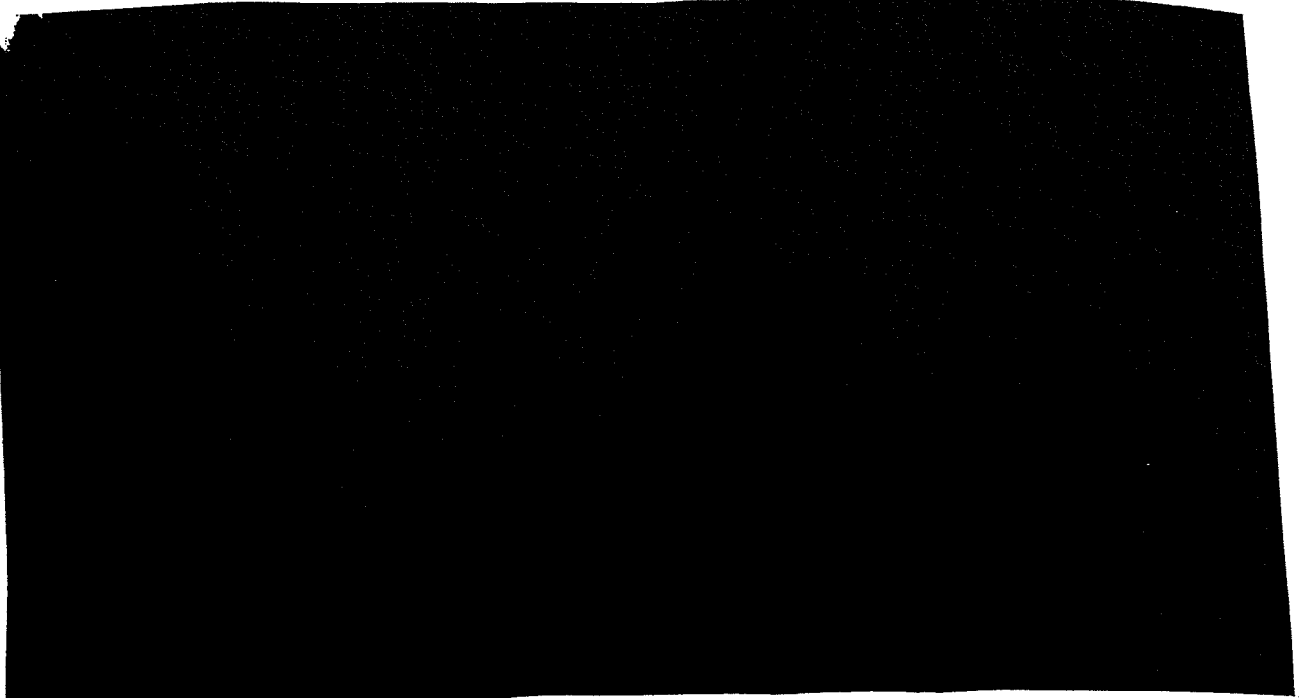


Out of Scope

bx/bp



To: "Jim Smythers" [redacted]@ssci.senate.gov>
From: [redacted]
Date: 03/13/2008 03:40PM
Subject: RE: Need Some Heavy Lifting on FISA

Done--just talked to Jen.

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

-----"Smythers, James (Intelligence)" [redacted]@SSCI.Senate.Gov> wrote: -----

To: [redacted]
From: "Smythers, James (Intelligence)" [redacted]@SSCI.Senate.Gov>
Date: 03/13/2008 03:33PM
Subject: RE: Need Some Heavy Lifting on FISA

Got it. Thanks.

Also, I mentioned to Jen Wagner that you might contact her for Chambliss' help.

From: [redacted]
Sent: Thursday, March 13, 2008 3:25 PM

To: Smythers, James (Intelligence)
Subject: Re: Need Some Heavy Lifting on FISA

Sorry I forgot to note: The below are all Blue Dogs who are wavering..and not certain if they will vote against Pelosi--anything the Seantor can do to impress on them how critical this vote is as if this Bill passes we are looking at months of delay and intell capability erosion.

Thank you Jim!

b2/b6
Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence

[REDACTED] wrote: -----

To: "Jim Smythers" <[REDACTED]@ssci.senate.gov>
From: [REDACTED]
Date: 03/13/2008 03:12PM
Subject: Re: Need Some Heavy Lifting on FISA

More Names:

Rep. Leonard Boswell, D-IA (Blue Dog);

Joe Baca (CA-43)

Marion Berry (AR-01)

Allen Boyd (FL-02)

Jim Cooper (TN-05)

Jim Costa (CA-20)

Lincoln Davis (TN-04)

Bart Gordon (TN-06)

Stephanie Herseth (SD-AL)

7/1/2008

Nick Lampson (TX-22)
Jim Marshall (GA-08)
Jim Matheson (UT-02)
Charlie Melancon (LA-03)
Mike McIntyre (NC-07)
Dennis Moore (KA-03)
Mike Ross (AR-04)
Zack Space (OH-18)
John Tanner (TN-08)
Gene Taylor (MS-04)

b2/b6

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

[REDACTED]

----- [REDACTED] wrote: -----

To: "Jim Smythers" <[REDACTED]@ssci.senate.gov>
From: [REDACTED]
Date: 03/13/2008 11:21AM
Subject: Need Some Heavy Lifting on FISA

Jim: Can you have Sen. Burr reach out to the following North Carolina Reps to vote against the HOUSE FISA Bill--on the floor today: He needs to tell them the House Bill is very bad and dos not advance the process at all and to vote against it. I have attached the DNI-AG letter:

Rep. Walter Jones (R-3rd-NC)--he is one of only two Rs who voted against the PAA on August 4, 2007--we want to ensure we have him for today's vote against the House Bill;

Rep. Heath Shuler, (D-NC-11th); he is a Blue Dog who signed the letter to Pelosi asking for the Senate Bill to be taken up by the House for a vote--we need to lock in his NO vote on the House Bill;

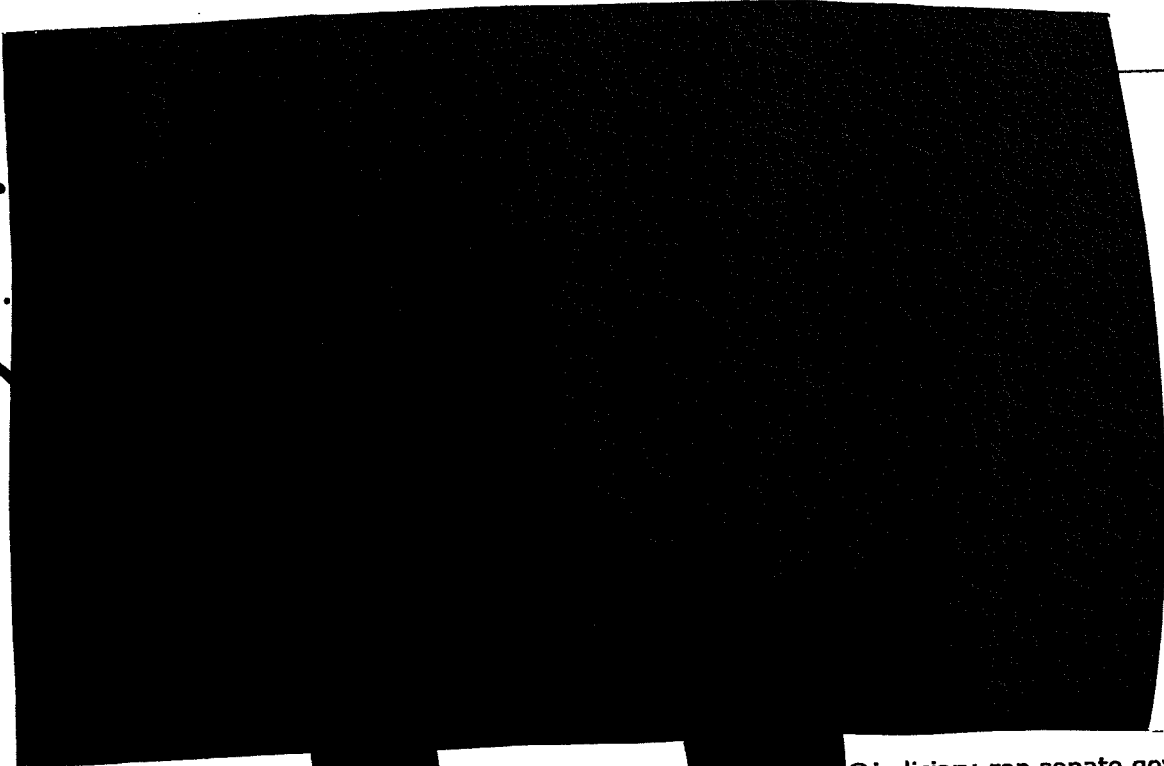
Rep. Mike McIntyre (D-7th-NC); Blue Dog who did not sign the letter to Pelosi and is wavering. Thanks for anything Sen. Burr can do.

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



b2/b6

Out of Scope
6/2/08

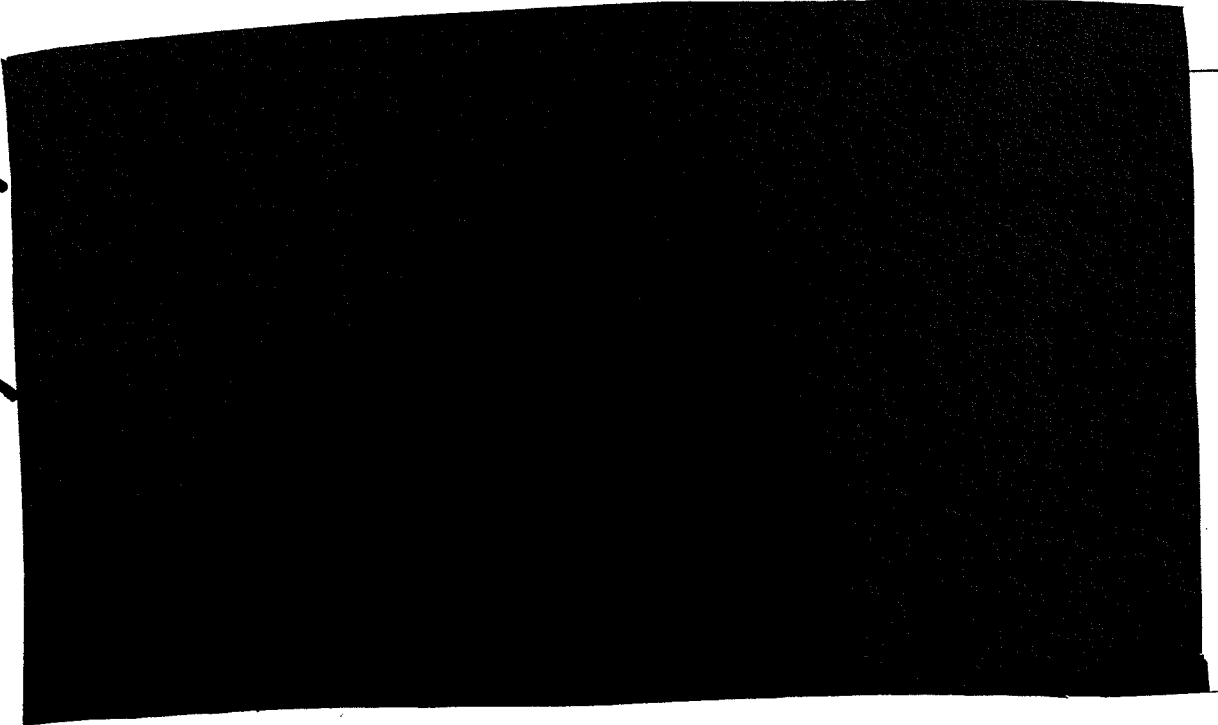


To: "Paul Matulic" <[redacted]@ssci.senate.gov>, [redacted]@judiciary-rep.senate.gov
From: [redacted]
Date: 03/12/2008 07:29PM
Subject: More Heavy Lifting on FISA

Paul: Pls see the attached letter from the DNI and the AG to the House ref their latest FISA Bill. Could Senator Hatch engage with Rep. Jim Matheson (UT-02) who, as a Blue Dog, may be wavering. We would certainly hope he would oppose the House Bill. Thanks much.

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

Out of Scope



To: "Jim Smythers" [redacted]@ssci.senate.gov>
From: [redacted]
Date: 03/13/2008 04:22PM
cc: [redacted]@ssci.senate.gov, [redacted]@ssci.senate.gov
Subject: Re: FW:

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

[redacted]
-----"Smythers, James (Intelligence)" <[redacted]@SSCI.Senate.Gov> wrote: -----

To: "Rice, K (Intelligence)" <[redacted]@SSCI.Senate.Gov>, [redacted], "Livingston, J (Intelligence)" <[redacted]@SSCI.Senate.Gov>
From: "Smythers, James (Intelligence)" <[redacted]@SSCI.Senate.Gov>
Date: 03/13/2008 03:56PM
Subject: FW:

Heads up... some good news from my boss.

-----Original Message-----
From: Burr, Richard (Burr)
Sent: Thursday, March 13, 2008 3:55 PM
To: Smythers, James (Intelligence)
Subject:

Jones will vote against the dem FISA bill today. Pls pass on

b2/b6

Out of Scope



b2/b6

To: "Russ Thomasson" <[redacted]@cornyn.senate.gov>
From: [redacted]
Date: 03/13/2008 06:55PM
Subject: RE: Need Some Heavy Lifting on FISA

Got it--thanks Russ; I understand.

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

-----"Thomasson, Russ (Cornyn)" <[redacted]@cornyn.senate.gov> wrote: -----

To: <[redacted]>
From: "Thomasson, Russ (Cornyn)" <[redacted]@cornyn.senate.gov>
Date: 03/13/2008 06:52PM
Subject: RE: Need Some Heavy Lifting on FISA

Sorry, it wouldn't help hearing from Cornyn...in fact, it would probably do more harm....

Russell J. Thomasson
Legislative Director

U.S. Senator John Cornyn (Texas)



<http://www.cornyn.senate.gov>

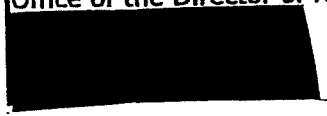
b2/b6

From: [Redacted]
Sent: Thursday, March 13, 2008 12:32 PM
To: Thomasson, Russ (Cornyn)
Subject: Need Some Heavy Lifting on FISA
Importance: High

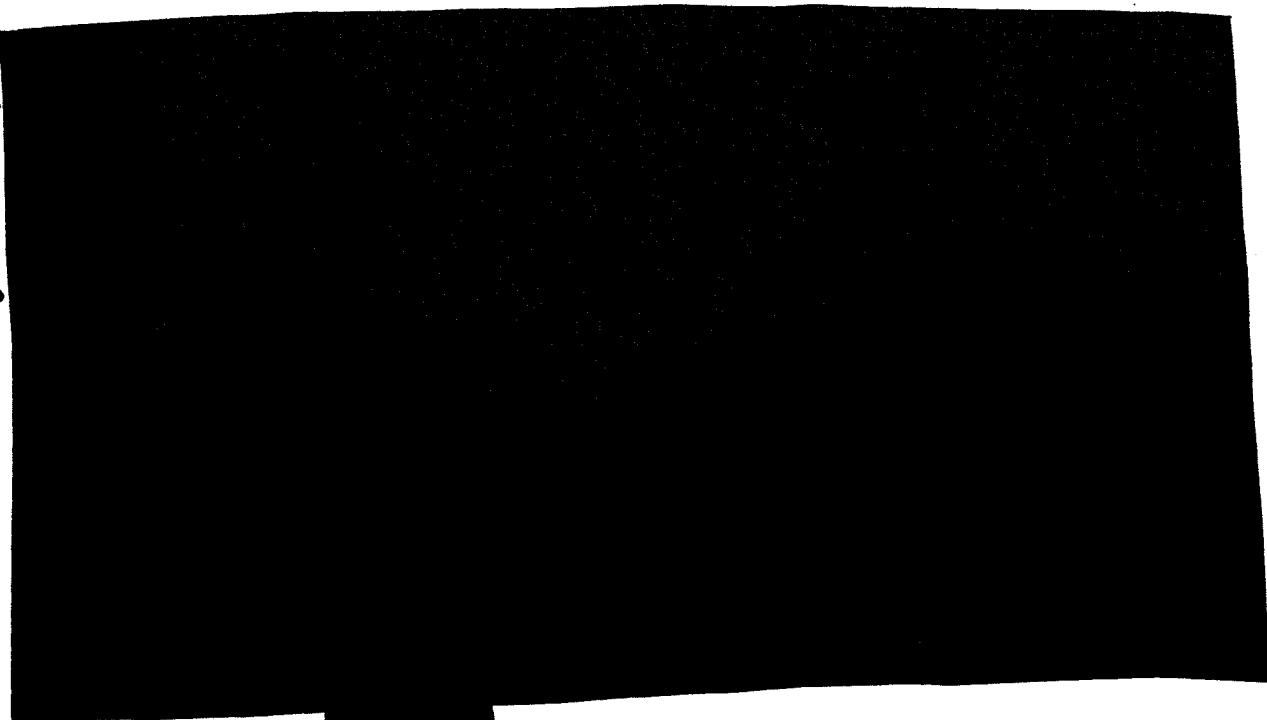
Russ: Can you have Sen. Cornyn reach out to Rep. Nick Lampson, (D-TX-22nd), who is a Blue Dog Democrat and ask if he will be voting against the HOUSE FISA Bill--on the floor today: He needs to tell them the House Bill is very bad and does not advance the process at all and to vote against it. I have attached the DNI-AG views letter on this Bill.

Thanks for anything Sen. Cornyn can do.

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



Out of Scope



To: "Jack Livingston" [redacted]@ssci.senate.gov>
From: [redacted]
Date: 03/13/2008 09:02PM
Subject: Re: Need Some Heavy Lifting on FISA

Yes we are-Hatch and Chambliss also. Can you think of others?
Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence
[redacted]

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

From: "Livingston, J (Intelligence)" [redacted]@ssci.senate.gov]
Sent: 03/13/2008 03:08 PM AST .
To: kathlpt
Subject: FW: Need Some Heavy Lifting on FISA

This is a great tactic. I hope you've sent similar e-mails to about 20 other Senators with similar situations.

From: Smythers, James (Intelligence)
Sent: Thursday, March 13, 2008 2:57 PM
To: Rice, K (Intelligence); Livingston, J (Intelligence)
Subject: FW: Need Some Heavy Lifting on FISA
Importance: High

7/1/2008

5/2/06

Senator Burr is working on these House members...

From: [REDACTED]
Sent: Thursday, March 13, 2008 11:22 AM
To: Smythers, James (Intelligence)
Subject: Need Some Heavy Lifting on FISA
Importance: High

Jim: Can you have Sen. Burr reach out to the following North Carolina Reps to vote against the HOUSE FISA Bill--on the floor today: He needs to tell them the House Bill is very bad and does not advance the process at all and to vote against it. I have attached the DNI-AG letter:

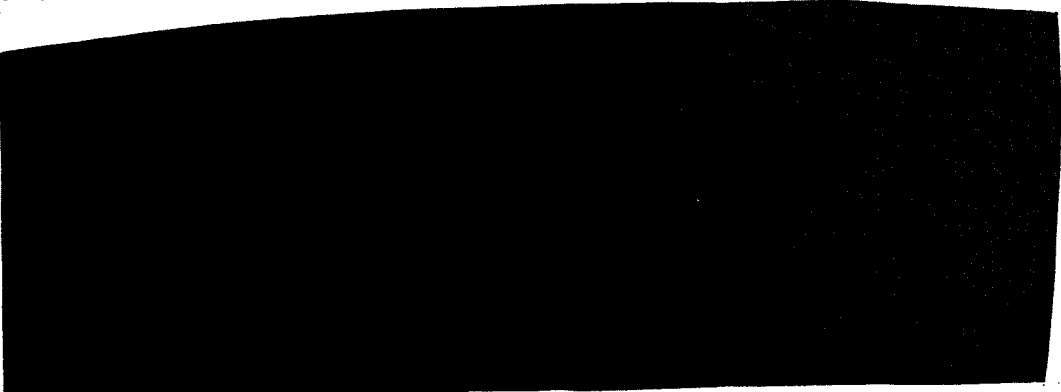
Rep. Walter Jones (R-3rd-NC)--he is one of only two Rs who voted against the PAA on August 4, 2007--we want to ensure we have him for today's vote against the House Bill;

Rep. Heath Shuler, (D-NC-11th); he is a Blue Dog who signed the letter to Pelosi asking for the Senate Bill to be taken up by the House for a vote--we need to lock in his NO vote on the House Bill;

Rep. Mike McIntyre (D-7th-NC); Blue Dog who did not sign the letter to Pelosi and is wavering. Thanks for anything Sen. Burr can do.

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

Out of sync



To: "Jeremy Bash" [redacted]@mail.house.gov
From: [redacted]
Date: 05/19/2008 12:38PM
cc: "Brett Gerry" <Brett.Gerry@usdoj.gov>, "Greenwald, Eric" [redacted]@mail.house.gov,
Subject: RE: Technical issues

trying to work through coordination issues on the tech team. think it would have to happen early on tuesday. will discuss on call.

-----"Bash, Jeremy" <[redacted]@mail.house.gov> wrote: -----

To: "Gerry, Brett " <Brett.Gerry@usdoj.gov>
From: "Bash, Jeremy" [redacted]@mail.house.gov
Date: 05/19/2008 11:47AM
cc: <[redacted] "Greenwald, Eric" <[redacted]@mail.house.gov>
Subject: RE: Technical Issues

Hi Brett.

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

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

Jeremy Bash, HPSCI
[redacted]

From: Gerry, Brett [mailto:Brett.Gerry@usdoj.gov]
Sent: Monday, May 19, 2008 9:31 AM
To: Bash, Jeremy

5/2/08

b2/36

Cc: [REDACTED]
Subject: Technical issues

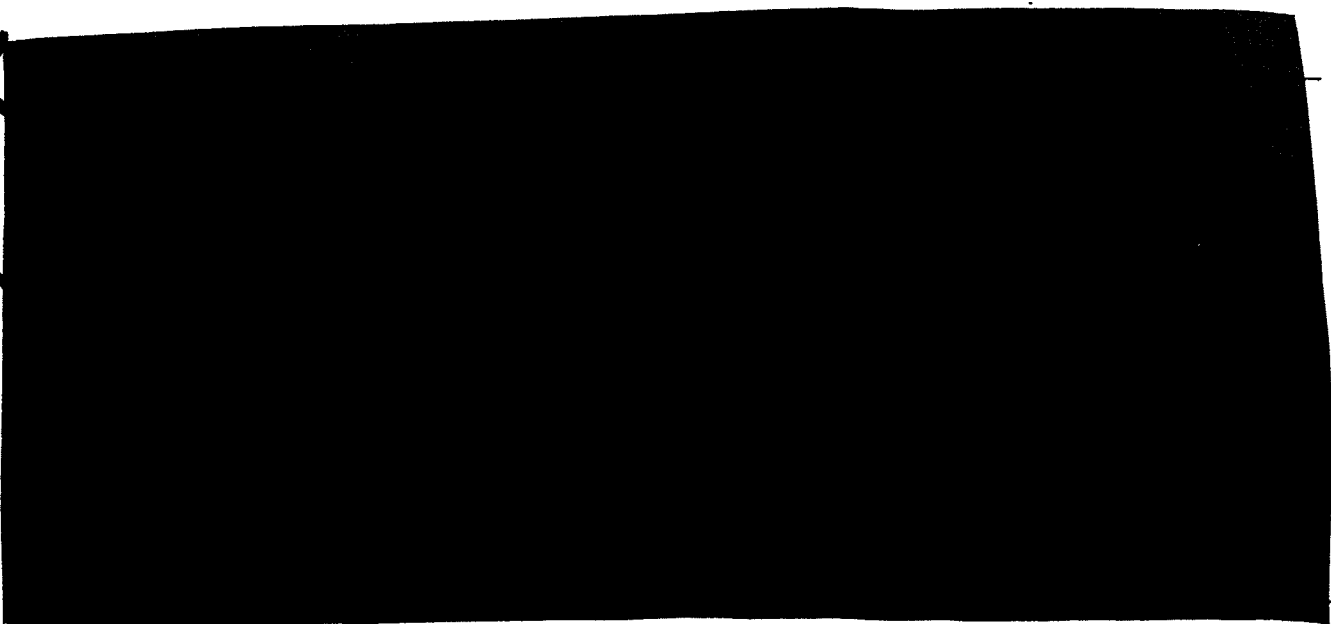
Jeremy-

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

Best,
Brett

10/17/2008

Out of Scope

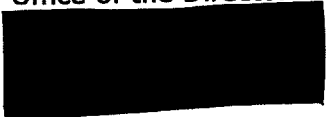


From: [redacted]
Sent: Thursday, December 13, 2007 5:54 PM
To: "David Grannis"
Cc: "Benjamin Powell"; John.Demers@usdoj.gov; "John Eisenberg"; "Brett Gerry"
Subject: Re: Immunity alternative

Thanks David; I will get it to the right folks and we will be in touch re a mtg with the Senators soonest.

2/2/06

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



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

To: [redacted]
From: "Grannis, D (Intelligence)" [redacted]@ssci.senate.gov>
Date: 12/13/2007 04:54PM
cc: "Benjamin Powell" [redacted] <john.demers@usdoj.gov>, "John Eisenberg" <John.Eisenberg@usdoj.gov>, <Brett.Gerry@usdoj.gov>
Subject: Immunity alternative

Kathleen -

As discussed, Sen. Feinstein filed an alternative proposal at today's Judiciary Committee mark-up that combines immunity with a piece of the Whitehouse substitution proposal. Her language is attached, keyed to a Hatch amendment that incorporated the Intel Committee's immunity provision.

The basic idea is that after the AG makes a certification under the SSCI immunity provision, the FISA Court would then conduct a review to see whether any assistance provided was done either in compliance with a certification under 18 USC 2511, or the company acted in good faith in making a reasonably objective judgment that the assistance was legal. (This part is the same as Sen. Whitehouse's

approach.)

In Feinstein's proposal, a favorable ruling from the FISA Court would then lead to immunity – per the SSCI position – and not to substitution as in the Specter/Whitehouse approach. In her view, this preserves the goal that many Members have of maintaining some form of judicial review of the legality, preserves the common law principle that companies should provide assistance if it can be done in good faith, and protects sources and methods by moving the decision to the FISA Court. We'd hope that this would be a middle of the road alternative that could bring together both sides, and pave the way for an agreement with the House.

We would be happy to discuss this further; let's be in touch on timing once ODNI, DOJ have had a chance to review the language.

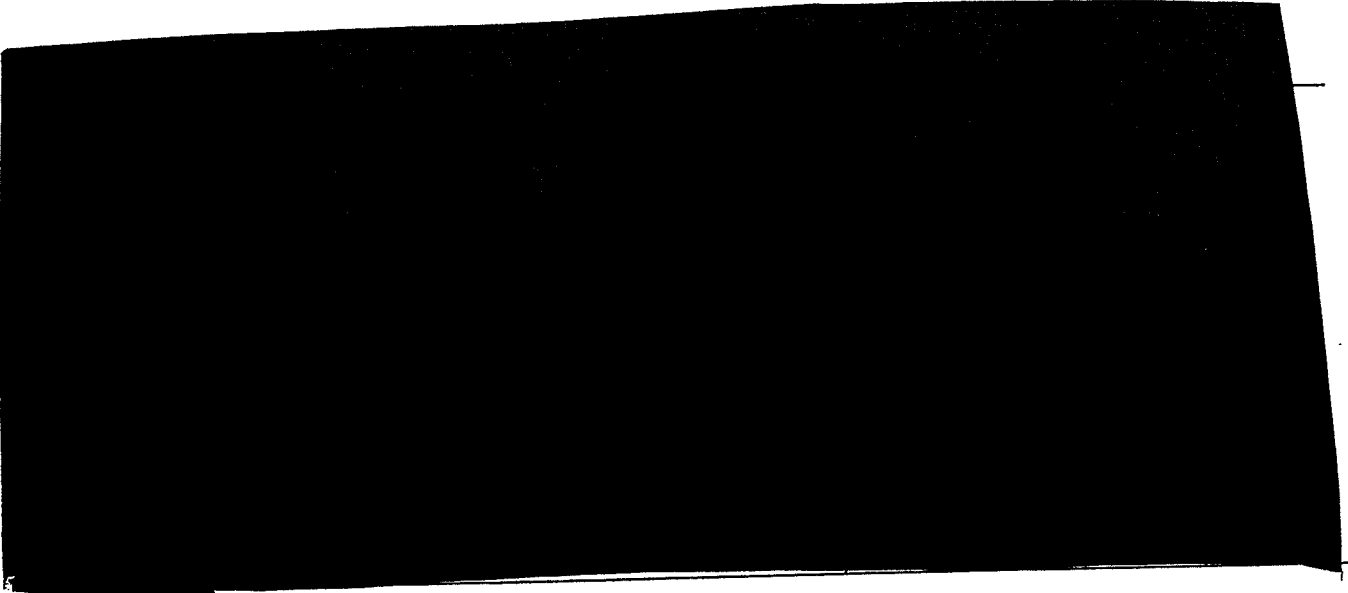
Best,
David

David Grannis
Professional Staff Member
Senate Select Committee on Intelligence

[REDACTED]
@ssci.senate.gov

b2/b6

Out of Scope



bd/bc

From: [redacted]
Sent: Wednesday, November 21, 2007 3:50 PM
To: "Marcel Lettre"
Subject: Re: Leader Reid-DNI McConnell Call Not Possible Before Week of Dec 10

I will do that Marcel. Thanks.

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



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

To: <[redacted]>
From: "Lettre, Marcel (Reid)" <[redacted]@reid.senate.gov>
Date: 11/21/2007 03:37PM
Subject: Re: Leader Reid-DNI McConnell Call Not Possible Before Week of Dec 10

Kathy - thanks. I will be back with leader reid sunday morning for start of codel so will try to ascertain a time when he might place a call while traveling but in any event will convey this info to him. Keep in touch with Ron (and pls keep me in the loop) re: developments om fisa negotiations throughout the course of next week.

Sent from my BlackBerry

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

From: [redacted]
To: Lettre, Marcel (Reid)
Sent: Wed Nov 21 15:16:15 2007
Subject: Leader Reid-DNI McConnell Call Not Possible Before Week of Dec 10

Hi Marcel: Thanks for meeting with us yesterday and giving us your views on the state of play. Unfortunately, we were unable to do a phone call between Senator Reid and the DNI prior to your Nov 25 travel; Darcel suggested I send you a note. The DNI is currently scheduled to be on overseas travel from Nov 29-Dec 7. So, if you could please convey to the Senator the following things the DNI wanted to relay to him:

- The bipartisan SSCI Bill (S. 2248) is a good product; the DNI compromised in many many areas to reach what we feel is a good Bill (still a few areas need work, but they are relatively few); the Administration and the full SSCI worked together for months to ensure the language is technically correct and that concepts are clearly worded;
- The SJC amendment is very problematic for us; in some areas it would severely undercut our foreign intelligence collection. We will continue to meet with the Congress to try and forge the best Bill to meet our intelligence needs while protecting US person's privacy and civil liberties, but, the SSCI Bill is the result of give and take and weeks of hard work;
- The DNI would be happy to come to S-407 and talk with Senators, perhaps with AG Mukasey's, if Leader Reid thinks that is a good idea.

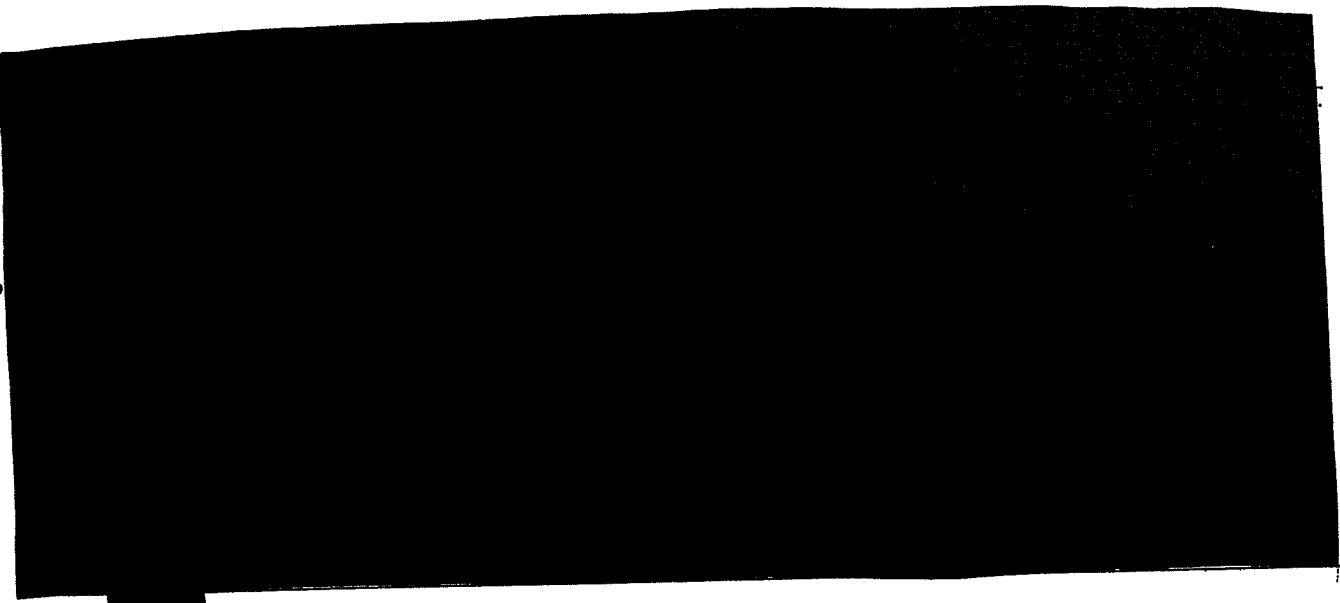
Marcel: Keep me posted as the DNI is happy to make himself available to talk with Senator Reid at any time. Have a great trip and a nice holiday!

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



b2/s6

Out of scope

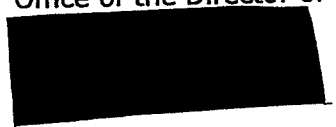


From: [Redacted]
Sent: Wednesday, November 07, 2007 2:49 PM
To: "Andy Johnson"; [Redacted]@ssci.senate.gov
Subject: DNI Calling the Chairman

Andy/Melvin; The DNI is trying to talk with the Chairman today on the FISA Bill that is slated for SJC mark up tomorrow. Worried about what we are hearing is bring considered in terms of amendments, especially regarding striking immunity, but other harmful amendments also. Would hope the SSCI bi-partisan, pretty darn good bill, will be supported by SJC cross-over Members such as Sens Feinstein and Whitehouse. Just asking the Chairman to work his magic and try and prevent this Bill from getting derailed. Thanks.

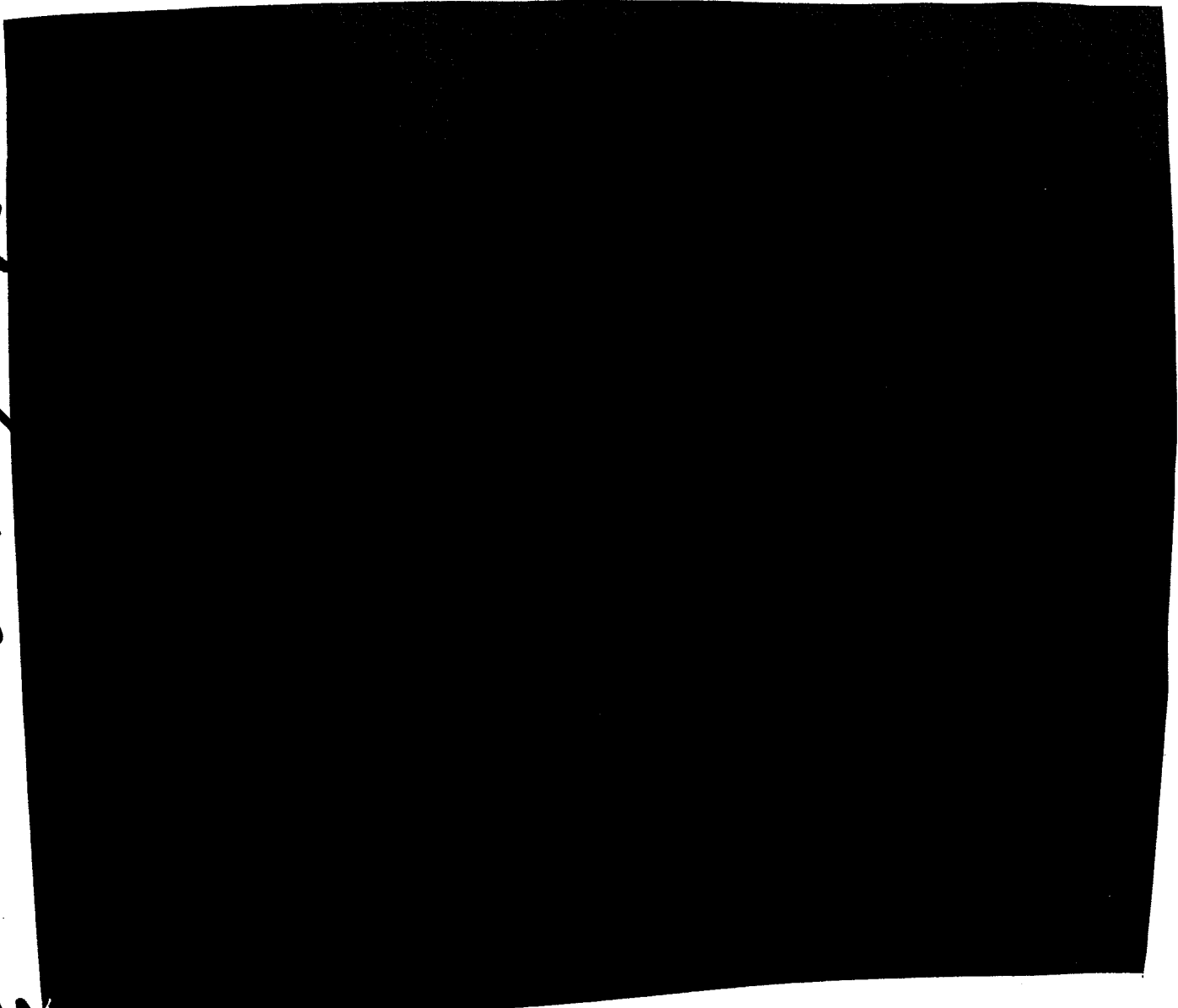
62/56

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



Out of scope

6/2/06



To: "Louis Tucker" <[redacted]@ssci.senate.gov>
From: [redacted]
Date: 04/04/2008 09:51AM
Subject: Option

Court Approval :

House: Court must approve surveillance procedures prior to the start of surveillance.

Senate: DNI and AG authorize acquisition and submit procedures to the FISA Court within 5 days after surveillance begins. Expeditious review by the Court is required.

Compromise: Look at taking some of the concepts from House bill, but we can't end up in a place where our foreign targeting activities are dependent on prior court review. One option could be to allow existing foreign surveillance to continue while new procedures for future foreign surveillance are submitted to the FISA court to review. This would allow the FISA court to "pre-approve" future foreign surveillance procedures without

interrupting current activities. Must also have a mechanism to allow new foreign surveillance prior to court approval where DNI determines that foreign intelligence would otherwise be missed and so notifies Congress.

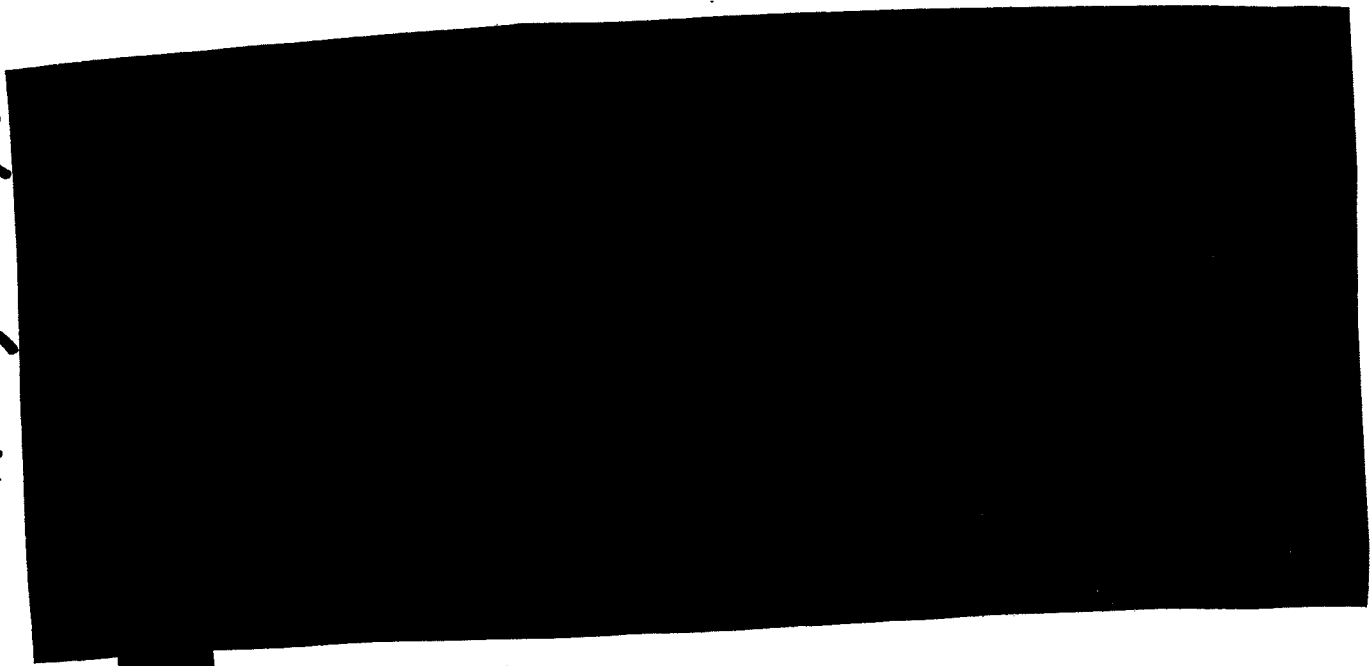
b2/b6

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



Out of Scope

5/2/08



From: [Redacted]
Sent: Friday, May 23, 2008 1:00 PM
To: [Redacted]@mail.house.gov; [Redacted]@mail.house.gov; [Redacted]@mail.house.gov
Cc: "Benjamin Powell"
Subject: Letter We Mentioned at Mtg Yesterday

Caroline, Kevin, Scott: Your Members asked about what could be said unclassified regarding lost intelligence as a result of: the expiration of PAA and the lengthy delay in new FISA Modernization legislation, with liability protection, affecting our commercial partners. Pls see the attached Feb 22, 2008 letter from the DNI and the AG responding to a HPSCI Chairman letter; the DNI-AG letter makes explicit the consequences of the 6 six days in February and the overall uncertainty created with PAA expiration and lack of retroactive liability protection for the carriers. I have also attached the joint DNI-AG Public Statement issued a day later when pvt sector cooperation resumed. Hope this is helpful and let me know if you/your Members need anything else.

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



Out of scope

b2/s4

From: [REDACTED]
Sent: Thursday, March 13, 2008 3:40 PM
To: [REDACTED]@mail.house.gov
Subject: FISA Info on Court Time Lines etc

1) Prior Court Approval:

Question: I am told that there will be no delay in surveillance because prior court approval is not required? What is correct?

Answer: Prior court approval is required unless the DNI and Attorney General find that:

- 1) "an emergency situation exists"; and
- 2) "immediate action by the Government is required"; and
- 3) "time does not permit the completion of judicial review pursuant to [the bill] prior to the initiation of an acquisition".

If the argument is that prior court approval is not required because the DNI and AG can declare everything an emergency, that seems to defeat the intent of the bill. The standards above are highly subjective, but would at a minimum require DNI and AG to act based on a known emergency requiring immediate action.

There are a number of basic problems. First, we know from experience with the Protect America Act that any delay will cause us to lose intelligence that can never be recaptured. We would be happy to provide a classified example. Second, we may not know we have an emergency until it is too late. We want to prevent emergencies requiring immediate action, not wait until something is an emergency to start gather intelligence.

Finally, the delay that is a part of prior court approval is unacceptable. Under the Protect America Act, we submitted a set of targeting procedures to the Court in August 2007. The Court approved those procedures in January 2008. If we had to wait for court approval, we would have lost the ability to collect the timely intelligence we gathered under the Act. We have provided Congress with unclassified and classified examples of that intelligence, including the disruption of

planned terrorist attacks. Although the bill appears to set a 30 day timeframe for the Court to rule, that timeframe is basically advisory and permits the Court to extend the timeframe at its discretion for "good cause." Given the complexity and amount of material the Court is asked to rule on under the House bill, it is highly likely the Court would have a number of questions in any particular situation and want to explore the details of the submissions in this highly technical area. This could easily extend the timeframe for many months to permit the Court to complete its review.

Bottom Line: Unless you claim that all of our valuable intelligence activities all constitute emergencies, prior court approval is required.

2) Significant Purpose:

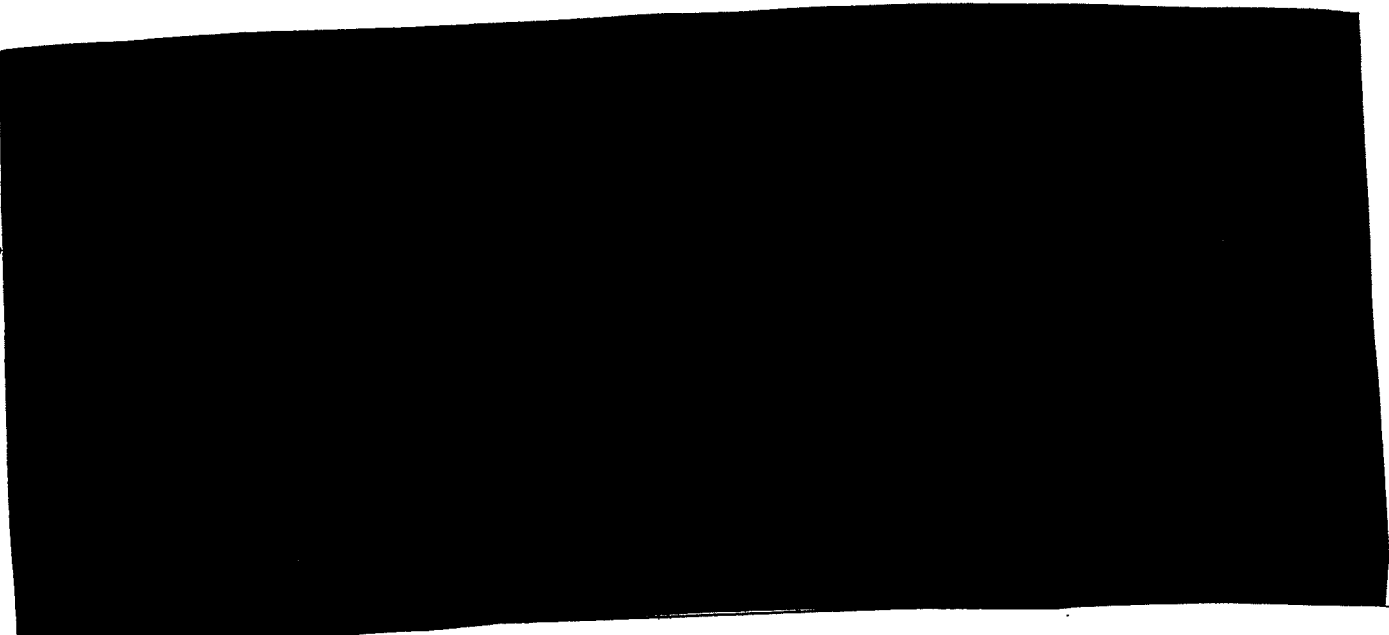
Question: What about the "significant purpose" test? I understand that this just ensures that surveillance of a foreigner is not a pretext for targeting an American.

Answer: Incorrect. We carry out our intelligence activities for a number of significant purposes. One of the significant purposes includes determining if a terrorist operative contacts someone in the United States to discuss an operation. Other significant purposes for doing surveillance on the same operative may be determine if they are planning to attack our troops in Iraq or attack an embassy overseas. These are all significant purposes of the surveillance. Under the House bill, we cannot undertake the activity if "a significant purpose" is to acquire a communication to a US person. Although it is highly likely that communications will generally go to other foreigners, the most important communication may be one that detects a contact with operatives in the United States. Under the "significant purpose" test, we would essentially be prevented from doing some of the most important surveillance activities.

Once we detect significant information concerning someone in the United States, the FBI is alerted and they can pursue an investigation under their guidelines. They may then choose to target the US person's communications by filing a FISA application to intercept the US person's communications upon issuance of a court order.

While much discussed, this concept of "reverse targeting" is already prohibited under law and regulation. The Senate bill codifies this understanding by prohibiting the targeting of a person outside the US if "the purpose" is to target a person in the US.

Out of scope

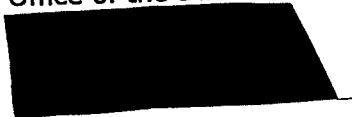


52/66

From: [redacted]
Sent: Thursday, March 13, 2008 3:09 PM
To: [redacted]@mail.house.gov
Subject: Follow-up from DNI Mike McConnell Call with Rep. Marshall

John: Please see below information in response to the questions and the attached letter from the DNI and the Attorney General.

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



1) Prior Court Approval:

Question: I am told that there will be no delay in surveillance because prior court approval is not required? What is correct?

Answer: Prior court approval is required unless the DNI and Attorney General find that:

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There are a number of basic problems. First, we know from experience with the Protect America Act that any delay will cause us to lose intelligence that can never be recaptured. We would be happy to

provide a classified example. Second, we may not know we have an emergency until it is too late. We want to prevent emergencies requiring immediate action, not wait until something is an emergency to start gather intelligence.

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Bottom Line: Unless you claim that all of our valuable intelligence activities all constitute emergencies, prior court approval is required.

2) Significant Purpose:

Question: What about the "significant purpose" test? I understand that this just ensures that surveillance of a foreigner is not a pretext for targeting an American.

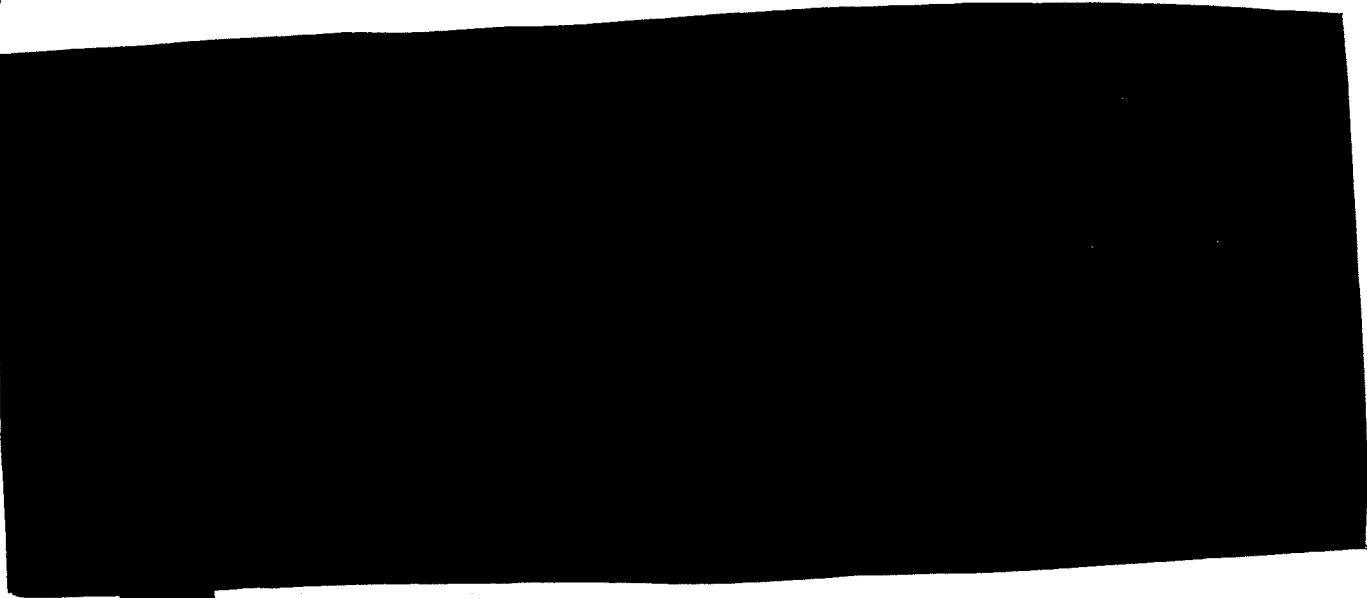
Answer: Incorrect. We carry out our intelligence activities for a number of significant purposes. One of the significant purposes includes determining if a terrorist operative contacts someone in the United States to discuss an operation. Other significant purposes for doing surveillance on the same operative may be determine if they are planning to attack our troops in Iraq or attack an embassy overseas. These are all significant purposes of the surveillance. Under the House bill, we cannot undertake the activity if "a significant purpose" is to acquire a communication to a US person. Although it is highly likely that communications will generally go to other foreigners, the most important communication may be one that detects a contact with operatives in the United States. Under the "significant purpose" test, we would essentially be prevented from doing some of the most important surveillance activities.

Once we detect significant information concerning someone in the United States, the FBI is alerted and they can pursue an investigation under their guidelines. They may then choose to target the US person's communications by filing a FISA application to intercept the US person's communications upon issuance of a court order.

While much discussed, this concept of "reverse targeting" is already prohibited under law and regulation. The Senate bill codifies this understanding by prohibiting the targeting of a person outside the US if "the purpose" is to target a person in the US.

Out of scope

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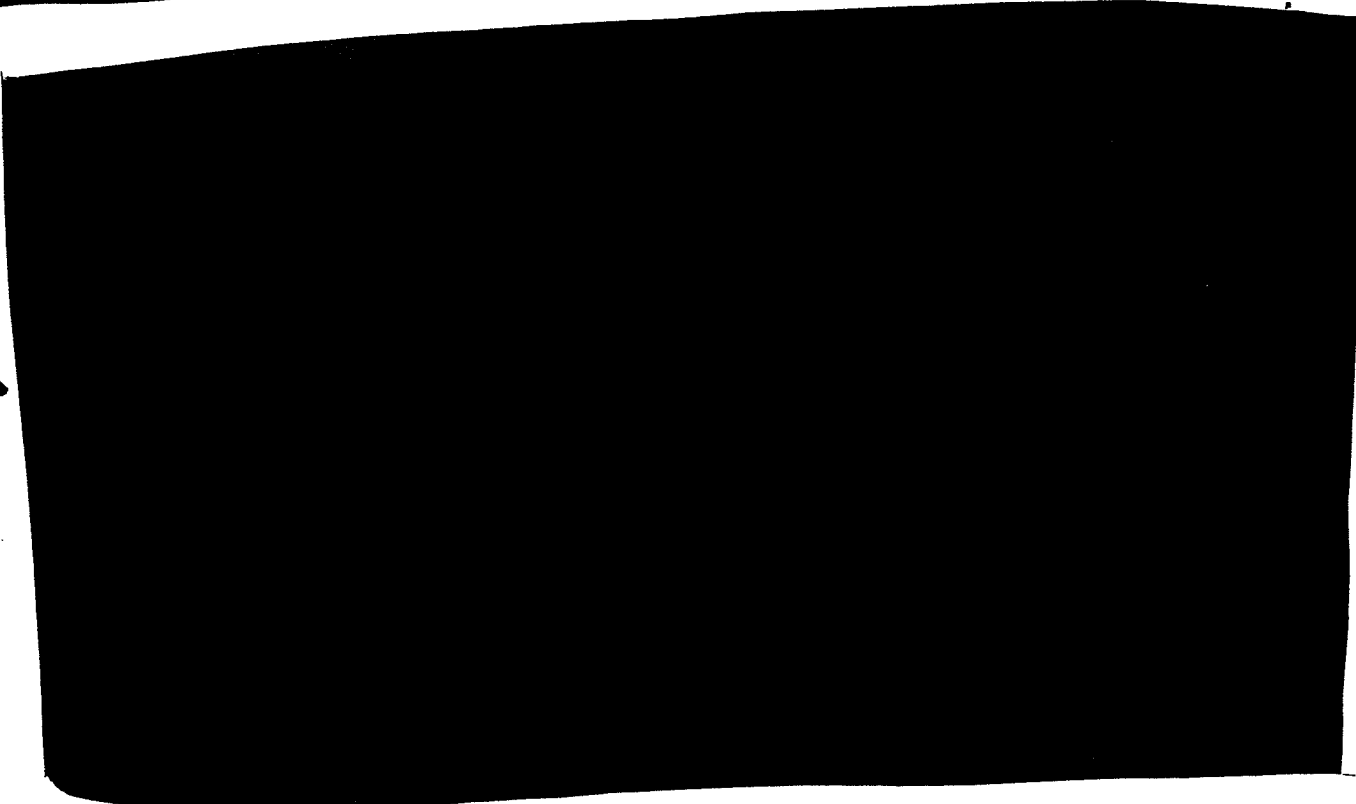
From: [Redacted]
Sent: Tuesday, February 12, 2008 11:05 PM
To: "Louis Tucker"; "Andy Johnson"; "Melvin Dube"; "Ken Johnson"; "Mike Davidson"; "Jack Livingston";
 "Kathleen Reilly"; "Chris Healey"
Subject: Thank You!

The DNI and the ODNI thank you for securing final passage of a very good FISA Bill! You guys made it happen with your persistence, focus and understanding of what was needed and why. We really appreciate your very hard work. Now we move to the House and will work to get your Bill passed quickly. Thank you again!

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

Out of scope

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To: [redacted]@mail.house.gov, [redacted]@mail.house.gov, "Johnnie Kaberle"
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From: [redacted]

Date: 02/26/2008 07:12PM

Subject: Background Briefing by Senior Administration Officials on FISA

Helpful info to educate Members below.

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



BACKGROUND BRIEFING BY SENIOR ADMINISTRATION OFFICIALS ON FISA

James S. Brady Press Briefing Room - The White House

FEB. 26, 2008 - 2:40 P.M. EST

SENIOR ADMINISTRATION OFFICIAL: I appreciate you taking the time to discuss this issue with you. I just want to give a very brief overview. I know this is a very

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complex subject and a lot of discussion out there, and it's hard sometimes to follow it.

Let me start. Foreign Intelligence Surveillance Act of 1978 passed because of the abuses of the 1960s, 1970s, and frankly, prior to even that time frame. There was a balance struck in the 1978 act for the intelligence community, and it said, if you're doing your foreign intelligence mission overseas, you do not need a court order to do that mission. It specifically exempted the international signals intelligence activities that our community does.

Q You mean it said you could break the law?

SENIOR ADMINISTRATION OFFICIAL: No. What the law said was that if you are doing your foreign intelligence mission, looking at communications abroad, you do not need a court order. That is what the law said. Okay? And --

Q -- by Congress?

SENIOR ADMINISTRATION OFFICIAL: Okay, that's what the Foreign Intelligence Surveillance Act of 1978 did, and that is what the legislative history specifically says, and that's what the Foreign Intelligence Surveillance Act says. I can get you the actual text. We can furnish that to you. I mean, it's plain as day. I could pull up the quote right now that says this law specifically exempts the international signals intelligence activities conducted by the National Security Agency.

What it said, though, is if you're doing your mission here in the United States you need a court order. So if you're targeting a U.S. person here in the United States, to intercept their communications you need to get a court order. That was the balance that was struck in 1978.

In 1978 -- let me divide the worlds of communications into wire and wireless -- 1978, wireless communication; radio and satellite, primarily for our international communications system. Fast-forward to today -- 90 percent I think, or so of the international communications systems carried in a glass pipe; a wire, for purposes of FISA. So we've had a huge shift from what was radio and satellite in 1978 now to wire, to fiber optics -- a huge, massive shift. The international communications system is also routed through the United States in many cases. Extraordinarily cheap to use this fiber optic system, a large price advantage over other types of wireless communication.

What caught us -- what got us caught up was, in 1978, when they did the law, when they thought of wire, they thought of privacy, and if you're on the wire that is what they use to define when we would need to get a court order, exempting this international activity by exempting out the radio and satellite communications mission that we do.

So we had this shift. I think in this debate, I think everyone has agreed now that FISA needs to be modernized to reflect the technologies of today; that they wrote FISA in 1978 to reflect the way the technology was then. I think everyone is basically on board with the fact that we need to have FISA modernized.

That brings us to the Protect America Act and the passage of the Protect America

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Act. The Protect America Act said, if you are targeting a foreigner overseas, you do not need a court order. But it went one step further than what was even in the 1978 act. It said, for your targeting procedures, to intercept that foreign communication you need to have those procedures submitted to the FISA court and approved by the FISA court. In 1978, our mission to target international communications, the FISA court had no role in that.

We did submit those targeting procedures in August. The FISA court approved those in January of this year.

Obviously, lots of concerns about some of the language of the Protect America Act. For the past six months, we worked very closely with the Senate on their bill. That bill responds to a lot of concerns raised by the public and by members. It expands the role of the FISA court even more in the foreign targeting procedures. Not only does it say that these foreign procedures -- that the procedures that we're going to use to target foreign people overseas have to go to the FISA court, but now the documents signed by the Attorney General and DNI that authorized this acquisition activity have to go to the FISA court. And in addition, something called "minimization procedures" are now going to have to be approved by the FISA court. None of this was part of the balance struck in 1978.

Let me pause and talk one minute about this word "minimization" that you've heard. Somebody is going to ask me the question: But when you're targeting a foreigner, don't you get a U.S. person sometimes? And the answer is, yes. And the answer is, for many decades we have encountered information to, from, or about a U.S. person when we're doing our overseas foreign intelligence mission. The way we deal with that is a process called "minimization." That's a whole separate briefing that Dana probably does not want me to give, but what that basically means is that we minimize the information concerning the U.S. person. And there's elaborate procedures that are a part of that.

That is not anything new. Minimization procedures are mentioned in the FISA -- in the act of 1978. It's something that was recognized would be a part of our intelligence community process.

So we are trying to basically restore the balance that was struck in 1978 through this legislation. That is the goal. In fact, what we've restored -- yes, we've restored the balance, but we have a greatly enhanced role for the FISA court, compared to anything that was done in 1978. And certainly the Senate bill expands on that role, in addition to a whole set of oversight procedures and reporting requirements that are in that.

This brings us to immunity and the issue of immunity. The bills have prospective liability protections, so going forward with our activities. Then there's the issue of what to do about retroactive liability protection. And this involves the program that the President spoke about on December 17, 2005, in his radio address.

The Senate committee report is perhaps the best source of information about this. I would commend all of you to read it. They did an exhaustive analysis of this. The bill passed out of the Senate Intelligence Committee 13 to 2. Of course, you know it passed the Senate with 68 votes.

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Q But that's not what you're arguing about in Congress. No one in Congress has disputed the notion that you should have the ability to target foreign-to-foreign communications. I mean, the most liberal senators, Russ Feingold and Senator Dodd have acknowledged that months ago. So why not argue about what's left to argue, which is the immunity question, and leave this behind? This seems like a bit of a red herring, to be honest.

SENIOR ADMINISTRATION OFFICIAL: Well, no, I said that there's consensus on this. And I think people tend to forget that this was a very well-thought-out process. I mean, we've been involved -- we spent half our life up on Capitol Hill over the last year in briefings and hearings. And I'll tell you, the experience, at least from my perspective, is that it was a -- it's been a very healthy legislative process. I mean, every aspect of that scheme that I just laid out and the immunity issue has been hammered on from both sides and debated. And the result was a very solid, well-thought-out bill out of the Senate.

And the bill, of course, incorporates not only that scheme I'm talking about, not only immunity, but also, as [my colleague] said, a lot of limitations and protections that weren't in the original Protect America Act.

So one of the reasons why I think you're seeing sort of a strong effort on the part of the proponents of the Senate bill is because we saw the legislative effort that went into that product, and we know that it's very sound. And you're not going to find any piece of that legislation that wasn't really carefully debated on both sides. And we think that with a bipartisan majority that passed it, it should be taken up in the House.

SENIOR ADMINISTRATION OFFICIAL: So let me address the question, then, of -- we were asked to kind of give an overview of the whole issue, so you had kind of that broad context about our mission and what we're trying to do in the legislation and how critical the private sector is to this. Certainly the past week has reminded us very clearly that no matter how strong our statutes and arguments, we really do need the willing cooperation of the private sector, who have different issues and other issues to consider besides just the national security.

There is a debate over the activities the President authorized after 2001. The Senate committee report acknowledges that debate and says they are continuing to review that matter. There's heated disagreement about that matter. No doubt about it. And the issue, though, is whether in this heated disagreement between the President and some members of Congress about the scope of people's powers under the Constitution -- the scope of the President's national security powers, the ability of Congress to pass certain statutes -- whether private parties are going to be the way to play that out, and essentially, while our intelligence capabilities continue to degrade, is that how we're going to settle those issues, many of which have gone on for over 200 years? Why should private parties be caught in the middle of what is ultimately a debate over separation of powers and between the branches, no doubt a debate that people feel very strongly about, but these are private parties who acted in good faith to help protect the nation.

Q But did they act under law? They knew they were acting under the law?

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Q So, basically, you cannot conduct -- get this activity without help from the private telecommunications firms?

SENIOR ADMINISTRATION OFFICIAL: "Electronic communication service providers" is the way I would phrase it, but, yes, private parties --

Q Right. And so because the law has expired, they're the ones, because they do not have the immunity --

SENIOR ADMINISTRATION OFFICIAL: They have lots of concerns. They've seen that companies have been sued. They have to protect their shareholders, they have fiduciary duties, they have all of those responsibilities. So we can make very strong arguments that these things continue even past the expiration of the act, and you've seen discussions of that in the public sphere. We can make those strong arguments, but they're the ones --

Q If they're acting legally why do they need the immunity?

SENIOR ADMINISTRATION OFFICIAL: Ma'am, your question about targeting procedures, I think that's a good question, because it goes to sort of the internal logic within the Protect America Act. What's lost in this debate is that there is sort of a good, common-sense basis to the Protect America Act and the legislation that we want to see made permanent. And it is basically what [my colleague] described, that FISA if you take -- if you look at the scope of potential surveillances out there, FISA in 1978 was intended to cover this scope, this part of it, which was targeting surveillance within the United States. Because of the change in technology, it started to creep out and cover the whole field. So Congress -- and I think there is a consensus on this -- said, wow, we need to bring it back to what we originally intended; we shouldn't be giving Fourth Amendment protections to terrorist suspects overseas.

How do we do that? We create a scheme that says, you do have to go to the court and get approval, just like you always have, if you want to target someone living in the United States -- under traditional FISA. But if you, the government, the executive branch, want to target somebody outside the United States, you just have to have procedures that are -- that reasonably determine that the person you want to target is outside the U.S. If you have procedures in place that say, "Check this, check this, check this," and the conclusion is that person -- we expect that person is outside the United States, and those are reasonable procedures that reasonably lead to the conclusion that the person is outside the U.S., based on that conclusion we should be able to go ahead and target that person for surveillance without having to go to FISA court.

And so in the debate, that is a very common-sense notion that gets lost, I think, in the debate. We had a really good, sound process in place in the Protect America Act, and that is, of course, incorporated pretty much into the Senate bill. And that's what we really need. We need that flexibility to be able to go up and do that surveillance overseas without having to go to a court, show the Fourth Amendment probable cause standard -- what was designed for people within the United States -- when they're trying to target someone who's maybe in a cave over in Afghanistan.

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approved procedures that are part of now, frankly, an expired law. So first, what are the procedures? The procedures are, how do we determine if somebody is reasonably believed to be outside the United States? How do I know that when I am going after somebody to get intelligence information, how do I know -- right? We want to make sure that they're overseas and that they're not here in this country. So that would be a concern, do we have adequate procedures that we're making sure. Now, there's a lot of technical ways to do that and other things that we've laid out for the court, and that's what they've approved.

Q And these are now no longer -- the approval is no longer valid because the law has expired?

SENIOR ADMINISTRATION OFFICIAL: Yes. The law, of course, has expired --

Q So does that make the approval, the court approval of these procedures invalid?

SENIOR ADMINISTRATION OFFICIAL: Well, we're still operating under those procedures. There is some activity that continues past the expiration of the act. And there's some --

Q Until August?

SENIOR ADMINISTRATION OFFICIAL: There is some activity that will continue past the expiration of the act. We have said that we issued some -- what are called "authorizations for activities" in August. So those authorizations would last until this coming August.

But, lots of confusion out there. These authorizations are authorizations signed by the Attorney General and DNI that authorize the activity. So it says, yes, agency -- pick your agency -- you are hereby authorized by the Attorney General and the Director of National Intelligence to undertake the following activities; and here are the rules and procedures you're going to follow, and you're going to file the procedures with the FISA court, and here's how you're going to act.

Separately -- so that just gives us the ability internally to go and do this activity. Separately we have to issue directives to private parties to cooperate with us. We can't do those activities under the authorization without the help of the private parties.

So now that the law is expired, that has led to great concern on the part of our private parties. It's also in great question whether or not we could issue new directives to new private parties. So, yes, the authorizations, which are enabling documents that give the authority to our agencies to act, continue past the expiration of the act. But if I need to issue new directives to new private parties, or to modify the authorizations and directives that are already out there, I have an expired act, and that is something that would lead to great concern.

Everyone assumed that under the old authorizations we could continue the activity we were doing, and add, essentially, new information to those same activities. We found in the last week that even that piece of information that we thought everyone was agreed on, and we think our arguments were strongest on, we had problems with that in the last week.

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What do they say in that report? They say it's absolutely vital to our intelligence community mission that we have the cooperation of the private sector. It says that their help is indispensable to the safety of the nation. It also says -- it goes through what they call the unique historical circumstances after the attacks of September 11th, the fact that the private parties were given documentation showing that the President had authorized the program, and showing that the legality of the program was also certified by high-level administration officials. It said that they had a good-faith basis for cooperating with the government. It does not make a judgment about the ongoing discussions about the respective powers of the Congress and the President, and make an ultimate legal determination about that program.

What is it from the perspective of the private parties? What are those who are alleged to have assisted with this caught up in, and what is the problem? Well, first, they can't defend themselves. And you say, well, that's our fault because we have asserted state secrets in various lawsuits. And the answer is, we have. And the reason we've done that is because the only way to defend yourself is to go out and describe the exact activities that I am talking about, and that would be a very bad idea if we want to continue to gain vital information, particularly in the counterterrorism arena. Second, they did act in good faith, in reliance on the documents that they received and are discussed in the Senate committee report.

With that, I guess I would just leave you with -- kind of in summary, if I had to reduce this and try to make it simple about what we're trying to do, three basic principles that the Director has always acted on: One, no court order to do our foreign intelligence mission. Let us do our foreign intelligence mission targeting foreigners overseas without a court order. That was fine in the Cold War of 1978; today we face, frankly, a more dynamic enemy than we faced in 1978 in terms of their ability to exploit our technology and to change their procedures, compared to the Soviet Union that we faced.

Second, a court order for targeting Americans. Something that is overlooked in the Senate bill, for the first time a court order is required if we are targeting an American anyplace in the world. That was not deemed appropriate in 1978; now the Senate has deemed it to be appropriate. That would be a large change. Prior to -- frankly, the way it is today, we go to the Attorney General to authorize those activities abroad targeting an American. The Senate bill would change that.

And finally, we need to have liability protection for the private sector, both prospective and retroactive, and we need the ability to compel their cooperation.

With that, I'll have [my colleague] --

Q If I could ask you one question on something you said?

SENIOR ADMINISTRATION OFFICIAL: Sure.

Q What are these targeting procedures that were approved in January? And if the court has already approved these procedures, then why do you need the -- do you need the law?

SENIOR ADMINISTRATION OFFICIAL: Well, the law has expired, so the court has

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SENIOR ADMINISTRATION OFFICIAL: Yes, the Attorney General --

Q Why give them immunity if they were legal?

SENIOR ADMINISTRATION OFFICIAL: Because to show that somebody was acting under the law, under the allegations and the numerous lawsuits that were filed, first they would have to show what exactly was done, they would have to show whether or not they engaged in the activity --

Q All they have to do is get from the White House -- say we gave them permission under the law.

SENIOR ADMINISTRATION OFFICIAL: Well, if the Senate committee reports suffice, which says that the President authorized this, and the legality was -- assurances of legality were provided to them, I wish that were sufficient to make the lawsuits go away. But that's not sufficient.

Q -- go along with that they were legal when you say they're legal, when the government says they are legal, acting under the law?

SENIOR ADMINISTRATION OFFICIAL: Well, we've seen there are, what, 40- some suits out there right now, and we've seen --

Q So they think they must have something. They think they're valid, don't they? Their lawyers obviously do.

SENIOR ADMINISTRATION OFFICIAL: Well, I'm not going to speak to what the lawyers of the other parties think. But bottom line is that some of these cases have gotten some traction. But we have been resisting on a number of different grounds. The problem is, is that aside what effort it puts us to, the providers are being sued. And they are in a position where they can't really defend themselves, because this is all classified, confidential information. Their reputations are in some danger, they go through the expense and the disruption of a litigation process, all because they really stepped forward and were good citizens after 9/11. And it's just --

Q Well, you can't just show the judge the classified information and let them make a decision?

SENIOR ADMINISTRATION OFFICIAL: Well, what we've done is we've shown this to members of Congress, and to the Judiciary Committees and the Intelligence Committees, shown the documents -- the documents that contain the assurances that were given from the administration to the providers at the time when they were asked to assist. And those -- the Senate intelligence report, as [my colleague] said, found those were good faith -- those were assurances that the program was legal and that it was directed by the President, and that the providers had a good-faith basis for going ahead and stepping up and assisting the government and protecting the country against another attack.

Q I just have one more question. I know I'm being -- don't mean to monopolize -- but can you honestly say that no American has been wiretapped without a warrant in this country -- has not been wiretapped -- has been wiretapped, yes, who has been wiretapped without a warrant -- warrantless wiretapping in this country.

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SENIOR ADMINISTRATION OFFICIAL: The reason I hesitate is because, as [my colleague] said, we will target surveillance against somebody overseas, and that person might -- 90 percent of the time that person is probably talking to people overseas, but sometimes that person is talking to somebody in the United States, and we intercept that communication. And as we've always done, we review that communication, and if it's irrelevant, we minimize it.

Q What do you mean, minimize?

SENIOR ADMINISTRATION OFFICIAL: Well, this is what [my colleague] was talking about. If it's an American -- United States person -- let's say we're targeting somebody, a terrorist suspect in the Middle East. That person calls over to an American phone number and gets a United States person. There are minimization rules in place that the intelligence community has been following for decades, for whenever they do target surveillance overseas they follow these rules. And if that communication is captured -- and [I], United States person, am on that phone call, there are rules that limit the dissemination of information about [me,] because I'm a U.S. person. My name can't be disseminated in intelligence reports in this kind of thing.

So there are protections in place to protect the privacy of Americans, but still allow us to target surveillance against targets overseas, where we really need to find out about threats.

Q Without a warrant?

SENIOR ADMINISTRATION OFFICIAL: Without a warrant, yes.

Q Just a couple things -- just so I make sure I understand. It would be the administration's position that these companies acted in good faith after 9/11, had the order from the President and, therefore, should be shielded from liability -- but you're seeking immunity retroactively in case the courts see it differently.

SENIOR ADMINISTRATION OFFICIAL: Yes. I mean, the -- I wish -- I certainly wish the process were that we show them the Senate Intelligence Committee report, file a classified declaration and the suits are dismissed and go away. That is not the way our system works. There's possibilities of discovery; there's appeals. We could get you lots of information about the different suits, the appeals that have happened, those types of things. Each one of those cases runs a -- I mean, from our perspective, runs a risk of disclosing our sources and methods, each kind of a little bit more as more information is out there.

So from the intelligence community perspective, that is of great concern. And while we wish it were that the Senate Intelligence Committee report or our classified declarations suffice to simply dismiss all the lawsuits -- I'll defer to [my colleague] on litigation matters -- but that's not exactly the way it works.

Q I think I understand that. So I guess my next point is, I mean, I've seen it happen in a lot of cases, like, when you have national security, where the government intervenes and asserts state secrets, and gets -- I mean, I've seen cases that, plaintiff, you may have the greatest case ever, you're out of court

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because the government successfully asserts state secrets.

So I guess my question is, isn't that another approach? Can't you go in there and try to win on state secrets, and get these cases -- and, therefore, you've done something on behalf of these telecoms who you say patriotically helped? I mean, there are other ways besides retroactive immunity.

SENIOR ADMINISTRATION OFFICIAL: And that's -- those are the ways we've been pursuing so far. But as [my colleague] said, that sort of puts the -- the providers are still in an awkward position because they've got these complaints, these claims against them, but they're precluded from actually litigating them and defending against them. So it's actually -- that's not ideal for the providers, and it's not ideal for us, because we can't predict exactly how every one of these litigations is going to go.

And if I could add on to this, [my colleague] enumerated a couple of the reasons why it's important that the providers get immunity. One is just because -- these people stepped up to help and they did so as good American companies, so we shouldn't subject them with litigation. Two, as he said, the fact that in these litigations, we really run a risk of disclosing classified and very sensitive information about our most sensitive intelligence programs.

But don't underestimate the third thing, which is we have an interest in this, which is we really do -- as somebody said over here -- we rely on the providers to cooperate. We don't own the communication systems. We have to work with them. And, yes, we can compel them to assist us through various court orders or directives. But I know as a prosecutor working criminal cases, trying to get telephone records, there's some companies that work well with you and you get them in a day, and you can -- that will help you to run down the bad guy more quickly. Others will take the full two weeks. And so there's cooperation, and there's cooperation.

Also, keep in mind that, yes, the providers, if they want to, they can litigate everything we give them. They have the right under the PAA -- the Protect America Act -- to go ahead and challenge these directives, and that's within their right to do so. And at the end of the day, we might prevail -- we will prevail because we have the authority to do it. But during the time that that's being litigated, the surveillance we're asking them to do is not happening. So there's some foreign intelligence target out there we think we need to be able to surveil, we're not surveilling that person. So we don't know what information we're missing.

So don't underestimate -- because there's no immunity, the providers are understandably concerned. They've got shareholders, they've got fiduciary duties to their shareholders, they've got to protect them. And one thing the general counsels do is then they try to minimize their risk. And they do that by, sometimes, litigating things more just to make sure that they've got a court order to cover them at every step of the way. And that will really slow us down.

Q On that last part, can you just clarify exactly what happened over the weekend with the provider or providers who you were saying were reluctant to comply? Were any providers actually refusing to comply? And did you lose intelligence because of that? If so, what then happened over the weekend to change their

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position? Because there's a difference between being reluctant and refusing to comply. So which was it?

SENIOR ADMINISTRATION OFFICIAL: My answer -- let me step back a second. Both [my colleague] and I -- step back even farther for a second. Keep in mind who we're up representing. I'm in the Department of Justice. I have attorneys working with me who appear before the FISA court. So we're sort of the lawyer part of this equation. [My colleague], of course, in the intelligence community and is the operator part of the equation. Both of us have to work together to get these warrants -- FISA orders -- and to implement the Protect America Act.

Last week -- over, actually, the last few weeks, both [my colleague] and I, and colleagues of ours, both in ODNI and DOJ, have been working very closely with general counsels offices in the various providers, because they've been asking about this looming potential expiration for some time and what its implications will be. And in terms of -- to answer your question, I'm basically going to stick with what's been made public. And there's actually been a pretty good record so far made public between the letter from the DNI and the AG, and then -- which came out Friday afternoon, I guess. And then there was a subsequent press release or statement the next day from DOJ and ODNI.

Bottom line is, as the AG and the DNI said in that letter, most providers were complying with requests for new surveillances. These are surveillances we wanted to go up on under the directives that continued in force after the expiration of the PAA, but we wanted to go up on new surveillances under those directives. Most providers were complying, but as of the time that we sent the letter, not all. And then soon after that -- we've been in intense discussion, back and forth, with a number of different parties, we achieved full compliance -- just with that, with the compliance with our request to go up on new surveillances under those PAA directives. However, they've made it very clear that this isn't a permanent situation, and they're concerned about it and they might -- they may well withdraw that cooperation if the situation doesn't get cleared up with permanent legislation.

Q So what intelligence was lost? You talked about the loss of intelligence. Can you quantify that? As Director McConnell did back in August, he gave very dramatic statements about 75 percent of the intelligence had been lost because of this one loophole. You know, this all seems kind of abstract -- the intelligence that had been lost. What does that actually mean?

SENIOR ADMINISTRATION OFFICIAL: Last summer was a more long-term development in coming. This was an intense period over a week, so we were not up on the new surveillances that we needed to go up on. So we were not up on those. We had valid foreign intelligence reasons to want to be initiating surveillance on these activities. We were not able to do that because of this issue with the providers. So we lost that time period from when we would have initiated these new surveillances to the time period in which we were able to come back up on them.

It's important to note -- let me just add one asterisk here, though, which is, the act has expired. This was what we thought was the clearest part of the act. And we had talked -- [my colleague] and I had both talked up on the Hill in hearings about this -- and I saw articles quoting us about, oh, yes, we can do -- we think we can

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do surveillances; that's pretty clear under the statute; we think we'll be successful on that. We outlined we were very concerned about new providers, new directives, new activities, which we thought we may encounter some issues on.

So we still have that problem with the act expired. So in addition to a problem we thought we didn't have, where everyone said, oh, yes, you could do new surveillances under existing directives and authorizations, we found that that was called seriously into question. And we still have the other problem -- we have an expired act and we need those tools.

Q Just to be clear -- called into question by whom, the general counsels for these companies? I mean, they're coming back to -- corporate lawyers coming to you guys and telling you what the law says? Is that what you're saying?

SENIOR ADMINISTRATION OFFICIAL: I'll characterize my back-and-forth with them. They're raising questions, and they're saying, look, we've got an expired piece of legislation; it's not crystal clear, for instance, what [my colleague] just said about, can we use the directives that are in place -- they continue for a year after they are put in place -- can we use them not only as to the providers to whom those directives were directed, but to another provider? And you look at the Protect America Act; it doesn't -- it's not crystal clear on that. It's not clear at all about that. And there's, they think, a very strong argument in the other direction.

So these general counsels are doing their jobs. They're saying, wait a minute, is that potential liability? We've got billions of dollars in liability looming in the background here from -- that we haven't been immunized from. We're very worried about that. We're not seeing immunity coming down the road any time real soon. And you're asking us to do something that's not terribly clear under a statute that's expired, and I've got shareholders to whom I owe my first duty. So should I just go ahead and cooperate under your reading of the statute, Mr. Government, or should I be extra cautious and risk-averse, and challenge that directive, when you ask me to go up on a surveillance against a terrorist suspect overseas -- should I challenge it in the FISA court and then go through the steps of litigation that will keep us in the dark?

SENIOR ADMINISTRATION OFFICIAL: And it should escape nobody's notice, because it certainly didn't escape them in my conversations -- so you're saying that the Attorney General believes this is clear, and he believes that this is legal, and he believes that we can rely on this representation? It escapes nobody's notice that that resembles a certain situation in 2001 where they still have not received any relief from it.

Q At what point do you start to need new -- I realize that you've got existing directives that last for a year, it sounds like --

SENIOR ADMINISTRATION OFFICIAL: From when each of those directives expires.

Q Yes, but is there a period in the short-term where you're going to need new directives, or are all these things going to be -- are all the existing directives going to be sufficient for some period of time?

SENIOR ADMINISTRATION OFFICIAL: I do not expect the existing directives are

b2/b6

sufficient for the future to do our mission. As to when I might need a new directive, I could get back to my office right now and have a phone call saying we've discovered that there's something going on, a communication path that we do not cover with the current existing directive to a provider, and we need to have a directive out to cover this situation.

Let me back up. We do not issue directives widely. We issue them because we have a specific mission need to issue them, and we have procedures in place, and we have compliance in place, and we have the technical means in place. We do not just mail directives to people. This is very technical, and it's very complex. And it's something that we roll out very carefully. We can go through a great detail of what we've done over the past six months in terms of compliance, in terms of reporting to Congress, in terms of oversight by multiple organizations, in terms of briefings to members of Congress and staff. So we've rolled this out extremely carefully. We want to make sure that we are in compliance, that we have the right procedures in place. So that is not a system by which we are just broadly doing something without making sure we have all those procedures in place before we act. But there's many scenarios I can envision where we would need new directives.

Q Can you say how many directives there are now?

SENIOR ADMINISTRATION OFFICIAL: No.

Q The situation you just laid out, just to be clear, of needing a new directive, that has not happened in the 10 days since the Protect America Act expired? You're saying that might happen in the next two minutes, but that has not happened yet?

SENIOR ADMINISTRATION OFFICIAL: That's correct.

Q And if you needed that new directive -- the FISA court would always still be available, right, in typical court order route?

SENIOR ADMINISTRATION OFFICIAL: Right. Okay, excellent. The answer is, no. And this question, if I may rephrase a little bit is, well, you could just use the FISA court. We've seen that debate out there -- you just go to the FISA court and get an order. Remember what [my colleague] described: Under the Foreign Intelligence Surveillance Act, we have to go to the FISA court and make a number of showings. One of those is a probable cause showing, under the Fourth Amendment.

These are not things that are done quickly, necessarily. This kind of gets back to the debate of last summer, before the Protect America Act expired, which was, do we take our operators, our linguists, our analysts -- we're always asked, do you have enough people who speak the right languages; do you have people who understand the cultures -- should I pull them off of their mission to write a thick application, court application, making this probable cause showing, and then go to court for individual surveillances on foreign targets abroad? We simply cannot do that as an intelligence community. Certainly that was part of the huge problem last summer, where we were caught where the law had not been updated.

Second, should we have to make that probable cause showing? If you're going to make that -- if you're going to import the probable cause showing that applies here in the United States, and require us to have that same level of information that we

b2/b6

use to wiretap somebody here in the United States, or do a physical search of a U.S. citizen, that is not a minor thing to do. So if you're going to apply that to our foreign targets abroad, that's a huge shift in what we do as a community, and you're changing the level of intelligence information that I need to initiate surveillance on somebody abroad. You're essentially applying something derived from the Fourth Amendment to our foreign mission.

I think DOJ did about 2,000-something FISAs in 2006 --

SENIOR ADMINISTRATION OFFICIAL: Twenty-three hundred or so, something like that.

SENIOR ADMINISTRATION OFFICIAL: I don't think I -- I'm not giving out any information to suggest that maybe there's more than 2,300 targets globally that the United States may be interested in.

SENIOR ADMINISTRATION OFFICIAL: Let me just add to that, keep in mind, we can individualize orders with each target surveillance with the FISA court. The Protect America Act allows us to do some broader surveillances, and that's hugely important operationally. Also, keep in mind, we talk about this Fourth Amendment standard -- what that means is that we have to establish, to the satisfaction of a federal judge, the person we want to target is a foreign power or an agent of a foreign power.

Now, there are a lot of circumstances where we're going to want to target somebody overseas for a legitimate foreign intelligence purpose -- and under the Protect America Act, that's all we need -- we need to show there's a legitimate foreign intelligence purpose -- but we might not have that probable cause here. There are a lot of surveillances like that. And so we have to resort to the FISA court for any category of surveillances. We would take all those surveillances for which we can't meet that probable cause standard, and we just wouldn't be able to do them.

SENIOR ADMINISTRATION OFFICIAL: Yes. I mean, two points that are perfect examples -- and we were severely criticized in the congressional joint inquiry. One of those criticisms was, of course, over the Moussaoui case, and you can read all about the details in the back-and-forth of what was required to meet that standard -- how do we show he's an agent of a foreign power; what kind of information; can we produce that information? All of that back- and-forth.

If you're saying that that standard needs to be applied to our foreign targets overseas, you're going to see that type of Moussaoui back-and-forth in -- I mean, it's just not something that's feasible for us to be able to do our mission as it was structured in 1978.

Let me hit one other point, which is, while under FISA you have the emergency authorization process -- the Attorney General can initiate an emergency authorization, and then you have 72 hours where you have to go to the FISA court. So why can't you act quickly under the emergency authorization part of FISA? There is no free pass under FISA. An analyst in my community cannot just initiate surveillance of somebody. The way it works is, that analyst goes to their supervisor, goes to their supervisor, goes to their supervisor -- that goes over to

b2/b6
the Department of Justice; they vet it; it is personally signed -- approved by the Attorney General, Deputy Attorney General or [my colleague]. If we get it wrong, there are certain penalties that kick in under FISA, if we thought we had probably cause, but it turns out somebody got the facts wrong. Depending on what happens, we may have certain penalties that we incur.

So the showing is the same. I can tell you from experience that the Attorney General, the Deputy Attorney General and the Assistant Attorney General for National Security do not just accept an incoming phone call from somebody who -- an analyst who gives them a little bit of information; they say, sure, go ahead, and we'll take 72 hours and kind of figure out what the real facts are. The statute is very clear. We have to make that showing before the Attorney General will give us the approval.

Q So, I mean, the Protect America Act could sort of obviate -- make FISA obsolete, because it will always be easier to do --

SENIOR ADMINISTRATION OFFICIAL: No, FISA is -- again, here in the United States, domestically, the Protect America Act, the Senate bill: court order, go through FISA if you're acting -- if you're targeting here in the United States, domestically. And broader, targeting a U.S. person anywhere in the world we now have to go to the FISA court. So, no, I still expect that we'll have large numbers of FISAs for our domestic mission.

Q Can you clarify, though, while with the law being expired, are you operating wholly under the Protect America Act, even though it has expired? Or do you revert back to rules from the preceding law? In this in-between period right now, what rule are you operating under?

SENIOR ADMINISTRATION OFFICIAL: Well, we have some of the Protect America Act, that portion that continues that we've described. So we hope that the act -- the authorities that have been issued and these directives, that people will continue to act under them. So we're acting under those.

To the extent there are new things, we're going to have to mitigate the problem and figure out ways to mitigate it. FISA is not a complete substitute. In many cases, it may not be much of a substitute at all. It's a problem right now. We're trying to figure out if I have other problems, how I would mitigate them.

Q And given the amount of thought that you described earlier has gone into this legislative debate, why is this issue of retroactive immunity coming to a head now? Why wasn't it contemplated and included in an earlier version?

SENIOR ADMINISTRATION OFFICIAL: Well, it's been a subject of debate since 2006.

SENIOR ADMINISTRATION OFFICIAL: Let me -- okay, in the summer the Director of National Intelligence, he had his three principles I outlined; you can see the statements on our website, they're all out there. And those were his three principles: court order for targeting an American; no court order for doing our foreign intelligence to target overseas targets; and three, protection, both prospective and retroactive, and an ability to compel the help that we need.

b2/b6

It was determined in the situation that we were in, in the end of July, and the gravity of the situation, that the Congress was not going to be able to address this issue of retroactive liability protection. The DNI discussed this in a statement of, I believe, August 2nd or August 3rd, where he certainly had the strong belief that this was going to be addressed in September of 2007, and that was his understanding. So this has been discussed all the way going back to 2006. And the Senate has addressed in a very strong fashion.

Q On lost intelligence, could you just be a little bit more specific, because when people hear that as evidence that America is less safe, they want to know -- are we talking emails? What was lost? Is it that you lost intelligence, or you lost the ability to listen or monitor, and so some intelligence may have been lost? Can you -- is there any way -- because that goes to the heart of the question: Is America less safe? What intelligence -- when you say intelligence was lost last week, what are we talking about here?

SENIOR ADMINISTRATION OFFICIAL: Well, first, we had surveillances that we wanted to do, that we had valid reasons for doing the surveillances, that we were not able to do because the providers were not cooperating and because of the concern that they expressed --

Q A handful? A dozen? Ten? Any way at all to quantify for people, so they can have something? Because to hear that, obviously there's no, sort of, perspective here in terms of what this intelligence -- lost intelligence is.

SENIOR ADMINISTRATION OFFICIAL: Sure. It's very difficult for me to quantify. I mean, I have a number of indications -- I'm actually trying to get some of that additional information right now. I can't give you -- I mean, those numbers are all going to be highly sensitive, but I'll say this: All weekend, when the act expired, prior to the law being expired the intelligence agencies were very concerned. When they felt there was an impairment they got very concerned. And on a daily basis we were working this issue, I was contacting -- working with the Department of Justice -- they were working extraordinarily hard, as were the intelligence agencies. And the problem got worse over the week, as we identified new things that we needed to be doing. And certainly the intelligence agencies felt it was significant. They also felt that Congress needed to be notified.

So I'm not going to get into quantifying things, but if it was one piece of kind of unclear activity, I don't think I would have seen the same concern from the intelligence agencies. I'm going to rely on their judgment, but they certainly felt it was a significant impairment and they certainly advised me that the Congress needed to be notified. And I don't think they would have done that if they didn't feel it was a significant impairment.

Q -- the letter that was put out today by Richard Clarke and Rand Beers and other intelligence officials sent to Director McConnell saying that he had distorted the debate through what they thought were misstatements about this supposed enhanced threat. The Democrats, of course, have had a field day, saying that the administration is crying wolf. And McConnell, himself, over the past two months has had to retract some statements about the Germany threat and others. Do you worry that when you make these statements, that the administration's credibility --

b2/b6
saying that we've lost intelligence, that we are in a more vulnerable position -- that some people just may not believe you?

SENIOR ADMINISTRATION OFFICIAL: Well, I'll let Dana and Tony speak to administration issues. I will speak for the -- from the Director's perspective and the intelligence perspective. I've not heard anyone question the NIE of the summer that talks about the homeland threat, the public version of that that we talked about -- I think it was the July NIE key judgments are public. So maybe people want to debate that NIE, but it is -- as far as I know, it's been fairly widely accepted. I did not hear members of Congress questioning what the NIE said. I have not heard members questioning what the DNI has outlined, in terms of the situation with the leadership, in terms of reconstitution, in terms of space to train and operate.

He's talked about the fourth piece that they're missing, in terms of operative cells, as far as we're aware here domestically. As recently as his last open threat testimony, though, and in some of the discussions that he's had, he's talked very clearly about what they want to do, in terms of moving operatives out of where they are into Europe, without visas, and how you would look at infiltrating the United States, or carrying out an attack elsewhere. So he's been very clear on that. And we track these people through a number of these tools, as he's discussed. So I'm not sure where the credibility gap is. The Germany --

Q Well, that's why I asked --

SENIOR ADMINISTRATION OFFICIAL: Well, you made the statement about --

Q My question was probably unclear then. The letter today from Clarke, Beers, Suzanne Spaulding, was talking about questioning his statements about enhanced threat over FISA -- over the loss of intelligence, and saying that he has distorted that issue. I wasn't sure whether I was clear on my question.

SENIOR ADMINISTRATION OFFICIAL: Okay, well, I mean, I stand by his statements. He's concerned that we had a dynamic tool under the Protect America Act. We've talked about some of the examples of the information that we've gathered over the past six months. We think it's been very valuable information under the Protect America Act.

We do not have all of the tools that the Protect America Act provides available to us right now. We had the issue of last week. We have, even on the things that we thought were most clear, we have people telling us, for now we will continue with those things. We don't have some of the new tools that we provide.

So from the Director's perspective, who is charged with providing warning of threats to the nation, he's concerned; he doesn't have these dynamic tools that he thinks he has. If people want to question that, that's certainly their right to do it, but I think it's well backed up by the evidence.

SENIOR ADMINISTRATION OFFICIAL: If I could just -- one last thing on this. Please go look at the joint Attorney General-DNI letter from last Friday. It's very thorough, and it's a very reasoned letter that's sort of making the point in measured terms what it is we're missing, and what the problem is that we're facing

b2/b6
now that the act has expired. And people have suggested that maybe this was something that was playing to politics, but you've got to look at the context here.

This was, A, it was a letter that was in response to inquiries from the Hill. We got a letter -- the President received a letter from Chairman Reyes about this very issue, so he asked the AGG and the DNI to respond, so they did respond with this well-thought-out letter. The letter itself acknowledges that most of the providers were cooperating with our requests, but that not all were.

I can't remember the exact language, but they say that we're hopeful that we will continue with our further efforts, we'll be able to mitigate these concerns, so we make it clear that we're working on it. And then later on that evening, once we do get to full compliance, the DOJ and ODNI immediately notify the intelligence committees up on the Hill that we've got full compliance now on that one area. And then the next day we put out a statement. So I think that whole exercise shows --

Q How did you get to full compliance, by telling them they were home-free?

SENIOR ADMINISTRATION OFFICIAL: It was a back-and-forth engagement with the general counsels' offices, so that they got to the point where, as the announcement says, they were willing to comply with our requests, but there's no guarantee they'd continue to do so.

Q We'll cover your ass. (Laughter.)

SENIOR ADMINISTRATION OFFICIAL: Help us protect our security.

END

3:35 P.M. EST

ba/bb

[Redacted]

From: [Redacted]
To: "A (Intelligence) Johnson" [Redacted]@ssci.senate.gov>,
cc: "Dubee, M (Intelligence)" <[Redacted]@ssci.senate.gov>, "Mike Davidson" <[Redacted]@ssci.senate.gov>

Date: Wednesday, May 07, 2008 10:43AM
Subject: Re: JDR phone call to the DNI

Thanks. Will do.

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

From: "Johnson, A (Intelligence)" [Redacted]@ssci.senate.gov]
Sent: 05/07/2008 10:28 AM AST
To: [Redacted]
Cc: "Dubee, M (Intelligence)" <[Redacted]@ssci.senate.gov>; "Davidson, M (Intelligence)" <[Redacted]@ssci.senate.gov>
Subject: JDR phone call to the DNI

Ben and Kathleen: Senator Rockefeller's scheduler will be contacting the Director's office soon to set up a phone call between the two of them this afternoon to discuss the Rockefeller FISA compromise proposal. I just wanted to give the two of you a heads-up so you can facilitate and support the call. Thanks, Andy

b2/b6
From: [REDACTED]

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

cc: "John Demers" <John.Demers@usdoj.gov>, [REDACTED]

Date: Thursday, May 08, 2008 10:59AM

Subject: Re: Proposal

Thanks. Would appreciate it.

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

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

Sent: 05/08/2008 10:37 AM AST

To: [REDACTED]

Cc: "John Demers" <John.Demers@usdoj.gov>; [REDACTED]

Subject: RE: Proposal

Ben:

We've asked Leg. Counsel to send us an MS Word, which we'll then send on to you.

Mike

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

From: [REDACTED]

Sent: Thursday, May 08, 2008 9:56 AM

To: Davidson, M (Intelligence)

Cc: John Demers; [REDACTED]

Subject: Proposal

Mike --i think I know the answer....but can we get a ms word/non-pdf version of proposal? I understand that getting access to such a leg counsel file may be harder than pdb access, but could make life much easier.

b2/b6

[Redacted]

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

Date: Thursday, May 08, 2008 11:18AM
Subject: Re:

yes. Will do. Things stacked right now, but will try this afternoon. Admire your ability to put fisa aside.

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

From: "Davidson, M (Intelligence)" [Redacted]@ssci.senate.gov]
Sent: 05/08/2008 10:55 AM AST
To: [Redacted]
Subject: RE:

Sorry not to have reached you last evening after getting your note, but, if confession is good for the soul, after a late dinner and a beer (mostly the beer), FISA was the furthest thing from my mind.

Let's connect today.

From: [Redacted]
Sent: Wednesday, May 07, 2008 8:32 PM
To: Davidson, M (Intelligence)
Subject:

free to talk this evening. at office [Redacted]

b2/b6

[Redacted]

From: [Redacted]
To: "DeRosa, Mary (Judiciary-Dem)" [Redacted]@Judiciary-dem.senate.gov>
cc: [Redacted]
bcc: [Redacted]

Date: Thursday, November 01, 2007 09:42PM
Subject: Re: question about briefing

Mary--Yes, we can help. what is your office phone for people to contact you at to discuss arrangements?

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

From: "DeRosa, Mary (Judiciary-Dem)" [Redacted]@Judiciary-dem.senate.gov]
Sent: 11/01/2007 07:27 PM AST
To: Benjamin Powell" <[Redacted]>
Subject: question about briefing

Ben and Kathleen,

Senator Durbin and others are very interested in a classified meeting with representatives from telecommunications companies to follow up on some questions from the briefing we had earlier this week. I understand from Mike Davidson that one meeting with representatives from different companies is not possible, so we'd have to do back-to-back meetings. Is this something you guys can help me with? If not, do you have any suggestions for me? I know a person from one of the companies that I can call directly, but I don't know others, and I'm not sure whether you (or someone in the government) would need to be involved.

Senator Durbin has next Tuesday at 2:30 set aside for this. If we can get it set up, we will invite the other Senators and cleared staff as well. I know that Senator Leahy won't be able to make it because he has a hearing then (and a mark-up on the AG in the morning). I'm helping Senator Durbin with this because he does not have a staff member cleared into this program.

Thanks, in advance, for any help you can give me.

Mary

b2/b6

[REDACTED]

From: [REDACTED]
To: "DeRosa, Mary (Judiciary-Dem)" <[REDACTED]@Judiciary-dem.senate.gov>
cc: [REDACTED]

Date: Friday, November 02, 2007 01:08AM
Subject: Re: question about briefing

[REDACTED]--lets discuss in morn nezxt step.

----- Original Message -----
From: "DeRosa, Mary (Judiciary-Dem)" <[REDACTED]@Judiciary-dem.senate.gov>
Sent: 11/01/2007 10:24 PM AST
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: question about briefing

That's great. My office number is [REDACTED]

From: [REDACTED]
Sent: Thu 11/1/2007 9:42 PM
To: DeRosa, Mary (Judiciary-Dem); [REDACTED]
Cc: [REDACTED]
Subject: Re: question about briefing

Mary--Yes, we can help. what is your office phone for people to contact you at to discuss arrangements?

----- Original Message -----
From: "DeRosa, Mary (Judiciary-Dem)" <[REDACTED]@Judiciary-dem.senate.gov>
Sent: 11/01/2007 07:27 PM AST
To: Benjamin Powell" <[REDACTED]>
Subject: question about briefing

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b2/b6

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Thanks, in advance, for any help you can give me.

Mary

Attachments:

mime

b2/b6

[Redacted]

From: [Redacted]
To: "L \ (Intelligence) Tucker" <[Redacted]@SSCI.Senate.Gov>
cc: [Redacted]

Date: Sunday, January 28, 2007 11:14AM
Subject: Jan 10 fisa orders

Louis--wanted to talk about access to orders with you. Let me know when convenient for you. I am free now until 1230. Then I should be free after 4pm.

Home # [Redacted]

b2/b6

[Redacted]

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

Date: Friday, May 16, 2008 01:21PM
Subject: RE: Technical edits

pls hold on email until we talk. calling now.

To: "Jeremy Bash" <[Redacted]@mail.house.gov>
From: [Redacted]
Date: 05/16/2008 01:15PM
cc: "Greenwald, Eric" <[Redacted]@mail.house.gov>, [Redacted]
Subject: RE: Technical edits

fine, but please note that this is literally technical edits as with the last meeting, and this is an intricate bill so need to be very careful with changes. Note I edited the last sentence of my email below to make it more inclusive.

-----"Bash, Jeremy" <[Redacted]@mail.house.gov> wrote: -----

To: <[Redacted]>
From: "Bash, Jeremy" <[Redacted]@mail.house.gov>
Date: 05/16/2008 01:03PM
cc: "Greenwald, Eric" <[Redacted]@mail.house.gov>
Subject: RE: Technical edits

Thank you.

They may work through me. Eric Greenwald on my staff will have the lead.

I think it makes sense for me to forward your note to the Staff Directors of the various committees inviting them to send folks to this. OK?

Jeremy Bash, HPSCI
[Redacted]

6/30/2008 4:27 PM

b2/b4

[Redacted]

From: [Redacted]
Sent: Friday, May 16, 2008 1:00 PM
To: Bash, Jeremy
Cc: [Redacted], Brett Gerry; [Redacted]; Christopher Frech; [Redacted]; Bill Burck; Harold Kim;
Subject: Technical edits

Jeremy -- [Redacted] in my office will work with [Redacted] at DOJ to continue the work on technical edits to the overall text. Should they coordinate with you or someone else in terms of getting together to review the edits?

As with the last meeting wth House/Senate leg counsel, they will not get into the substance of the various counter proposals; but instead work on various issues with proper cross references in the text, conforming amendments, etc. (I am a bit concerned that at least one substantive change may have been put into text unintentionally as a result of tech edits. As you know, some of these words are precise terms of art to us so they need to be careful in changing words based on leg counsel overall preferences in terms of what is done in other statutes).

Of course, we would also want to make sure that relevant staff of minority members are invited to any meeting.

6/30/2008 4:27 PM

b2/b6

From: [redacted], "benjamin
To: "Gerry, Brett (OLP)" <Brett.Gerry@usdoj.gov>, [redacted], "Roland, Sarah E" <Sarah.E.Roland@usdoj.gov>, "powell" [redacted]
cc: [redacted], "cwoff" <cwoff@who.eop.gov>, [redacted], "Bradbury, Steve" <Steve.Bradbury@usdoj.gov>

Date: Sunday, July 29, 2007 03:10PM
Subject: Re: Classified Briefing for Sen. Specter

Kathleen

Yes, will adjust his sked to accommodate

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

From: "Gerry, Brett (OLP)" [Brett.Gerry@usdoj.gov]
Sent: 07/29/2007 03:08 PM
To: [redacted]; "Roland, Sarah E" <Sarah.E.Roland@usdoj.gov>;
Cc: [redacted]; "cwoff@who.eop.gov"; [redacted]; "Bradbury, Steve" <Steve.Bradbury@usdoj.gov>
Subject: Re: Classified Briefing for Sen. Specter

Thanks. Copying Steve Bradbury. I will plan on attending. Nick has sci, and indeed has already been briefed on the fisc orders. To the extent you are talking about historical briefings into tsp and other activities, that call on read-ins is not doj's to make.

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

From: [redacted] Roland, Sarah E; Gerry,
To: [redacted]; Jonathan Miller
Brett (OLP); [redacted]
Cc: [redacted]; cwoff@who.eop.gov <cwoff@who.eop.gov>;
Sent: Sun Jul 29 15:00:40 2007
Subject: Fw: Classified Briefing for Sen. Specter

Ben, Brett and Sarah: Per the below, Sen Specter is available for the bfnng at 3 or 3:15. I think there is an advantage to doing the bfnng in SSCI spaces with Louis and Jack there, vice in S-407, but I don't have real strong views abt that. I think including Nick Rossi in the bfnng would also be helpful. I don't know if Nick has SCI. If he does then I would suggest he attend and be briefed into the program What say you all?

[redacted] Can we make the DNI available from 3-4:30 to brief Sen Specter tomorrow (.Mon) on the Hill?

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

[redacted]

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

From: "Rossi, Nick \ (Judiciary-Rep\)" <[redacted]@judiciary-rep.senate.gov>
Sent: 07/29/2007 02:39 PM AST

To: [redacted]; <Sarah.E.Roland@usdoj.gov>
Cc: [redacted]; <Brett.Gerry@usdoj.gov>; <Matthew.Olsen@usdoj.gov>; Livingston, J
\ (Intelligence\)" <[redacted]@ssci.senate.gov>; Rice, K \ (Intelligence\)" <[redacted]@ssci.senate.gov>;
<[redacted]@ssci.senate.gov>; Wolfe, J \ (Intelligence\)" <[redacted]@specter.senate.gov>; O'Neill,
Plakoudas, Maria \ (Specter\)" <[redacted]@judiciary-rep.senate.gov>; Hoeflich,
Michael \ (Judiciary-Rep\)" <[redacted]@specter.senate.gov>; Miner, Matt \ (Judiciary-
Scott \ (Specter\)" <[redacted]@specter.senate.gov>;
Rep\)" <[redacted]@judiciary-rep.senate.gov>
Subject: Classified Briefing for Sen. Specter

Kathleen and Sarah,

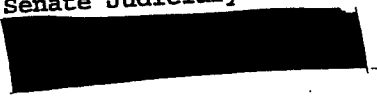
As you probably know, Sen. Specter spoke with DNI McConnell yesterday regarding the proposed, short-term FISA fix. It is my understanding that they agreed to hold a classified, follow-up briefing tomorrow (Monday). Sen. Specter has asked me to schedule the briefing as soon as he returns to DC.

Sen. Specter is scheduled to arrive at Union Station at 2:49 PM tomorrow. So, if we could schedule the briefing for 3:00 or 3:15 PM, that would be ideal. I would appreciate your input on whether it is preferable to hold the briefing in the SSCI office suite, since there may be relevant documents lodged there. Also, I do not know whether I will be permitted to attend the briefing (or part of it), so I would also appreciate your input on whether I should seek to have SSCI staff accompany my boss.

I'll look forward to working out the details tonight or first thing tomorrow.

Thanks,
Nick

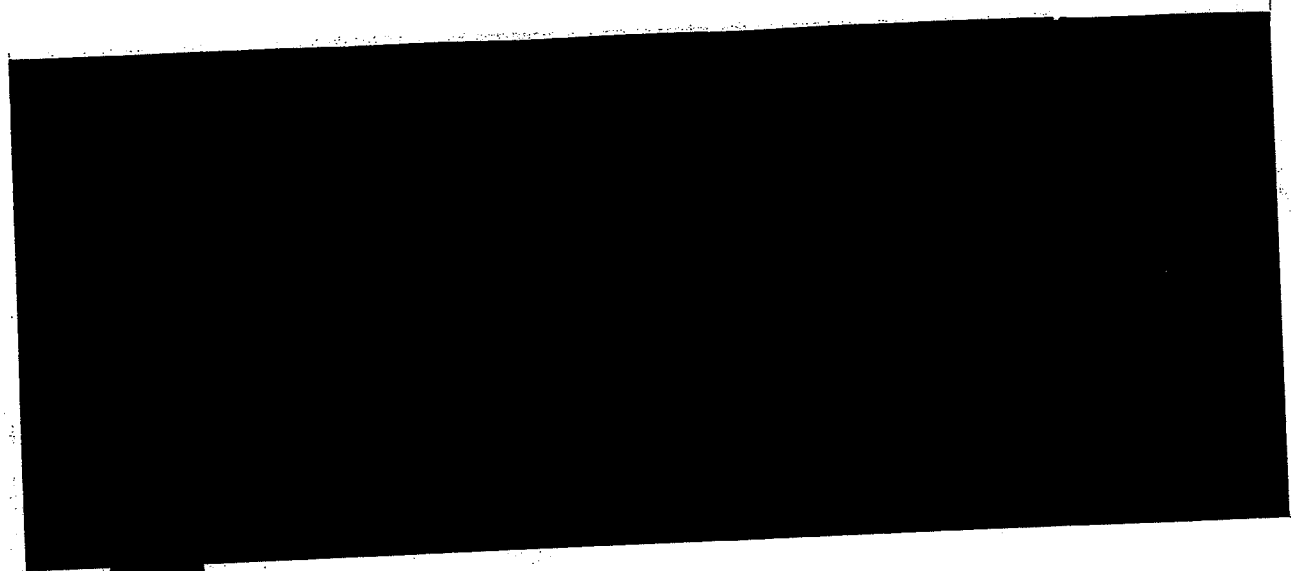
Nick Rossi
Deputy Chief Counsel
Republican Staff
Senate Judiciary Committee



Sent from my BlackBerry Wireless Handheld



b2/b6
Fw: FISA



From: [redacted]
Sent: Saturday, January 26, 2008 11:52 AM
To: "Marcel Lettre"; "Benjamin Powell"
Subject: Re: FISA

Marcel: This is a White House issue; there is great interest in getting this permanent legislation done quickly to reduce risk and uncertainty and to address our partner's concerns.

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

----- Original Message -----
From: "Lettre, Marcel (Reid)" [redacted]@reid.senate.gov]
Sent: 01/26/2008 11:34 AM EST
To: [redacted] >
Subject: Fw: FISA

Can you help us understand what is going on here?

Thanks.

Sent from my BlackBerry

----- Original Message -----
From: Myrick, Gary (Reid)
To: Weich, Ron (Reid); Hoy, Serena (Reid); Lettre, Marcel (Reid)
Sent: Sat Jan 26 11:03:07 2008
Subject: Fw: FISA

Fyi

b2/b6

Fw: FISA

Sent from my BlackBerry Wireless Handheld

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

From: Emling, John G. <John_G._Emling@who.eop.gov>

To: Myrick, Gary (Reid)

Sent: Sat Jan 26 11:01:21 2008

Subject: FISA

Gary -

I wanted to give you a heads-up that we plan to put out notice this weekend of a specific veto threat on a 30-day extension of FISA. Pls give me a call if you'd like to discuss further. Thanks.

John



Out of Scope

bd/bb

To: [REDACTED]@mcconnell.senate.gov
 From: [REDACTED]
 Date: 02/29/2008 09:28AM
 cc: John_G._Emling@who.eop.gov, Harold_H._Kim@who.eop.gov,
 [REDACTED]@mcconnell.senate.gov
 Subject: Re: FISA/House

Understand. No Dems have approached us abt any mtg thus far.

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

[REDACTED]

-----"Hawkins, Tom (McConnell)" <[REDACTED]@mcconnell.senate.gov> wrote:

To: "Emling, John G." <John_G._Emling@who.eop.gov>, "Kim, Harold H."
 <Harold_H._Kim@who.eop.gov>, [REDACTED]
 From: "Hawkins, Tom (McConnell)" <[REDACTED]@mcconnell.senate.gov>
 Date: 02/29/2008 09:22AM
 cc: "Abegg, John (McConnell)" <[REDACTED]@mcconnell.senate.gov>
 Subject: FISA/House

After last night's extended discussion regarding House action of FISA, it seems the best course of

6/13/2008 8:12 AM

b2/b4

action is to encourage outright defeat of whatever is put on the House floor (other than the Senate passed bill), which argues further to forgo any effort to improve the product in a piecemeal way.

Out of Scope



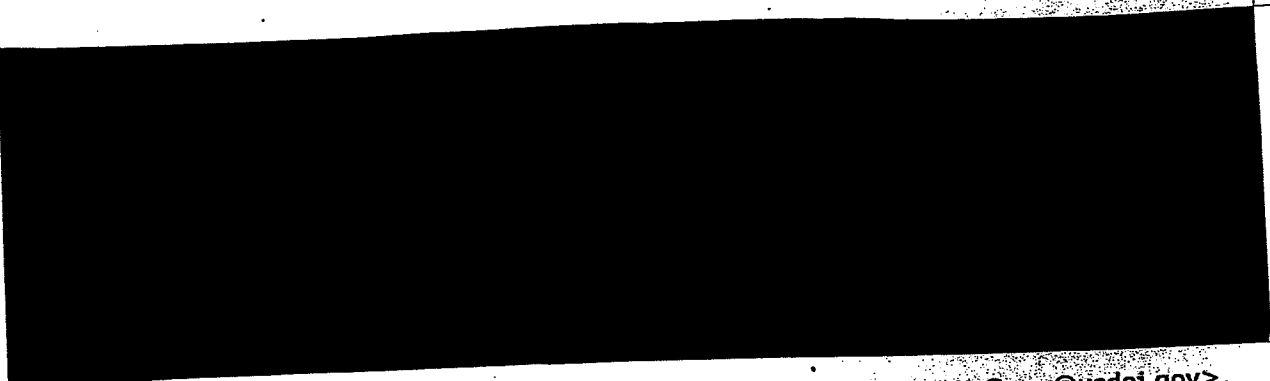
b2/b4

To: "Mike Davidson" <[redacted]@ssci.senate.gov>, "Jack Livingston"
 <[redacted]@ssci.senate.gov>, "Christine Healey" <[redacted]@ssci.senate.gov>, "K Rice"
 <[redacted]@ssci.senate.gov>, "Alissa Starzak" <[redacted]@ssci.senate.gov>, "John Demers"
 <John.Demers@usdoj.gov>, [redacted]
 From: [redacted]
 Date: 02/02/2008 01:30PM
 cc: "Ken Wainstein" <kenneth.wainstein@usdoj.gov>, [redacted]
 Subject: Wmd amendment

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

Out of Scope

02/66



To: "Mike Davidson" <[REDACTED]@ssci.senate.gov>, "Brett Gerry" <Brett.Gerry@usdoj.gov>, "John Eisenberg" <John.Eisenberg@usdoj.gov>, "Vito Potenza (work)" <[REDACTED]>, "Carl Nichols" <Carl.Nichols@usdoj.gov>, [REDACTED], "Matthew (NSD) Olsen" <Matthew.Olsen@usdoj.gov>, "John Demers" <John.Demers@usdoj.gov>
 From: [REDACTED]
 Date: 11/13/2007 10:29PM
 cc: "Jack Livingston" <[REDACTED]@ssci.senate.gov>, "Christine Healey" <[REDACTED]@ssci.senate.gov>, "K Rice" <[REDACTED]@ssci.senate.gov>, "Starzak, Alissa (Intelligence)" <[REDACTED]@ssci.senate.gov>, [REDACTED], [REDACTED]
 Subject: Re: FISA

Thanks Mike. We will check on schedules and see what works.
 Happy to proceed however committee sees fit, and would welcome Mary/Nick.

Very unclear to me what will come out of SJC and our initial read of some of the proposals is that they may miss the mark by a wide margin.

I think we have identified some discrete issues with s2248, but have worked hard to get many of the more significant items correct as a matter of policy and precise drafting. I hope we don't end up reopening s2248 in a frenetic drafting exercise as that may not turn out well for anyone.

----- Original Message -----
 From: "Davidson, M (Intelligence)" [REDACTED]@ssci.senate.gov]
 Sent: 11/13/2007 06:37 PM EST
 To: [REDACTED]; Gerry, Brett (OLP)" <[REDACTED]@usdoj.gov>;
 <John.Eisenberg@usdoj.gov>; Potenza, Vito" <[REDACTED]>;
 <Carl.Nichols@usdoj.gov>; [REDACTED];
 <Matthew.Olsen@usdoj.gov>; <John.Demers@usdoj.gov>
 Cc: Livingston, J (Intelligence)" <[REDACTED]@ssci.senate.gov>; Healey, C
 (Intelligence)" <[REDACTED]@ssci.senate.gov>; Rice, K (Intelligence)"
 <[REDACTED]@ssci.senate.gov>; Starzak, Alissa (Intelligence)"
 <[REDACTED]@ssci.senate.gov>
 Subject: FISA

It's been such a long time that I've written to everyone that I'm not sure if I've forgotten someone.

The week after Thanksgiving, during which the Senate will be in recess (as will the House), would be a good time to gather again and take stock of where we are in advance of what should be a fast paced several weeks of session in December which will, we hope, include floor consideration of S. 2248.

There are undoubtedly ideas that DNI/DOJ/NSA might have in relation to amendments during our markup, there will be amendments or potential amendments coming out of the Judiciary Committee's consideration of the bill, and there may be suggestions from elsewhere (such as those David Kris has written about).

A question here is whether the Chairman and Vice Chairman will be proposing a managers amendment that addresses some of those matters.

Will you be in town and available? For starters in thinking of a day and time, how would Tuesday, November 27, either morning or afternoon work for everyone? I expect that we'll find that after an initial discussion we'll need to reconvene later in the week.

I'd like to involve Mary DeRosa (Leahy) and Nick Rossi (Specter) in these discussions. The Leadership will be expecting, I'm sure, that there will be an effort by the two committees to either bridge differences or at least identify and refine the choices that may be put before the Senate for votes.

At some point, it would be helpful for us to ask David Kris to come by to discuss his suggestions. That could be for a part of the Tuesday, November 27, discussion, or another time.

Please let us know whether that Tuesday, or another day that week, would work for you, and any ideas you might have about how we might proceed.

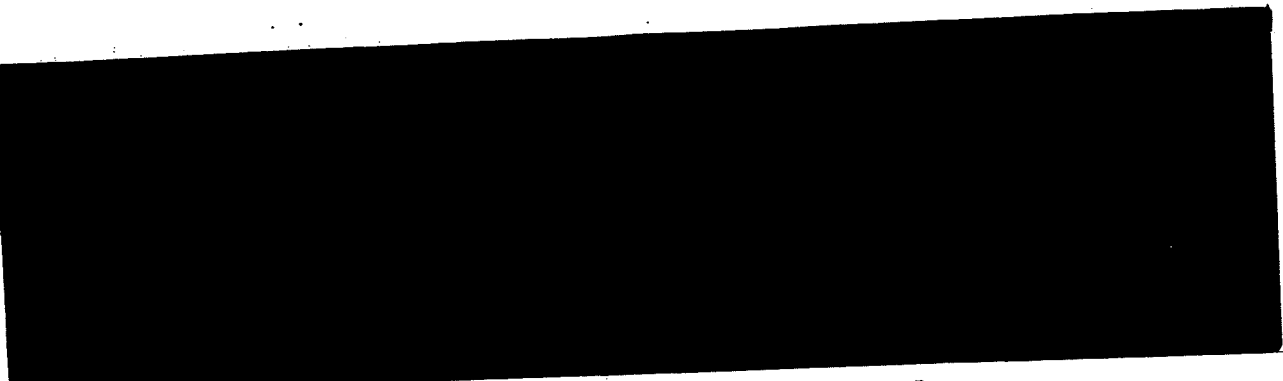
And a most happy Thanksgiving.

Mike

10/17/2008

Out of scope

b2/bc



To: "Christine Healey" <[redacted]@ssci.senate.gov>, "Mike Davidson" <[redacted]@ssci.senate.gov>, "Jack Livingston" <[redacted]@ssci.senate.gov>, "K Rice" <[redacted]@ssci.senate.gov>
 From: [redacted]
 Date: 09/28/2007 10:22PM
 cc: "Brett Gerry" <Brett.Gerry@usdoj.gov>
 Subject: Fisa discussions

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

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

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

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

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

Ben and Brett -

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

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

Thanks,

10/17/2008

Chris

b2/bc

Christine Healey

Senate Select Committee on Intelligence

[REDACTED]

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

10/17/2008