

FEDERAL BUREAU OF INVESTIGATION
FOIPA
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Serial Description ~ COVER SHEET

Total Deleted Page(s) ~ 41

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Date:	4/14/2008	Location:	Capital Hill	Committee	SAC
Time:	3:30 pm	Room:	Defense SCIF 116	Sub-Comm	CJS
SUBJECT/TOPIC		Unclassified Going Dark Brief			
Attendees:		Office		Title	
1	Richard Haley	FBIHQ – Finance Division		Assistant Director	
2	Kerry Hayens - MB	FBIHQ – Science and Tech Branch		Executive Assistant Director	
3		FBIHQ – Finance Division		Approp Liaison Officer	
4		FBIHQ- OCA		Congressional Affairs Spec	
5		Senator Mikulski's Office		Professional Staffer – CJS	
6		Senator Mikulski's Office		Committee Clerk – CJS	

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Handouts – An unclassified power point handout entitled “Going Dark” was provided for the brief.

OVERVIEW

- The main message presented by EAD Haynes is that the ability of the FBI to collect intelligence and conduct investigations through the use of technology is shrinking ever day. [Redacted]
- a. Advances of technology include: [Redacted]
- The FBI considers that it is currently, in what it refers to as, the possibly of collection/intercept based on the technology of today. [Redacted]
- The presentation further detailed specific technological advances and speculation on where the technology industry is headed and what must be done for the FBI to continue to play a proactive role to combat criminal and terrorism investigations.

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QUESTIONS/CONCERNS FROM [Redacted] AND [Redacted]

- [Redacted] asked what the FBI's 5 year plan was and referenced the DNI 5 year plan which he has not had access to.
- [Redacted] asked how big of a priority this was to the FBI and to law enforcement nationwide.
- [Redacted] asked if this would be done by contract workers or FBI staff.
- [Redacted] asked if we were collecting less intelligence information via FISA, etc due to emerging technologies.
- [Redacted] asked if the FBI was optimistic that it would be able to capture this data in the future with the right resources.
- Is the exploitation of ELSUR currently being addressed by the cyber security initiative



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How does the FBI propose to solve this problem?

Response:

- The FBI has developed a national Electronic Surveillance Strategy to preserve vitally important law enforcement and IC electronic surveillance capabilities. The Strategy is composed of five unique, yet complimentary, components:

- 
- 
- Enhancing law enforcement and IC electronic surveillance coordination;
- Enhancing electronic surveillance cooperation between industry, law enforcement and IC agencies; and
- Increasing law enforcement and IC electronic surveillance technical and financial resources.

Why should the FBI's strategy be pursued on behalf of law enforcement and the IC?

Response:

- The FBI is well suited to gain consensus regarding all aspects of advanced methods of electronic surveillance and to ensure comprehensive understanding of the technical and/or operational challenges faced by law enforcement and IC agencies and help devise and implement solutions. The FBI has an established, robust liaison with all aspects of the communications industry and has routinely been required to work with the industry to develop intercept capabilities for the law enforcement community that are leveraged for intelligence cases as well as capabilities utilized solely by the IC. As a result, the communications industry is comfortable working with the FBI under domestic authority to develop tools that are narrowly tailored to comply with these authorities. In addition, although typically ad hoc and tactical in nature, the FBI has long assisted other Federal, state, and local law enforcement effect criminal and Cyber-based electronic surveillance. And, as a key IC member, the FBI provides vital daily support to IC agencies by effecting national security intelligence, counter-intelligence, and counterterrorism intercepts.

Information provided/approved by: AD Marcus Thomas
Date: 01/14/2009



GOING DARK

What is "Going Dark"?

Response:

- "Going Dark" refers to law enforcement's limited capability to comprehensively and lawfully collect data and information, conduct electronic surveillance and analyze the raw data due to the rapid evolution of telecommunications and data collection technology and services.

-

-

Didn't Congress already solve this problem when it passed the Communications Assistance for Law Enforcement Act (CALEA) in 1994?

Response:

- No, CALEA applied to telecommunications carriers and to services that replace a substantial portion of the local exchange service.
- CALEA excludes a wide range of other services which travel over wire and electronic communications transmission networks and are interwoven in network traffic.

What are some of the specific problems the FBI and the rest of the law enforcement are facing?

Response:

-

How does the FBI propose to solve this problem?

Response:

- To meet this challenge, key law enforcement and industry representatives have collaborated with the FBI to form a comprehensive, five-pronged National Lawful Intercept Strategy. Key points include:
 - modernizing lawful intercept laws;
 - updating lawful intercept authorities;
 - increasing law enforcement coordination;
 - establishing broader industry liaison, and
 - seeking increased funding for these efforts.

Information provided/approved by: AD Marcus Thomas, OTD
Date: 5/29/2009

[REDACTED] (RMD) (FBI)

From: BEERS, ELIZABETH RAE (OCA) (FBI)
Sent: Monday, January 28, 2008 2:48 PM
To: [REDACTED] (DO) (FBI); [REDACTED] (OCA) (FBI)
Cc: [REDACTED] (HO) (FBI)
Subject: FW: IMMEDIATE: Q&A for Director's briefing book - "Going Dark"

Attachments: Going Dark QAs.doc

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NON-RECORD

for the briefing book.

Beth Beers
Office of Congressional Affairs

[REDACTED]

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From: THOMAS, MARCUS C. (OTD) (FBI)
Sent: Monday, January 28, 2008 2:30 PM
To: HAYNES, KERRY E. (DO) (FBI); BEERS, ELIZABETH RAE (OCA) (FBI)
Cc: COOK, PATRICK B. (OTD) (FBI); DICLEMENTE, ANTHONY P. (OTD) (FBI); SMITH, CHARLES BARRY (OTD) (FBI)
Subject: RE: IMMEDIATE: Q&A for Director's briefing book - "Going Dark"

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Kerry, Beth,

See attached proposed Q&A for the "Going Dark" question. We can, of course, provide much more detail when/if needed, however, I wanted to keep it short and simple.

Marcus



Going Dark
QAs.doc (51 KB)

From: HAYNES, KERRY E. (DO) (FBI)
Sent: Monday, January 28, 2008 8:22 AM
To: THOMAS, MARCUS C. (OTD) (FBI)
Subject: IMMEDIATE: Q&A for Director's briefing book - "Going Dark"

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Kerry E. Haynes
Executive Assistant Director
Science and Technology Branch
FBIHQ Room 7125

[REDACTED]

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From: BEERS, ELIZABETH RAE (OCA) (FBI)
Sent: Friday, January 25, 2008 6:37 PM
To: HAYNES, KERRY E. (DO) (FBI)
Subject: FW: Q&A for Director's briefing book - "Going Dark"

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Kerry - checking on the status of this request - we're trying to finalize our briefing material so that we can have it waiting for the Director in Honolulu. Appreciate the help. Thanks,

Beth Beers
Office of Congressional Affairs

[Redacted]

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From: BEERS, ELIZABETH RAE (OCA) (FBI)
Sent: Tuesday, January 15, 2008 5:51 PM
To: HAYNES, KERRY E. (DO) (FBI)
Cc: [Redacted] (DO) (FBI); [Redacted] (OCA) (FBI)
Subject: Q&A for Director's briefing book - "Going Dark"

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Kerry - the Director will be testifying before SSCI (2/5) and HPSCI (2/7) with the other IC principals at the annual threat assessment hearing. We're preparing his briefing book and have been asked to include a Q&A on "Going Dark." [Redacted] [Redacted] advises that you've got something prepared that addresses the implications on lack of funds to our technical operations. We're looking for something relatively short that the Director could use to respond if he gets a question. There will be both open and closed sessions, so if the answer requires disclosure of classified information, please portion-mark the answer. Apologize for the short deadline - if we could get something by 1/22 that would be great. Please call if you have questions. Thanks,

Beth Beers
Office of Congressional Affairs

[Redacted]

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[redacted] (RMD) (FBI)

From: [redacted] (OTD) (FBI) b6
Sent: Friday, May 29, 2009 1:00 PM b7C
To: [redacted] (DO) (FBI)
Cc: DICLEMENTE, ANTHONY P. (OTD) (FBI); COOK, PATRICK B. (OTD) (FBI); [redacted]
[redacted] (OTD) (FBI); [redacted] (OTD) (FBI)
Subject: FW: Going Dark request - Deadline today at 2:30
Attachments: OTD-GoingDarkDoc 1_14_09 (4).doc

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[redacted]

Here is the Going Dark response. [redacted]

[redacted]

[redacted]

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See attached for revised version:



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c 1_14_09 (4).d...

From: [redacted] (OTD) (FBI) b6
Sent: Friday, May 29, 2009 10:01 AM b7C
To: [redacted] (OTD) (FBI)
Cc: [redacted] (OTD) (FBI); COOK, PATRICK B. (OTD) (FBI)
Subject: FW: Going Dark request - Deadline today at 2:30
Importance: High

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[redacted] as discussed here is the items needed to be reviewed. DEADLINE IS 2:30 TODAY. b6

[redacted] b7C

Executive Assistant
Operational Technology Division

[redacted] Blackberry b2
[redacted]@ic.fbi.gov b6
b7C

From: [redacted] (DO) (FBI) b6
Sent: Friday, May 29, 2009 9:54 AM b7C
To: THOMAS, MARCUS C. (OTD) (FBI)
Cc: [redacted] (OTD) (FBI); [redacted] (OTD) (FBI)
Subject: Going Dark request - Deadline today at 2:30
Importance: High

UNCLASSIFIED
NON-RECORD

Mr. Marcus,

I work in OCA and am preparing the Director's briefing material for his upcoming appearance before the Senate Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies on June 4, 2009. It has come to OCA's attention that questions will be posed on the topic of Going Dark in both the closed and open hearing sessions.

AD Powers advised he recently met with you on Going Dark and requested that I send this directly to you for review. Therefore, attached paper is a Question and Answer format that I believe covers the potential areas on this topic. Could you please review the paper and edit for changes? Also, the Director prefers concise and brief answers to the questions. The answer to the last question on page 2 is rather lengthy. Could this be condensed to a shorter answer? In addition, please feel free to add any other additional questions you deem necessary.

<< File: OTD-GoingDarkDoc 1_14_09 (3).doc >>
I apologize for requesting a short deadline, but I will need this paper returned by 2:30 today.

Thank you for your assistance on this matter,

UC [redacted]
Special Projects Unit
Office of Congressional Affairs
[redacted]

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**FY 2010 Legislative Call
Office of the General Counsel**

PROPOSAL

In an effort to remedy interception and ELSUR-related gaps, and provide LEAs with the tools they need to accomplish their mission, the FBI has developed a national strategy known as the "Going Dark Initiative." The Going Dark Initiative includes several significant elements, one of which is the attached catalog of ELSUR and ELSUR-related legislative proposals designed to update and improve existing Federal ELSUR laws and assistance mandates and to enact new ELSUR and ELSUR-related laws to support LEAs' investigative efforts. As the events of September 11, 2001 show, law enforcement cannot *connect* the intelligence and evidentiary dots unless it first *collects* those dots. Absent needed legislation, LEAs increasingly will encounter outages, which will ultimately result in LEAs going dark with regard to the collection of essential evidence and intelligence information.

JUSTIFICATION

Lawfully-authorized electronic surveillance (ELSUR) is critical to enforcing the law, protecting our citizens, and maintaining our nation's security. Preserving and enhancing the capabilities used to intercept specific communications content and communication-identifying information is essential to this effort. In recent years, the variety and complexity of communications services and technologies introduced to the marketplace have increased dramatically.

[REDACTED]

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As a result, United States law enforcement is faced with an ever-increasing gap in ELSUR capabilities. Gaps in ELSUR capabilities, however, are not in and of themselves the only difficulties confronting law enforcement. As technology and communications services advance, LEAs also face greater challenges in carrying out the fundamental aspects of their investigative mission.

COST IMPACT

Unknown

POINT OF CONTACT

[REDACTED] Science and Technology Law Unit, [REDACTED]

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ADMINISTRATIVE NOTE

Proposal was prepared, approved, and submitted by OGC

**MISCELLANEOUS LEGISLATIVE PROPOSALS
NOT INCLUDED IN THE SCIENCE AND
TECHNOLOGY LAW OFFICE'S RESPONSE TO
THE 111TH CONGRESS LEGISLATIVE CALL**

NOVEMBER 14, 2008

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Modernizing Federal Electronic Surveillance Laws

Court-authorized electronic surveillance (ELSUR) is critical to enforcing the law, protecting our citizens, and maintaining our Nation's security. Maintaining a capability to intercept specific communications content and communications identifying information is vital. But maintaining ELSUR capabilities is not an end in itself; it is the ELSUR "collection product" that is critical to all types of national security and criminal investigations. Post-9/11, sharing the collection product is essential, underscoring the basic proposition that agencies cannot *connect* the intelligence and evidentiary dots unless they first *collect* those dots.

In recent years, the variety and complexity of communications technologies have increased dramatically,¹ and

[redacted]

— giving rise to an ELSUR "interception capability gap."

Absent needed legislation and a substantial increase in resources, LEAs, including the FBI, increasingly will encounter ELSUR outages on the road to "going dark."

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The FBI in concert with LEA representatives has devised a five-pronged National ELSUR Strategy composed of:

- (1) modernizing the Federal ELSUR assistance mandates² and Federal ELSUR laws³
- (2) enacting new ELSUR-enhancing statutory authorities
- (3) enhancing LEA ELSUR coordination
- (4) enhancing ELSUR cooperation between industry and LEAs
- (5) increasing technical and financial resources for LEAs

Highlights of the legislative proposals under prongs 1 and 2 are outlined in brief in the table below. The specific legislative provisions proposed and the rationale for them are set forth in Attachments 1 and 2.

(1) Modernizing Fed ELSUR Assistance / ELSUR Laws	(2) New ELSUR-enhancing Statutory Authorities
[redacted]	

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[redacted]

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² The primary Federal ELSUR assistance mandate is the Communications Assistance for Law Enforcement Act of 1994, Pub. L. 103-414 (CALEA). However, long before CALEA, Congress mandated "technical assistance" in all of our Nation's ELSUR laws (see 18 U.S.C. §2518(4)(Title III), 18 U.S.C. §3124 (criminal law pen registers/trap-traces), 50 U.S.C. §1805(c)(2)(FISA), and 50 U.S.C. §1842(d)(B)(FISA non registers/trap-traces).

³ Title III of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90-351 ("Title III"); the Foreign Intelligence Surveillance Act of 1978, Pub. L. 95- 511 ("FISA"); and the Electronic Communications Privacy Act of 1986, Pub. L. 99-508 ("ECPA").

**Attachment 1: Modernizing the Federal ELSUR
Assistance Mandates and Federal ELSUR Laws**

**Attachment 2: Enacting New ELSUR-enhancing
Statutory Authorities**

FBI LEGISLATIVE AND POLICY PROPOSALS

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1. Going Dark

Proposal: Update and improve certain existing ELSUR laws to allow for catch up to changing technology.



2. Data Retention

Proposal: Require Electronic Communication Service Providers to retain for two years records showing the origination and termination of communications.

3. Extension of certain Human Resource authorities

Proposal: Amend 2005 Consolidated Appropriation Act to eliminate expiration date of December 31, 2009, on authority to grant retention and relocation bonuses.

4. Mass Killings

Proposal: Amend Title 28 to give the FBI statutory authority to assist in investigation of mass killings or attempted mass killings in schools, colleges, universities, non-federal office buildings, malls, and other public places.

5. Infrastructure/Facilities

Proposal: Eliminate requirement for GSA review and approval of long-terms leases. Institute DOJ review and approval procedures.

The Going Dark Initiative

Lawfully-authorized electronic surveillance (ELSUR) is critical to enforcing the law, protecting our citizens, and maintaining our nation's security. Preserving and enhancing the capabilities used to intercept specific communications content and communication-identifying information is essential to this effort. In recent years, the variety and complexity of communications services and technologies introduced to the marketplace have increased dramatically.

[REDACTED]

As a result, United States law enforcement is faced with an ever-increasing gap in ELSUR capabilities. Gaps in ELSUR capabilities, however, are not in and of themselves the only difficulties confronting law enforcement. As technology and communications services advance, LEAs also face greater challenges in carrying out the fundamental aspects of their investigative mission.

In an effort to remedy interception and ELSUR-related gaps, and provide LEAs with the tools they need to accomplish their mission, the FBI has developed a national strategy known as the "Going Dark Initiative." The Going Dark Initiative includes several significant elements, one of which is the attached catalog of ELSUR and ELSUR-related legislative proposals designed to update and improve existing Federal ELSUR laws and assistance mandates and to enact new ELSUR and ELSUR-related laws to support LEAs' investigative efforts. As the events of September 11, 2001 show, law enforcement cannot *connect* the intelligence and evidentiary dots unless it first *collects* those dots. Absent needed legislation, LEAs increasingly will encounter outages, which will ultimately result in LEAs going dark with regard to the collection of essential evidence and intelligence information.

The specific legislative proposals and the rationale for each are set forth in Attachments 1 and 2 below.

**Attachment 1: Updating and Improving Federal
ELSUR Laws and Assistance Mandates**

**Attachment 2: Enacting New ELSUR and ELSUR-
Related Laws and Capabilities**

FY 2010 Legislative Call
Office of the General Counsel

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JUSTIFICATION

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[REDACTED] As a result, United States law enforcement is faced with an ever-increasing gap in ELSUR capabilities. Gaps in ELSUR capabilities, however, are not in and of themselves the only difficulties confronting law enforcement. As technology and communications services advance, LEAs also face greater challenges in carrying out the fundamental aspects of their investigative mission.

COST IMPACT

Unknown

POINT OF CONTACT

[REDACTED], Science and Technology Law Unit, [REDACTED]

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ADMINISTRATIVE NOTE

Proposal was prepared, approved, and submitted by OGC

FY 2010 Legislative Call
Office of the General Counsel

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[REDACTED]

[REDACTED] As a result, United States law enforcement is faced with an ever-increasing gap in ELSUR capabilities. Gaps in ELSUR capabilities, however, are not in and of themselves the only difficulties confronting law enforcement. As technology and communications services advance, LEAs also face greater challenges in carrying out the fundamental aspects of their investigative mission.

HISTORY

Various CALEA issues have been discussed for many years, some on a regulatory front and some on a legislative front. The attached information details what is needed and in some instances, what has been addressed in part or is pending before the FCC.

COST IMPACT

Unknown

ADMINISTRATIVE NOTE

Proposal was prepared, approved, and submitted by OGC



GOING DARK

What is "Going Dark"?

Response:

- The term "Going Dark," is used to refer to the very real constriction of our ability to perform lawfully authorized technical collections (e.g., electronic surveillance, search and seizure of data, access to transactional records).

[REDACTED]

[REDACTED] have increased dramatically in recent years and is expected to continue unabated for the foreseeable future.

- The FBI, as the lead domestic intelligence agency, has devoted resources to develop technical collection capabilities; however, these expenditures have only enabled the FBI to barely keep up with the pace of change. Members of the intelligence community (IC) and law enforcement community are experiencing significantly reduced collection capabilities. These circumstances reflect an emerging "capability gap" for the FBI, other IC agencies, and law enforcement.

Didn't Congress already solve this problem when it passed the Communications Assistance for Law Enforcement Act (CALEA) in 1994?

Response:

- No, CALEA applied to telecommunications carriers and to services that replace a substantial portion of the local exchange service. CALEA excluded, and still excludes, a wide range of other services which today travel over wire and electronic communications transmission networks and are interwoven in network traffic.

What are some of the specific problems the FBI and the rest of the law enforcement and intelligence communities are facing?

Response:

- [REDACTED]

FEDERAL BUREAU OF INVESTIGATION
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Congressional Affairs Office Congressional Contacts

Date Entered: Briefing Hearing Other FOC

Event Date: 5/27/2009 Entered By:

Subject:

CAO Contact Person: (attended by)

DOJ Notification: DOJ Date/Time:

FBI Participants: and

Other Participants:

Committees /Subcommittees:

Members/Staff: (Committee) and (Mikulski) and SAC-CJS staffer (Mikulski)

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Details of Briefing:

The brief began with a general overview of the FY2010 NIP budget enhancements. Rich gave the overview and discussed the FBI's strategy map. This included a broad discussion on costs in several areas to include personnel, infrastructure and programs. and then addressed the different areas in more detail. Most budget related questions were for clarification and our briefers handled them without any issues. All staffers had additional questions relating to the FBI's how the FBI is dealing with the "going dark" issue and the costs involved with . The staffers requested additional budget numbers and a five year plan. Mikulski staffer asked for further information on the recent internet security breach of the FBI unclass network. also mentioned Mikulski is likely to bring up the "going dark" issue at the closed hearing next Thursday.

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Follow Up Action:



Congressional Affairs Office Congressional Contacts

Date Entered:	05/15/2009	<input checked="" type="radio"/> Briefing	<input type="radio"/> Hearing	<input type="radio"/> Other	<input type="radio"/> FOC
2009-134	Event Date: 5/14/2009	Entered By: []			
Subject: FBI Budget Brief to Rep Ruppenger					
CAO Contact Person: []					
DOJ Notification: []		DOJ Date/Time: []			
FBI Participants: AD Rich Haley, []					
Other Participants: []					
Committees /Subcommittees: HPSCI					
Members/Staff: Rep Ruppenger, []					

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Details of Briefing:

TO COVER:

1. FBI FY 2010 Budget
2. Enhancements to the FBI Budget and needs of the Bureau

AD Haley Opening

AD Haley explained the change in the FBI budget and funding process since becoming a member of the IC and transforming to an intelligence agency. He explained that the rest of the IC uses a 5 year budget projection and that the FBI must use a 1 year.

The FBI has written a 5 year program that is used internally so that they can track the IC community in a more consistent manner with the IC.

In 2002, the FBI budget was approximately 3 billion

In 2009, the FBI budget was well over 7 billion

0.5 billion of this budget is for rent, utilities and other overhead

Personnel

The average employee at the FBI costs approximately \$ [] per year including benefits (increased significantly)

Funds received in recent years have gone to enhancing positions such as:

otas - which were previously GS-7 job and no college degree, now require a college degree and are being hired as GS-14.

This has impacted the FBI personnel costs

Rupp - was not in agreement with the way the FBI NSB was set up with traditional agents who were not trained or experienced in NS.

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Rupp - How are you doing with the communications/computer technology systems?
Why have they not been modeled after CIA and other NS agencies?

Haley explained the current state of Sentinel to include next steps (Sentinel on the TS system)

There are 82 different technology products

oCORE - FBI forms

Rupp - asked if IAs have the ability to access the necessary systems to do their job?
Yes in all field office but some of the Ras are a little slower.

Funding - NIP

Haley explained that the NIP is scored through the DNI

Rupp - How many positions in the FBI are scored through the NIP? [] roughly half

Drugs

Rupp - one of his biggest concerns and issues are drugs. How is the FBI addressing this problem?

Haley explained that due to the transformation and the shift in resources to NSB, the drug violations have been affected but are still a concern of the FBI.

[] - resources and current states of the [] program as well as describing each division were provided

Rupp - asked why [] do not carry guns

Explained that they are []

Provided the number of [] staff and that this should be doubled

Rupp - what are you doing to address the [] shortage?



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Haley stated that we continue to request more funding and do not always receive it. Identified the funding requests from prior years.

Rupp - WANTS TO GET WITH HAC CJS TO ADDRESS FUNDING MATTERS FOR THE FBI - [REDACTED]

Counterintelligence and Russia

Rupp - stated that the Russia threat is increasing and really heating back up --Big Concern

Going Dark Problem

Haley explained that [REDACTED]

Rupp - asked if we were [REDACTED]

Haley explained that [REDACTED]

Other Topics Addressed

National Cyber Security Initiative

National Security Branch

Mortgage Fraud

All funding for the FBI goes through the HAC CJS and the Intel Authorization Bill authorizes the use of the Intel money.

GET BACK - WANTS A MEETING WITH [REDACTED] TO ADDRESS FUNDING AND SHORTAGES.

When it comes to funding, if you need it, let me know. If you justify it, I will work to get it. Tell me either on or off the record.

[REDACTED] cont

Discussed funding for the FBI Academy improvements and the additional funding for the NA.

Cyber Security Initiative - What is the role of the FBI?

Training of Cyber Agents was discussed and the specialized background and career path they have to possess.

WMD coordinators are over stretched in the field

o Is there going to be funding available that will alleviate this issue

BMTC - Clarksburg facility and the future of the technology to create a national standard for all LE.

o NGI will be housed here

LANGUAGE INCENTIVE PAY - explained by the last slide in the packet

o Confirm that language designated positions get the bonus but do they receive a maintenance bonus when not assigned to a job that requires their language.

GET-BACK - WHAT IS THE EXACT NUMBER OF SURVEILLANCE AGENTS?

Follow Up Action:



**Congressional Affairs Office
Congressional Contacts**

Date Entered: 06/18/2008 Briefing Hearing Other FOC

2008-765 Event Date: 4/16/2008

Subject: Going Dark Briefing - Unclassified

CAO Contact Person: [Redacted]

DOJ Notification: [Redacted] DOJ Date/Time: [Redacted]

FBI Participants: EAD Kerry Haynes, [Redacted]

Other Participants: [Redacted]

Committees /Subcommittees: SAC CJS

Members/Staff: [Redacted]

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Details of Briefing:

The briefing covered the unclassified details of the "Going Dark Initiative" and the threats that the US intelligence community face without properly preparing for the changes in technology. The briefing was well received.

OVERVIEW

1. The main message presented by EAD Haynes is that the ability of the FBI to collect intelligence and conduct investigations through the use of technology is shrinking ever day.

A. Advances of technology include:

2. The FBI considers that it is currently, in what it refers to as, the possibly of collection/intercept based on the technology of today.

3. The presentation further detailed specific technological advances and speculation on where the technology industry is headed and what must be done for the FBI to continue to play a proactive role to combat criminal and terrorism investigations.

QUESTIONS/CONCERNS FROM [Redacted] AND [Redacted]

1. [Redacted] asked what the FBI's 5 year plan was and referenced the DNI 5 year plan which he has not had access to.
2. [Redacted] asked how big of a priority this was to the FBI and to law enforcement nationwide.
3. [Redacted] asked if this would be done by contract workers or FBI staff.
4. [Redacted] asked if we were collecting less intelligence information via FISA, etc due to emerging technologies.
5. [Redacted] asked if the FBI was optimistic that it would be able to capture this data in the future with the right resources.
6. Is the exploitation of ELSUR currently being addressed by the cyber security initiative

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Follow Up Action:

[Redacted] and [Redacted] were interested in going to Quantico to receive the classified version of this briefing. OCA will follow-up with them to provide this briefing to them when their schedule permits.



Congressional Affairs Office Congressional Contacts

Date Entered: 06/18/2008 Briefing Hearing Other FOC

2008-766 Event Date: 4/16/2008

Subject: Senate Appropriations CJS Sub-Committee Hearing
CAO Contact Person: Jeff Kroeger
DOJ Notification: DOJ Date/Time:
FBI Participants: Director Mueller, AD Powers, AD Haley
Other Participants:
Committees /Subcommittees: SAC CJS
Members/Staff: Senator Mikulski, Shelby, Stevens,

Details of Briefing:

1. MIKULSKI OPENING STATEMENTS Sen Mikulski

The FBI and the CJS has had a very productive working relationship and the FBI can count on the CJS for whatever it needs to fulfill the mission of the FBI.

The FBI is a new modern FBI that has been tasked with a variety of responsibilities that it was not formally tasked with: intelligence Law Enforcement Agency that has been tasked with protecting against traditional crimes and the continued threat of terrorism

The current FBI budget is 7.1 Billion up 7% from the previous year

oThis money will fund the hiring of additional agents and intelligence analysts.

oThe largest budget increases fall within the CT program

oAll realize that this is a huge priority encompassing almost 40% of the budget. The majority of these investments deal with cyber crime and intel gathering and the combination of the two.

The NSL problem is still a major issue of concern to the committee

TSC and the process of getting selected for the terrorist watch list and then getting off of it when you should

The unpaid wiretap bills of the FBI

DIRECTOR'S COMMENT OF IMPORTANCE

1. MORTGAGE FRAUD - One of Senator Mikulski's main concerns was the current housing market and rampant mortgage fraud that has developed because of the market conditions. The Director stated that the FBI has increased its attention to mortgage fraud and making this a priority to the FBI. At present, the FBI is currently investigating 19 companies, up from 17 a month ago, for mortgage fraud and illegal sub-prime lending practices. The FBI is re-assigning agent from other areas such as financial fraud and healthcare fraud to address this growing problem. The FBI currently has 1,300 mortgage fraud investigations and the Director expects this number to grow over the next year.

2.

QUESTIONS DURING THE HEARING

MIKULSKI

Mortgage Fraud and Predatory Lending

1. What resources are needed from the SAC CJS by the FBI to address this issue?

a. Mikulski stated that this is a very sophisticated type of investigation requiring forensic accounts and agents with a very good understanding of this issue.

b. She cited that SAR reporting was up 300%

2. The SAC CJS is concerned that with the reallocation of resources from criminal investigations to the terrorism threat.

The state and local LEA (Law Enforcement Agencies), which make up the JTF around the country, have been neglected and funds have been taken away or not increased from these programs. Mikulski noted that there are no additional funds to enhance this program. QUESTION: What is the desirable number of JTF and what would it take to meet those numbers to make an impact on traditional criminal cases.

Sentinel Implementation

3. Where are we with the Sentinel implementation and how is the overall process coming along?

a. GAO has stated that this project is on time and with the budget parameters. Mikulski did express concern with the conversion of case files from the ACS system to the new sentinel program.

Terrorist Screening Center/Terrorist Watch List - IG has provided its finding, identified the flaws, and expressed their concerns with this program. Specifically, the lag in getting individuals nominated and put onto the watch list and then getting people appropriately removed from the watch list, once it is determined that they should be cleared.

4. What is the response to the IG's concerns and recommendations related to the TSC.

Crimes Against Children - JTF on Child Prostitution

5. What are the programs the FBI is responsible for with the protection against crimes against children. Point of Information (POI) - This is a high priority issue for Mikulski.



Congressional Affairs Office Congressional Contacts

SHELBY

1. What is the hold-up with OMB releasing the \$38m, which has already been allocated by the SAC CJS, for the render safe program?
2. What would be the impact of a long term, 90 or 120 day continuing resolution, since the FBI's 2009 budget already has a \$56m shortfall
3. Are you satisfied that the FBI is reaching the right balance between criminal and terrorism investigations.
4. The SAC CJS set aside \$9.8m to address training and infrastructure needs at the FBI Academy. Does this money meet the current needs that need to be addressed at QT.
Cyber Security Initiative
5. What is the role? What are the resources and why is this program important?

STEVENS

1. Is the FBI effectively communicating with the DHS and other partners in the intelligence community?
2. Is the defense initiative, as it relates to cyber, correctly addressed in this budget? Is there a corroboration of resources and programs with the FBI, DNI and DHS?
 - a. Mikulski, along with her staff at the Going Dark Briefing on 4/14, stated that the FBI's budget for the cyber initiative is still somewhat unclear. Because of this, Senator Mikulski and the Director agreed to have a classified briefing on this issue in the near future. Senator Stevens and Shelby were invited and seemed to agree with Mikulski on this issue. This issue/concern stems from the fact that under DOJ, the FBI is unable to perform a 5 year budget projection/request like other agencies in the Intel Comm. Although the FBI has submitted a 5 year projection, the FBI is only allowed to ask for one year at a time vs. all 5 years up front. Because of this, the members perceive this as the FBI being secretive, when in fact, they are simply complying with DOJ established DOJ standards and policies.
 - i. POI – this same point was made by Doug Disrud at the Going Dark briefing with EAD Haynes on 4/14/2008.
3. Stevens did ask which federal agency would be in charge of the cyber initiative/defense program.
4. Do we have any overlapping funding between the federal agencies?

QUESTIONS FOR THE RECORD:

Mikulski indicated that there would be additional questions that will be submitted for the record.

Follow Up Action:

Get back on Mortgage Fraud numbers.



Congressional Affairs Office Congressional Contacts

Date Entered: Briefing Hearing Other FOC

Event Date:

Subject:

CAO Contact Person:

DOJ Notification: DOJ Date/Time:

FBI Participants:

Other Participants:

Committees /Subcommittees:

Members/Staff: and

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Details of Briefing:

OTD covered program and the significant contribution the FBI makes to the IC in this matter; special projects (for which staff were read-in); TICTU overview (UC discussed and the misconceptions about what it was a how it works); CART (w emphasis on TEDAC); overview of Tactical Operations program; Technical Response Unit; and a "Going Dark" briefing with Kerry Haynes (a handout was provided to OCA, who reviewed it and provided to staff, after removing one page). Attached is the handout, the schedule of events, and the notes from the visit. Topics covered included unfunded requirements, level of cooperation/understanding/assistance from DNI, level of sharing and cooperation with IC/telecom and intl partners, consolidation of tech efforts across industry, working groups/detailees to consolidate efforts, the "data coordination center" concept.

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Follow Up Action:

National Lawful Interception Strategy/

“Going Dark” Strategy

Matters for

Legislative Consideration

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National Lawful Interception Strategy/ "Going Dark" Strategy Matters for Legislative Consideration

1. Modernizing Lawful Interception Laws and Related Authorities (BAH, Fall 2008)
2. Proposed Amendments to CALEA (DOJ/FBI approved [redacted], Spring 2006)
3. Explanatory Text re Proposed Amendments to CALEA (DOJ/FBI [redacted], Spring 2006)
4. CALEA Amendment / FCC Decisions Comparison Table [redacted], Late Spring 2006)
5. High-level Overview of Proposed CALEA Amendments (BAH, Spring 2006)
6. High-level Explanation of 2006 CALEA Amendment Package [redacted], 9/11/2008)
7. Chart by Topic Showing CALEA vs. Non-CALEA Provisions (BAH, Fall 2008)
8. Thoughts Regarding Concept for Additional Appropriations Fund (BAH, Fall 2008)
9. Potential Language for No cause Against Service Providers, Protecting Techniques (BAH, Spring 2006)
10. Encryption: Countering the Threat; Potential Lines of Legislative Action (BAH, Fall 2008)

Modernizing Federal Electronic Surveillance Laws

Court-authorized electronic surveillance (ELSUR) is critical to enforcing the law, protecting our citizens, and maintaining our Nation's security. Maintaining a capability to intercept specific communications content and communications identifying information is vital. But maintaining ELSUR capabilities is not an end in itself; it is the ELSUR "collection product" that is critical to all types of national security and criminal investigations. Post-9/11, sharing the collection product is essential, underscoring the basic proposition that agencies cannot *connect* the intelligence and evidentiary dots unless they first *collect* those dots.

In recent years, the variety and complexity of communications technologies have increased dramatically,¹ and

[redacted]

— giving rise to an ELSUR "interception capability gap."

Absent needed legislation and a substantial increase in resources, LEAs, including the FBI, increasingly will encounter ELSUR outages on the road to "going dark."

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The FBI in concert with LEA representatives has devised a five-pronged National ELSUR Strategy composed of:

- (1) modernizing the Federal ELSUR assistance mandates² and Federal ELSUR laws³
- (2) enacting new ELSUR-enhancing statutory authorities
- (3) enhancing LEA ELSUR coordination
- (4) enhancing ELSUR cooperation between industry and LEAs
- (5) increasing technical and financial resources for LEAs

Highlights of the legislative proposals under prongs 1 and 2 are outlined in brief in the table below. The specific legislative provisions proposed and the rationale for them are set forth in Attachments 1 and 2.

(1) Modernizing Fed ELSUR Assistance / ELSUR Laws	(2) New ELSUR-enhancing Statutory Authorities
[redacted]	

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[redacted]

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² The primary Federal ELSUR assistance mandate is the Communications Assistance for Law Enforcement Act of 1994, Pub. L. 103-414 (CALEA). However, long before CALEA, Congress mandated "technical assistance" in all of our Nation's ELSUR laws (see 18 U.S.C. §2518(4)(Title III), 18 U.S.C. §3124 (criminal law pen registers/trap-traces), 50 U.S.C. §1805(c)(2)(FISA), and 50 U.S.C. §1842(d)(B)(FISA pen registers/trap-traces).

³ Title III of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90-351 ("Title III"); the Foreign Intelligence Surveillance Act of 1978, Pub. L. 95- 511 ("FISA"); and the Electronic Communications Privacy Act of 1986, Pub. L. 99-508 ("ECPA").

**Attachment 1: Modernizing the Federal ELSUR
Assistance Mandates and Federal ELSUR Laws**

**Attachment 2: Enacting New ELSUR-enhancing
Statutory Authorities**

(U) National Lawful Intercept Strategy

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From Bureaupedia

(U) **National Lawful Intercept Strategy** is a comprehensive five-step process devised by key law enforcement and industry representatives to reverse the growing number of threats to lawful interception.

Contents

- 1 (U) Issue
- 2 (U) Proposed solution
- 3 (U) Budget
- 4 (U) Recommendations / Actions

(U) Issue

(U) The convergence of communications and the increased variety and complexity of advanced services and technologies has resulted in impediments to lawful intercept capabilities and created an increasingly evident "lawful intercept capabilities gap." In the face of more diverse and complex communications services and technologies, including the rapid growth in diverse protocols, proprietary compression techniques, encryption, and other technological factors, law enforcement is now faced with several especially daunting lawful interception challenges.

(U)



(U) The costs of conducting lawful intercepts are increasing daily.



(U) Proposed solution

(U) The National Lawful Intercept Strategy proposes the following solution:

1. Modernize Lawful Intercept Laws: Existing lawful intercept laws (e.g., Title III of the Omnibus Crime Control and Safe Streets Act, Electronic Communications Privacy Act [ECPA], and the Communications Assistance for Law Enforcement Act [CALEA]) require modernization as a

- result of advancements in communications services and technologies.
2. Update Lawful Intercept Authorities: Protect sensitive law enforcement and proprietary service provider lawful intercept techniques and information; authorize, in statute, FBI assistance and coordination of lawful intercept expertise; remove any administrative constraints on the ability to loan lawful intercept equipment and provide technical assistance and/or training.
 3. Law Enforcement Coordination: To increase efficiency and cost-effectiveness, integrated leadership and support within law enforcement must be increased and coordinated. Examples of law enforcement coordination include: research and development; distribution of analysis, processing, and presentation tools and applications; strategic and tactical technical and operational assistance; sharing of technical best practices; and outreach and liaison with entities within the communications industry.
 4. Industry Cooperation: To institute greater and broader industry liaison, particularly with IP-based communications service providers and manufacturers and emerging trusted third-party lawful intercept solution providers. This effort will focus on obtaining greater information and insight into emerging technologies, services, applications to ensure that law enforcement can field more timely, cost-effective technical solutions and identify less expensive commercial lawful intercept solutions.
 5. Resources: To accomplish the above four prongs of the National Lawful Intercept Strategy, additional resources are required.

(U) Budget

(U) There is no current budget allocated for the Going Dark Initiative. The Operational Technology Division (OTD) has worked with the Cyber Division to request initial funding (i.e., "seed money") to stimulate the establishment of a centralized FBI organization to begin implementing the National Lawful Intercept Strategy. The use of Cyber-related funding is being considered because much of the National Lawful Intercept Strategy would support the expansion of capacity of certain critical lawful intercept collection tools.

(U) Recommendations / Actions

(U) The FBI will continue to pursue the development and implementation of the National Lawful Intercept Strategy to ensure the future viability of this effective, useful, and indispensable investigative tool for the entire law enforcement community.

1. Seek continued input from law enforcement leadership (e.g., IACP, Major Cities Chiefs, Major County Sheriffs' Association) and industry regarding the development and implementation of the five-pronged National Lawful Intercept Strategy.
2. The FBI will finalize the five-pronged National Lawful Intercept Strategy based on the above described continuing dialog. Vet the Strategy with key Administration officials (e.g., Office of Management and Budget [OMB], Office of the Director of National Intelligence [ODNI]; Department of Justice [DOJ]) to ensure approval and commitment from necessary components.
3. Socialize the Strategy with key Congressional members and staff (e.g., Judiciary, Intelligence, Appropriations) as appropriate.
4. Explore potential for early Strategy implementation, resource allocation, and funding and secure the five-pronged Strategy package: legislative and full-scale resource and funding enhancements.

Retrieved from "https://www.iportal.fbi/wiki/National_Lawful_Intercept_Strategy"

(U) Lawful interception

From Bureaupedia

(U) Court-authorized lawful interception (telephone tapping) is a critically important governmental technique utilized in all types of investigations to enforce the Nation's laws, ensure the safety of its citizens, and maintain the Nation's security. Effective use of the Foreign Intelligence Surveillance Act (FISA), Title III of the Omnibus Crime Control and Safe Streets Act, and the Electronic Communications Privacy Act (ECPA) consistently produces vital intelligence and evidence in national security and crime-related investigations. Lawful interception is used in nearly every significant intelligence, counter-intelligence, counterterrorism, criminal, and Cyber crime investigation. The Communications Assistance for Law Enforcement Act (CALEA) mandates telecommunications carriers to design into their networks the capability to perform lawful intercept.

(U) See also

(U) National Lawful Intercept Strategy

Retrieved from "https://www.iportal.fbi/wiki/Lawful_interception"

■ This page was last modified 19:35, 9 September 2008.

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FBI > In Brief > DOJ Budget Details High-Tech Crime Fighting Tools

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In Brief: DOJ Budget Details High-Tech Crime Fighting Tools

Alert Me

Title	DOJ Budget Details High-Tech Crime Fighting Tools
Description	<p>New Surveillance Programs Look Ahead As FBI Seeks To Overcome Past Criticism ABCNews.go.com By Jason Ryan May 9, 2009</p> <p>WASHINGTON, DC -- The release of the 2010 budget request has shed more light on some FBI surveillance programs the bureau is currently developing and testing.</p> <p>While the FBI has been criticized at times for its slow reforms after the 9/11 attacks, which revealed the FBI did not have adequate computer resources, some of the new programs sound like something out of a high-tech cloak and dagger film. The budget request shows that the FBI is currently developing a new "Advanced Electronic Surveillance" program which is being funded at \$233.9 million for 2010. The program has 133 employees, 15 of whom are agents.</p> <p>According to the budget documents released Thursday, the program, otherwise known as "Going Dark," supports the FBI's electronic surveillance intelligence collection and evidence gathering capabilities, as well as those of the greater Intelligence Community. "The term 'Going Dark' does not refer to a specific capability, but is a program name for the part of the FBI, Operational Technology Division's (OTD) lawful interception program which is shared with other law enforcement agencies," an FBI spokesman said. "The term applies to the research and development of new tools, technical support and training initiatives."</p>
Attachment 1	News article
Attachment 2	
Attachment 3	
Start Date	5/11/2009
End Date	5/12/2009
Sequence	
Approval Status	Approved

Content Type: FBI In Brief
 Created at 5/11/2009 6:55 AM by [redacted] (OPA) (FBI)
 Last modified at 5/12/2009 6:53 AM by [redacted] (OPA) (FBI)

This document consists of highly-sensitive, confidential, internal decision-making, deliberative process, and attorney-client/legislative counsel information, disclosure of which would cause foreseeable harm

“Going Dark”

Legislative Provisions

May 27, 2009

DRAFT

