- 301(b)(2)(B) (Page 97, line 16) -- strike "its review" and replace with "the review of the Inspector General"

801 (Page 85) -- The definition for "Civil action" will appear as paragraph (2) [definitions are supposed to be in alphabetical order]

STRIKING THIS EDIT -- 802(f) (Page 91, lines 13-16) -- strike this entire subsection (it recites an inherent appellate power of the courts)

STRIKING THIS EDIT -- 803(a) (Page 92, line 7) -- strike "shall have authority to" and replace with "may"

9/25/2008

404(a)(7) (Page 108, line 5) – after “effect” insert “, notwithstanding the expiration provided for in subsection (a) of such section 105B,” [we needed to make this refer to the PAA, since that is the provision that allows authorizations up to one year]

STRIKING THE RESTRUCTURING EDITS to 703(d)(1) and 704(d)(1)

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Demers, John

Exemption 6

From: Tucker, L (Intelligence) [REDACTED]@SSCI.Senate.Gov]
Sent: Wednesday, June 18, 2008 7:05 AM
To: [REDACTED]@mail.house.gov; Starzak, Alissa (Intelligence); [REDACTED]@mail.house.gov;
 [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov;
 Christopher W. Frech@who.eop.gov; Daniel P. Meyer@who.eop.gov; Demers, John;
 [REDACTED]; [REDACTED] Joel_D_Kaplan@who.eop.gov;
 [REDACTED]@mail.house.gov; Livingston, J (Intelligence); Davidson, M
 (Intelligence); Johnson, A (Intelligence); [REDACTED]@mail.house.gov;
 [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov;
 [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov;
 Healey, C (Intelligence); Lettre, Marcel (Reid)
Subject: Re: June 17 PDF draft

Thanks Eric, we will review this morning and respond either with further edits needed, or confirm that Senator Bond believes this draft accurately represents what he agreed to on Thursday. We appreciate your hard work in putting this together.

From: Greenwald, Eric
To: Greenwald, Eric ; Starzak, Alissa (Intelligence); Lynch, Caroline ; Donesa, Chris ; [REDACTED] ; Bash, Jeremy ; Christopher W. Frech ; Daniel P Meyer ; John Demers ; [REDACTED] ; Vito Potenza ; Joel D Kaplan ; [REDACTED] ; Bash, Jeremy ; Sixkiller, Mariah ; Tucker, L (Intelligence); Livingston, J (Intelligence); Davidson, M (Intelligence); Johnson, A (Intelligence); Sheehy, Mike ; Onek, Joe ; DeBaca, Lou ; Stewart, Jen ; Diffell, Brian ; Parker, Wyndee ; Delaney, Mike ; Healey, C (Intelligence); Lettre, Marcel (Reid)
Sent: Tue Jun 17 23:00:55 2008
Subject: June 17 PDF draft

Attached is the PDF version that incorporates all of the changes from today's page turn.

A track changes version will follow as soon as it is available.

We believe that this completes the technical editing phase.

Please contact me if you have any questions.

Thanks so much.

Eric

4/5/08

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Demers, John

From: Tucker, L (Intelligence) [REDACTED]@SSCI.Senate.Gov]

Exemption 6

Sent: Wednesday, June 18, 2008 10:35 AM

To: [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; Starzak, Alissa (Intelligence); [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; Christopher_W._Frech@who.eop.gov; Daniel_P._Meyer@who.eop.gov; Demers, John; [REDACTED]; [REDACTED]; Joel_D._Kaplan@who.eop.gov; [REDACTED]; Livingston, J (Intelligence); Davidson, M (Intelligence); Johnson, A (Intelligence); [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; Healey, C (Intelligence); Lettre, Marcel (Reid); Hawkins, Tom (McConnell); Abegg, John (McConnell)

Subject: Re: June 17 track changes document

Great, thanks for clarifying. On our end Bond is waiting on Hoyer and the other 3 leaders.

From: Sixkiller, Mariah

To: Tucker, L (Intelligence); Greenwald, Eric ; Starzak, Alissa (Intelligence); Lynch, Caroline ; Donesa, Chris ; [REDACTED]; Bash, Jeremy ; Christopher_W._Frech@who.eop.gov ; Daniel_P._Meyer@who.eop.gov ; [REDACTED]@usdoj.gov ; [REDACTED]; [REDACTED]; Joel_D._Kaplan@who.eop.gov ; [REDACTED]; Livingston, J (Intelligence); Davidson, M (Intelligence); Johnson, A (Intelligence); Sheehy, Mike ; Onek, Joe ; DeBaca, Lou ; Stewart, Jen ; Diffell, Brian ; Parker, Wyndee ; Delaney, Mike ; Healey, C (Intelligence); Lettre, Marcel (Reid); Hawkins, Tom (McConnell); Abegg, John (McConnell)

Sent: Wed Jun 18 10:25:35 2008

Subject: Re: June 17 track changes document

His 10:30 is his weekly pen and pad, on a variety of subjects. He is NOT rolling out the deal and none of us SHOULD roll out the deal until we have more clarity on floor timing (hope to have this soon). His message remains: making good progress, nothing final yet.

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

From: Tucker, L (Intelligence) <[REDACTED]@SSCI.Senate.Gov>

To: Greenwald, Eric; Starzak, Alissa (Intelligence) <[REDACTED]@SSCI.Senate.Gov>; Lynch, Caroline; Donesa, Chris; [REDACTED]; Bash, Jeremy; Christopher_W._Frech@who.eop.gov <Christopher_W._Frech@who.eop.gov>; Daniel_P._Meyer@who.eop.gov <Daniel_P._Meyer@who.eop.gov>; [REDACTED]@usdoj.gov <[REDACTED]@usdoj.gov>; [REDACTED]; [REDACTED]; Joel D. Kaplan@who.eop.gov <Joel_D._Kaplan@who.eop.gov>; [REDACTED]; Sixkiller, Mariah; Livingston, J (Intelligence) <[REDACTED]@SSCI.Senate.Gov>; Davidson, M (Intelligence) <[REDACTED]@SSCI.Senate.Gov>; Johnson, A (Intelligence) <[REDACTED]@SSCI.Senate.Gov>; Sheehy, Mike; Onek, Joe; DeBaca, Lou; Stewart, Jen; Diffell, Brian; Parker, Wyndee; Delaney, Mike; Healey, C (Intelligence) <[REDACTED]@SSCI.Senate.Gov>; Lettre, Marcel (Reid) <[REDACTED]@reid.senate.gov>; Hawkins, Tom (McConnell) <[REDACTED]@mccconnell.senate.gov>; Abegg, John (McConnell) <[REDACTED]@mccconnell.senate.gov>

Sent: Wed Jun 18 10:18:27 2008

Subject: Re: June 17 track changes document

We have reviewed the below draft and Senator Bond concurs that it accurately reflects the agreement finalized Thursday. Thanks to all who have worked on crafting this agreement over the past few months.

Mariah, Bond's press folks heard that Mr. Hoyer will be speaking to press at 1030 this morning on this; if that is accurate, Bond would like Hoyer to know beforehand that he is now fine with him saying Bond agrees to this language. We look to the Senate/House Leaders now for next steps in moving forward. Thanks,

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9/25/2008

Louis

From: Greenwald, Eric
To: Greenwald, Eric ; Starzak, Alissa (Intelligence); Lynch, Caroline ; Dones, Chris ; [REDACTED]; Bash, Jeremy ; Christopher W. Frech ; Daniel P Meyer ; John Demers ; [REDACTED]; Vito Potenza ; Joel D Kaplan ; [REDACTED]; Bash, Jeremy ; Sixkiller, Mariah ; Tucker, L (Intelligence); Livingston, J (Intelligence); Davidson, M (Intelligence); Johnson, A (Intelligence); Sheehy, Mike ; Onk, Joe ; DeBaca, Lou ; Stewart, Jen ; Diffell, Brian ; Parker, Wyndee ; Delaney, Mike ; Healey, C (Intelligence); Lettre, Marcel (Reid)
Sent: Wed Jun 18 09:36:56 2008
Subject: June 17 track changes document

Here is the track changes version (comparing the draft circulated last night to the draft circulated on Monday night).

My apologies again for the delay.

Eric

9/25/2008

Demers, John

3
1 page

From: Demers, John

Sent: Wednesday, June 18, 2008 11:27 AM

To: 'Tucker, L (Intelligence)'; [redacted]@mail.house.gov; Starzak, Alissa (Intelligence),
[redacted]@mail.house.gov; [redacted]@mail.house.gov; [redacted]@mail.house.gov; Christopher_W. Frech@who.eop.gov;
Daniel_P_Meyer@who.eop.gov; [redacted]@dni.gov; [redacted]@mail.house.gov; Livingston, J
(Intelligence); Davidson, M (Intelligence); Johnson, A (Intelligence); [redacted]@mail.house.gov;
[redacted]@mail.house.gov; [redacted]@mail.house.gov; [redacted]@mail.house.gov;
[redacted]@mail.house.gov; [redacted]@mail.house.gov; [redacted]@mail.house.gov;
Healey, C (Intelligence); Lettre, Marcel (Reid); Hawkins, Tom (McConnell); Abegg, John
(McConnell)

Exemption 6

Subject: RE: June 17 track changes document

Eric and all,

Thanks for your hard and careful work on this draft. We think that we're just about there. We have reviewed the draft circulated last night and time-stamped 10:52 and with the exception of the third nit below agree that it accurately reflects all the changes agreed to. We have also caught two additional nits.

P. 7, l. 15. Delete "to" following "considering a petition"

P. 5, l. 16-18. The language used here on targeting procedures does not quite track the language used on p. 4, lines 11-14 and p. 9, lines 16-20. To use the same "reasonably designed" language wherever it appears, we suggest striking "reasonable" before "procedures" on p. 5, line 16, and inserting on line 18 "and that are reasonably designed" after "FISC" and before "to."

P. 22, line 22. Replace "during" with "for" in the phrase "___ the effective period of that order." We thought this is what we had agreed to yesterday and that it more accurately conveys the intended meaning that the AG authorization can last only for the effective period of the order.

I think this is all straight-forward but I'm happy to talk about any of these.

Thanks again,
John

9/25/2008

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Demers, John

From: Greenwald, Eric [redacted]@mail.house.gov]

Sent: Wednesday, June 18, 2008 11:47 AM

To: Demers, John; [redacted]@SSCI.Senate.Gov; [redacted]@ssci.senate.gov; Lynch, Caroline; Donesa, Chris; [redacted] Bash, Jeremy; Christopher W. Frech@who.eop.gov; Daniel_P_Meyer@who.eop.gov; [redacted] Joel_D_Kaplan@who.eop.gov; [redacted]; Sixkiller, Mariah; [redacted]@SSCI.Senate.Gov; [redacted]@SSCI.Senate.Gov; [redacted]@SSCI.Senate.Gov; Sheehy, Mike; Onek, Joe; DeBaca, Lou; Stewart, Jen; Diffell, Brian; Parker, Wyndee; Delaney, Mike; [redacted]@SSCI.Senate.Gov; [redacted]@reid.senate.gov; [redacted]@mccconnell.senate.gov; [redacted]@mccconnell.senate.gov

Exemption 6

Subject: Re: June 17 track changes document

John,

Thanks for the comments. I don't think it will be a problem to incorporate these.

We have just a couple of additional (very minor) changes, and I will provide a complete list of those a little later today.

Eric

Sent from my BlackBerry Wireless Handheld

DJP
)

453

3

Demers, John

From: Greenwald, Eric [REDACTED]@mail.house.gov **Exemption 6**
Sent: Wednesday, June 18, 2008 4:47 PM
To: Greenwald, Eric; Starzak, Alissa (Intelligence); Lynch, Caroline; Doneso, Chris; [REDACTED]
[REDACTED] Bash, Jeremy; Christopher W. Frech; Daniel P Meyer; Demers, John;
[REDACTED] Vito Potenza; Joel D Kaplan; [REDACTED] Bash,
Jeremy; Sixkiller, Mariah; Tucker, L (Intelligence); Livingston, J (Intelligence); Davidson, M
(Intelligence); Johnson, A (Intelligence); Sheehy, Mike; Onek, Joe; DeBaca, Lou; Stewart, Jen;
Diffell, Brian; Parker, Wyndee; Delaney, Mike; Healey, C (Intelligence); Lettre, Marcel (Reid)
Subject: June 18 PDF draft
Attachments: 18Jun09 PDF draft.pdf

<<18Jun09 PDF draft.pdf>>

We have received a small number of technical corrections to the last draft.

I have appended a comprehensive list of line edits below (along with brief explanations for those edits), and I have attached a PDF of the corrected draft. (The line edits are based upon the track changes word document that I sent around earlier this morning.)

As for next steps, we continue to await guidance from leadership on roll-out and floor timing.

Please let me know if you have any questions.

Thanks.

Eric

Line Edits:

- Page 5, line 16 – strike “reasonable” before procedures
- Page 5, line 18 – insert “that are reasonably designed to” after “Foreign Intelligence Surveillance Court”

[these first two are designed to make all the language describing targeting procedures consistent]

- Page 7, line 15 – strike “to” after “petition” [this is to correct a typo resulting from the previous round of edits]
- Page 12, line 30 – strike “such” before “acquisitions authorized” [this was a change that was supposed to have been made in the previous round but was missed]
- Page 22, line 15 – strike “section” before “704” [this one was also missed]
- Page 22, line 22 – strike “during” and insert “for” [this one was also missed]

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9/25/2008

- Page 23, line 26 – strike “section 702.” and insert “section 702; and” [this is to correct a typo resulting from the previous round of edits]

Eric Greenwald | Counsel

Staff Director, Subcommittee on Oversight & Investigations

Permanent Select Committee on Intelligence

Main: [REDACTED]

Direct: [REDACTED]

[REDACTED]@mail.house.gov

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Demers, John

From: Rice, K (Intelligence) [REDACTED]@SSCI.senate.gov
Sent: Thursday, June 26, 2008 7:12 PM
To: Diffell, Brian; Lynch, Caroline; Doneso, Chris; Stewart, Jen; Roland, Sarah; [REDACTED]@mail.house.gov; Kim, Harold H.; Demers, John; [REDACTED]; Kathleen Turner
Cc: Tucker, L (Intelligence); Livingston, J (Intelligence)
Subject: FISA status
Attachments: Specter 5059.pdf; Draft Revised Bingaman Amend (EAS08321_xml)(6-24-08).pdf

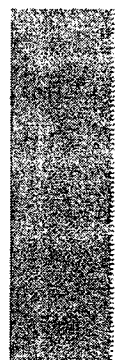
Exemption 6

Louis asked me to inform you that there is a Unanimous Consent agreement to have votes on the following amendments on July 8, when we return from recess:

- 1) Specter amendment (requires court to determine whether the TSP was constitutional before dismissing lawsuits--attached) – 60 vote threshold
- 2) Bingaman amendment (delaying civil liability relief under title II of the bill until 90 days after IG audit under title III is received—attached) – 60 vote threshold
- 3) Dodd/Feingold (strike title II civil liability) – 50 vote threshold

Cloture and final passage will then follow. If you have any questions, please let us know.

Thanks.
Kathleen



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9/25/2008