



Federal Bureau of Investigation

Washington, D.C. 20535

MR. NATHAN CARDOZO
ELECTRONIC FRONTIER FOUNDATION
454 SHOTWELL STREET
SAN FRANCISCO, CA 94110

March 18, 2011

Subject: GOING DARK PROGRAM

FOIPA No. 1131078- 000

Dear Mr. Cardozo:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Form OPCA-16a:

Section 552

Section 552a

- List of exemptions including (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7)(A-F), (b)(8), (b)(9), (d)(5), (j)(2), (k)(1-7)

479 page(s) were reviewed and 142 page(s) are being released.

- Document(s) were located which originated with, or contained information concerning other Government agency(ies) [OGA]. This information has been:
- referred to the OGA for review and direct response to you.
- referred to the OGA for consultation. The FBI will correspond with you regarding this information when the consultation is finished.

You have the right to appeal any denials in this release. Appeals should be directed in writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Number assigned to your request so that it may be easily identified.

The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown, when ident, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

See additional information which follows.

Sincerely yours,



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

Enclosure(s)

The enclosed documents contained in the FBI Office of Government Counsel response and the FBI Operational Technology Division (OTD) response, section two, represent the final release of information responsive to your Freedom of Information Act (FOIA) request submitted to the FBI Records Management Division (RMD) at Winchester, Virginia.

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could be reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could be reasonably expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

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FOIPA
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[redacted] (OTD) (CON)

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From: [redacted] (OTD) (FBI)
Sent: Tuesday, March 17, 2009 2:28 PM
To: [redacted] (OTD) (CON)
Subject: FW: Advisory Board Files

Attachments: DRAFT Going Dark Authorities.ppt

UNCLASSIFIED
NON-RECORD

From: [redacted] (OTD) (FBI)
Sent: Monday, March 16, 2009 9:55 AM
To: DICLEMENTE, ANTHONY P. (OTD) (FBI)
Cc: [redacted] (OTD) (CON)
Subject: RE: Advisory Board Files

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UNCLASSIFIED
NON-RECORD



DRAFT Going Dark
Authorities.p...

[redacted], please print for M.r D.

b6
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From: DICLEMENTE, ANTHONY P. (OTD) (FBI)
Sent: Friday, March 13, 2009 5:19 PM
To: [redacted] (OTD) (FBI)
Subject: FW: Advisory Board Files

UNCLASSIFIED
NON-RECORD

[redacted]
Have you started anything on this?

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Anthony P. DiClemente
Chief, Data Acquisition / Intercept Section
Operational Technology Division

[redacted]

From: [redacted] (OTD) (FBI)
Sent: Tuesday, March 10, 2009 4:18 PM
To: THOMAS, MARCUS C. (OTD) (FBI); DICLEMENTE, ANTHONY P. (OTD) (FBI); [redacted] (OTD) (FBI); [redacted] (OTD) (FBI);
Cc: [redacted] (CQ) (CON); [redacted] (OTD) (FBI); [redacted] (OTD) (FBI); [redacted] (OTD) (FBI); [redacted] (OTD) (FBI);
Subject: FW: Advisory Board Files

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On March 18, OTD will be hosting a meeting for members of the Director's Advisory Board regarding Going Dark. I have attached an agenda for the meeting. Those on the To: line are being asked to do a 15 minute presentation as indicated in the enclosed agenda. I have also attached a template for the presentation. On Monday March 16th at 10AM in the AD's conference room, we will have a review of the presentations.

I know you will not be able to attend the meeting. Marcus or Pat will present but can you fill in the template?

will put together the ppt for Law Enforcement Outreach. Can you give him input from your side so he can fill in the template?

Can you do the ppt for Tony?

Thanks,

<< File: DRAFT Going Dark DAB 20090310.ppt >> << File: Director's Advisory Board Agenda.doc >>

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**OPERATIONAL TECHNOLOGY DIVISION (OTD)
Going Dark
SIGNIFICANT MONTHLY ACCOMPLISHMENTS
September 2008**

(U) GOING DARK:

- (U) The CALEA Implementation Unit (CIU) drafted the OTD response to a Science and Technology (S&T) Branch tasking from the Director's Office regarding the Going Dark Initiative and [redacted]

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- (U) The CALEA Implementation Unit (CIU) provided [redacted]
[redacted] CIU drafted an electronic communications (EC) for distribution to all FBI Field Office regarding [redacted]

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[redacted] CIU also drafted "Going Dark Initiative" goals and objectives for review within OTD. The goals and objectives are based on the five-pronged National Electronic Surveillance Strategy and are aligned to the OTD Strategy Map.

- (U) The CALEA Implementation Unit (CIU), [redacted] drafted a report summarizing [redacted]

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- (U) The CALEA Implementation Unit (CIU), [redacted] continued drafting [redacted]

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- (U) RSDU held a meeting with [redacted] Met with entities from [redacted]

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~~SECRET//NOFORN~~

[redacted] Meeting focus included [redacted] as well as [redacted]

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- (U//FOUO) The Technical Liaison Unit (TLU) coordinated and hosted [redacted] to meet with senior OTD management and to receive a Going Dark initiative briefing.

(U)

- ~~(S//REL USA, GBR)~~ [redacted] participated with [redacted]

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(U)

- ~~(S//NF)~~ In response to DITU tasking and [redacted]

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- (U) On 7/30/2008, the ENC Program Team within the ELSUR Technology Management Unit (ETMU) was charged with the responsibility to [redacted]

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[redacted] The ENC team is coordinating with [redacted] and several FBI divisions (Information Technology Operations Division, Security Division, and Office of General Counsel) to ensure that [redacted] to all FBI field offices is consistent/in compliance with current FBI policies, procedures, and investigative guidelines.

- (U) The ETMU ELSUR National Contracts (ENC) Program prepared for a 10/01/2008 implementation of [redacted]

[redacted] In doing so, the ENC worked in conjunction with [redacted]

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[redacted] Additionally, the ENC has coordinated with the FBI Security Division, CD-8, and personnel from [redacted] to ensure [redacted]

~~SECRET//NOFORN~~

- (U) Special Projects Technology Unit (SPTU) personnel tested, configured, and supplied [redacted] with [redacted] for testing and potential deployment against [redacted] in a criminal investigation being conducted in conjunction with [redacted]

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OPERATIONAL TECHNOLOGY DIVISION (OTD)

GOING DARK SIGNIFICANT MONTHLY ACCOMPLISHMENTS January 2009

(U) ~~(S)~~ GOING DARK:

(U) • ~~(S)~~ The Electronic Surveillance (ELSUR) National Contracts Program, ETMU acquired

[Redacted]

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[Redacted]

(U)

• ~~(S)~~ On 12/16/2009, OTD management met with

[Redacted]

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[Redacted]

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- (U) The CALEA Implementation Unit (CIU) prepared [Redacted]

[Redacted]

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- (U) The CALEA Implementation Unit (CIU) developed [Redacted]

[Redacted]

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- (U) The CALEA Implementation Unit (CIU) developed [Redacted]

[Redacted]

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- (U) The CALEA Implementation Unit (CIU) finalized presentation summarizing the National Lawful Intercept Strategy as leave behind material for staff of the Director's Office as well as a timeline presentation identifying upcoming FY09 Going Dark activities and corresponding descriptions. CIU also developed a one-page white paper providing an update of CALEA implementation activities and the Going Dark initiative for the Director's briefing book.

- (U) The CALEA Implementation Unit (CIU), in its effort to increase cooperation with [Redacted]

[Redacted]

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- (U//FOUO) On 01/23/2009 TLU SSA [Redacted] met with [Redacted]

[Redacted]

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(U) [redacted]

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• (U) [redacted] received a Letter of Commendation from [redacted] for his assistance in resolving issues from an ongoing development effort. Specifically, [redacted] provided recommendations for [redacted]

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(U) • Shortfall: ~~(S)~~ \$ [redacted] in Services funding for [redacted] which is Task 8 of [redacted]

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(U) Why is this critical? ~~(S)~~ The FBI is responsible for participation in the implementation of [redacted]

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(S) [redacted]

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~~SECRET~~

~~SECRET//20340407~~

OPERATIONAL TECHNOLOGY DIVISION (OTD)

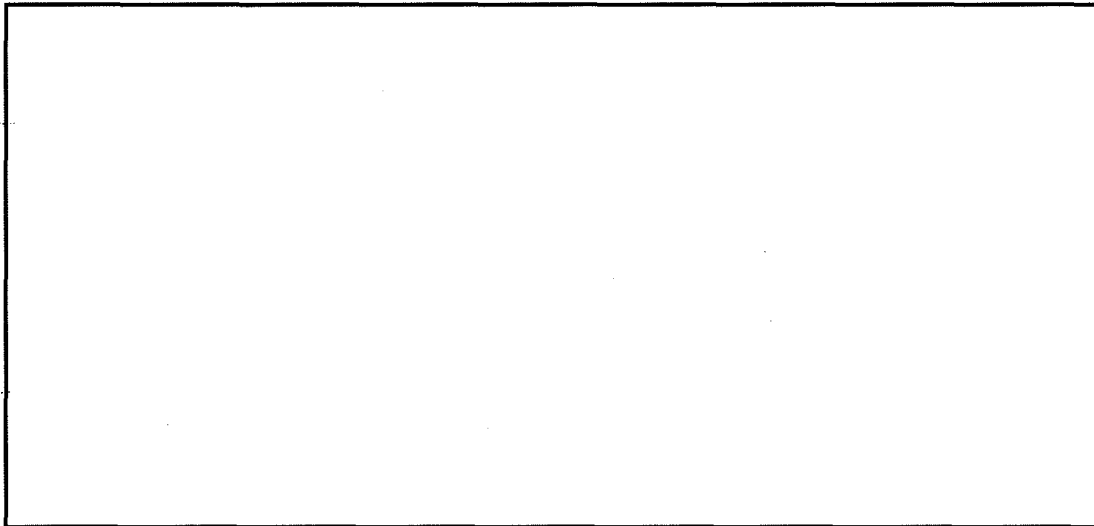
GOING DARK MONTHLY ACCOMPLISHMENTS

March 2009

(U) Remote Operations Unit (ROU)

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(S)



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(U) Cryptologic & Electronic Analysis Unit (CEAU)

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(U//FOUO) Enhanced LEA/IC coordination - On 03/10/2009, CEAU hosted a visit by



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(U) Forensic Audio/Video & Image Analysis Unit (FAVIAU)

•

(U) FAVIAU hosted



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[REDACTED]

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- (U) Funding of \$ [REDACTED] was applied for [REDACTED]. This new project will focus on [REDACTED]. The project is linked to [REDACTED]. The funding source is [REDACTED].

(U) CALEA Implementation Unit (CIU)

- (U) The CALEA Implementation Unit (CIU) developed presentations and agenda for a National Lawful Intercept Strategy briefing before the Director's Advisory Board. The presentations highlighted the implementation of CALEA, necessary legislative changes, and enhanced law enforcement coordination. CIU also participated in the briefing of the Director's Advisory Board regarding the National Lawful Intercept Strategy and "Going Dark" Initiative.

- (U) The CALEA Implementation Unit (CIU) assisted the Data Intercept Technology Unit (DITU) in addressing issues with [REDACTED] for a criminal investigation supported by [REDACTED]

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- (U) The CALEA Implementation Unit (CIU) assisted the Data Intercept Technology Unit (DITU) to address several outstanding technical issues with [REDACTED]. Specifically, assisted [REDACTED] DITU with issues that [REDACTED]

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- (U) The CALEA Implementation Unit (CIU) participated in the International Law Enforcement Technical Symposium (ILETS) drafting group meeting in Seigburg, Germany. Provided a presentation on [REDACTED] and discussed the upcoming agenda for [REDACTED]

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- (U) The CALEA Implementation Unit (CIU), held a meeting of the Law Enforcement Technical Forum (LETF) focused on the progress to date with the "Going Dark" initiative and the role of other Federal, State, and local law enforcement in the continued

~~SECRET//20340407~~

implementation of the National Lawful Intercept Strategy. Additionally, CIU demonstrated [REDACTED]

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- (U) The CALEA Implementation Unit (CIU) drafted a revised whitepaper describing [REDACTED] to conduct lawful interception. The whitepaper is to serve the purpose of introducing recipients to the National Lawful Intercept Strategy and the "Going Dark" initiative.

~~(U) Derived from: FBI NSISC Guide 20090407~~
~~(U) Declassify on: 20340407~~

~~SECRET//20340407~~

~~SECRET~~//NOFORN//20340513

OPERATIONAL TECHNOLOGY DIVISION (OTD)

GOING DARK MONTHLY ACCOMPLISHMENTS

April 2009

- (U//FOUO) Enhanced (international) LEA/IC coordination. From 03/26/2009 to 04/02/2009, TD [redacted] and EEP PM [redacted] attended the Five Eyes Conference in Melbourne, Australia. They met with representatives of [redacted] and [redacted] on matters of mutual concern.

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(S)

[redacted]

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- (U) ~~(S)~~ Enhanced (international) LEA/IC coordination. From 04/18//2009 to 4/22/2009, SSA [redacted] attended [redacted]

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(S)

[redacted]

- (U) An Image Examiner was invited by the ASAC in Buffalo to the Search and Seizure of Digital Evidence Conference in Buffalo, NY. The examiner presented [redacted] [redacted]. The conference attendees included local area law enforcement agencies.

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- (U) An Image Examiner met with Department of State (DOS) representatives in Washington, DC, to discuss [redacted] and provide an update on training activities being pursued by FAVIAU. In May 2009, [redacted]

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~~SECRET~~//20340513

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[Redacted]

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(S)

[Redacted]

(U)

~~(S)~~ Shortfall: \$ [Redacted] in Services funding for [Redacted]
[Redacted] which is Task 8 of [Redacted]

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(U)

~~(S)~~ Why is this critical? The FBI is responsible for participation in [Redacted]
[Redacted]

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(U)

~~(S)~~ Why can't [Redacted] cover this with our current base funding? A new [Redacted] contract has been requested since FY2004, but this effort has become quite protracted and still is not in place.

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(U)

~~(S)~~ What is the impact if unable to obtain funding for this? [Redacted]
[Redacted]

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(U) TTU met with [Redacted] to discuss [Redacted]
[Redacted]

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- (U) TTU met with [redacted]

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- (U) TTU met with [redacted] for a briefing on [redacted]

- (U) [redacted] contacted TPDU regarding [redacted]

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- (U//FOUO) On behalf of the FBI and the Operational Technology Division, the TLU sponsored and participated in [redacted]

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- (U) The CALEA Implementation Unit (CIU) developed draft presentations for and participated in the Science and Technology Branch Investment Symposium describing efforts of the Operational Technology Division (OTD) and the Going Dark Initiative.

- (U) The CALEA Implementation Unit (CIU) provided assistance with [redacted] Participated in conference call with [redacted] Issues focused on [redacted]

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- (U) The CALEA Implementation Unit (CIU) updated the quarterly "Going Dark" status presentation for inclusion in the Director's SMS Initiative meeting. Updates included revising the past and future timeline of events, descriptive text of upcoming events, and requested actions of upper level FBI management.
- (U) The CALEA Implementation Unit (CIU) assisted the Data Intercept Technology Unit (DITU) in addressing a potential issue with

[Redacted]

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(S)

[Redacted]

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~~(U) Derived from: FBI NSISC Guide 20090513
(U) Declassify on: 20340513~~

[redacted] (OTD) (FBI)

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From: [redacted] (OTD) (FBI)
Sent: Tuesday, March 17, 2009 10:05 AM
To: DICLEMENTE, ANTHONY P. (OTD) (FBI)
Subject: RE: Advisory Board Files

UNCLASSIFIED
NON-RECORD

Tony looks good to me. I don't see anything in here necessarily classified unless you see something in particular. We can just leave it marked it law enforcement sensitive.

From: DICLEMENTE, ANTHONY P. (OTD) (FBI)
Sent: Tuesday, March 17, 2009 9:53 AM
To: [redacted] (OTD) (FBI)
Subject: RE: Advisory Board Files

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UNCLASSIFIED
NON-RECORD

[redacted]

I made some edits to the attached so please review for accuracy. Also, pls classify as appropriate. Thanks,

Anthony P. DiClemente
Chief, Data Acquisition / Intercept Section
Operational Technology Division
[redacted]

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<< File: DRAFT Going Dark gdk 20090310rev.ppt >>

From: [redacted] (OTD) (FBI)
Sent: Tuesday, March 17, 2009 8:05 AM
To: DICLEMENTE, ANTHONY P. (OTD) (FBI)
Cc: [redacted] (OTD) (FBI)
Subject: RE: Advisory Board Files

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UNCLASSIFIED
NON-RECORD

Tony,
Here is the presentation for tomorrow make any changes as appropriate

<< File: DRAFT Going Dark gdk 20090310.ppt >>

From: DICLEMENTE, ANTHONY P. (OTD) (FBI)
Sent: Monday, March 16, 2009 2:42 PM
To: [redacted] (OTD) (FBI)
Subject: FW: Advisory Board Files

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NON-RECORD

**Director's Advisory Board
March 18, 2009 Meeting
Going Dark Initiative
Agenda**

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b7c

- 10:00 am: *Overview of the National Lawful Intercept Strategy* - Marcus Thomas, Assistant Director - Operational Technology Division
(15-minute presentation followed by 15 minute Q&A)
- 10:30 am: *Operational Obstacles* - [REDACTED]
Data Acquisition and Intercept Section (DAIS)
(15-minute presentation followed by 15 minute Q&A)
- 11:00 am *Research and Development* - [REDACTED]
[REDACTED] - DAIS
(15-minute presentation followed by 15 minute Q&A)
- 11:30 am Break
- 11:45 am *CALEA / New Legislative Efforts* - [REDACTED] Acting Section Chief, Technical Programs Section (TPS)
(15-minute presentation followed by 15 minute Q&A)
- 12:15 pm *New Lawful Intercept Authorities* - Tony DiClemente, Section Chief, DAIS
(15-minute presentation followed by 15 minute Q&A)
- 12:45 pm Break
- 1:00 pm *Law Enforcement Outreach* - [REDACTED] / [REDACTED]
[REDACTED] DAIS
(15-minute presentation followed by 15 minute Q&A)
- 1:30 pm *Industry Outreach* - [REDACTED] Technical Liaison Unit, TPS
(15-minute presentation followed by 15 minute Q&A)
- 2:00 pm Round Table: *The Future of Lawful Intercept* - All
One-hour discussion
- 3:00 pm Close

[redacted] (OTD) (FBI)

From: [redacted] (OTD) (FBI)
Sent: Thursday, October 23, 2008 4:57 PM
To: [redacted] (OTD) (FBI); [redacted] (OTD) (CON)
Subject: FW: Presentation

Attachments: Going Dark_ARM_10-23-08.ppt

SENSITIVE BUT UNCLASSIFIED
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[redacted]
Here's the presentation for the ODNI.

[redacted]
The supersedes Going Dark ARM 6-03-08 ppt. I'll send it to you on the low side.

Mb

From: [redacted] (OTD) (CON)
Sent: Thursday, October 23, 2008 4:45 PM
To: [redacted] (OTD) (FBI).
Subject: Presentation

SENSITIVE BUT UNCLASSIFIED
NON-RECORD



Going
_ARM_10-23-08.ppt

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SENSITIVE BUT UNCLASSIFIED



“Going Dark”

Law Enforcement’s Need to Preserve Lawful Intercept (LI) Capabilities

Title III Electronic Surveillance 1968-2007

June 2008

Title III Electronic Surveillance 1968-2007 *

Year	Total Authorized	Federal	State	Total Denied	Year	Total Authorized	Federal	State	Total Denied
1968	174	0	174	0	1988	738	293	445	2
1969	302	33	269	2	1989	763	310	453	0
1970	597	183	414	0	1990	872	324	548	0
1971	816	285	531	0	1991	856	356	500	0
1972	855	206	649	5	1992	919	340	579	0
1973	864	130	734	2	1993	976	450	526	0
1974	728	121	607	2	1994	1,154	554	600	0
1975	701	108	593	3	1995	1,058	532	526	0
1976	686	137	549	2	1996	1,149	581	568	1
1977	626	77	549	0	1997	1,186	569	617	0
1978	570	81	489	2	1998	1,329	566	763	2
1979	553	87	466	0	1999	1,350	601	749	0
1980	564	81	483	2	2000	1,190	479	711	0
1981	589	106	483	0	2001	1,491	486	1,005	0
1982	578	130	448	0	2002	1,358	497	861	1
1983	648	208	440	0	2003	1,442	578	864	0
1984	801	289	512	1	2004	1,710	730	980	0
1985	784	243	541	2	2005	1,773	625	1,148	1
1986	754	250	504	2	2006	1,839	461	1,378	0
1987	673	236	437	0	2007	2,208	457	1,751	0

* Statistics drawn from the annual *Federal Wiretap Report* prepared by the Administrative Office of the United States Courts.



“Going Dark”

Law Enforcement’s Need to Preserve Lawful Intercept (LI) Capabilities

Foreign Intelligence Surveillance Act (FISA)
Court Orders 1979-2007

June 2008

[redacted] (OTD) (CON)

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From: [redacted] (OTD) (FBI)
Sent: Friday, April 25, 2008 11:39 AM
To: COOK, PATRICK B. (OTD) (FBI)
Subject: FW: Going dark

Attachments: Going Dark PFIAB Briefing_April 08_v18.ppt

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

This seems to be the latest, its from April.

From: [redacted] (DO) (FBI)
Sent: Friday, April 25, 2008 11:38 AM
To: [redacted] (OTD) (FBI)
Subject: FW: Going dark

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SENSITIVE BUT UNCLASSIFIED
NON-RECORD

The latest "Going Dark."

[redacted]
Executive Office
Science and Technology Branch
[redacted]
@ic.fbi.gov

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From: GREVER, LOUIS E. (DO) (FBI)
Sent: Tuesday, April 15, 2008 4:18 PM
To: [redacted] (DO) (FBI); [redacted] (DO) (FBI)
Subject: FW: Going dark

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[redacted]

Can we get copies of this brief printed for all the attendees of this Thursday's meeting?

Louis

From: HAYNES, KERRY E. (DO) (FBI)
Sent: Tuesday, April 15, 2008 3:38 PM
To: GREVER, LOUIS E. (DO) (FBI)
Subject: Going dark

SENSITIVE BUT UNCLASSIFIED
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Going Dark PFIAB
Briefing_Apri...

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

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SENSITIVE BUT UNCLASSIFIED

[redacted] (OTD) (FBI)

From: [redacted] (OTD) (FBI)
Sent: Friday, April 10, 2009 1:49 PM
To: [redacted] (OTD) (FBI)
Cc: THOMAS, MARCUS C. (OTD) (FBI); DICLEMENTE, ANTHONY P. (OTD) (FBI); [redacted]
[redacted] (OTD) (FBI); [redacted] (OTD) (FBI)
Subject: Going Dark Business Model - Slides
Attachments: dcac.ppt

UNCLASSIFIED
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[redacted]

I added a few slides after we talked. Here are the slides I put together for the 'proposed' business model development.



dcac.ppt (71 KB)

[redacted]

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[redacted] (OTD) (FBI)

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From: GREVER, LOUIS E. (DO) (FBI)
Sent: Tuesday, March 18, 2008 9:34 AM
To: [redacted] (OTD) (FBI)
Subject: FW: Latest (Final?) ppt for Director's Brief
Attachments: Directors Briefing_04Feb_02_v18.ppt

UNCLASSIFIED
NON-RECORD

Is this the briefing you needed?

From: [redacted] (DO) (FBI)
Sent: Thursday, March 13, 2008 1:35 PM
To: [redacted] (DO) (FBI)
Cc: GREVER, LOUIS E. (DO) (FBI)
Subject: FW: Latest (Final?) ppt for Director's Brief

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UNCLASSIFIED
NON-RECORD

[redacted]

Per your conversation with Louis Grever a few minutes ago, please see the attached "Going Dark" Briefing.

Thanks,

[redacted]

[redacted]

Executive Office
Science and Technology Branch

[redacted]

@ic.fbi.gov

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From: [redacted] (OTD) (FBI)
Sent: Wednesday, February 20, 2008 12:24 PM
To: [redacted] (DO) (FBI)
Subject: FW: Latest (Final?) ppt for Director's Brief

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UNCLASSIFIED
NON-RECORD

From: THOMAS, MARCUS C. (OTD) (FBI)
Sent: Monday, February 04, 2008 9:28 AM
To: THOMAS, MARCUS C. (OTD) (FBI); HAYNES, KERRY E. (DO) (FBI); [redacted] (OTD) (FBI)
Cc: SMITH, CHARLES BARRY (OTD) (FBI); COOK, PATRICK B. (OTD) (FBI); GREVER, LOUIS E. (DO) (FBI); [redacted] (OTD) (FBI)
Subject: RE: Latest (Final?) ppt for Director's Brief

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NON-RECORD



Directors
iefing_04Feb_02_v1

WITH CHART ATTACHED!

[Redacted]

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Can you get a copy of this to [Redacted]? This has updated chart.

Marcus

Marcus C. Thomas
Assistant Director,
Operational Technology Division

[Redacted]

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UNCLASSIFIED

[redacted] (OTD) (CON)

b6
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From: [redacted] (DO) (FBI)
Sent: Wednesday, February 20, 2008 12:24 PM
To: [redacted] (OTD) (FBI)
Subject: FW: Going Dark

Attachments: Directors Briefing_29Jan08_v18.ppt

UNCLASSIFIED
NON-RECORD

Here you go.....

[redacted]
Executive Office
Science and Technology Branch
[redacted]
@ic.fbi.gov

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From: GREVER, LOUIS E. (DO) (FBI)
Sent: Thursday, January 31, 2008 3:45 PM
To: [redacted] (DO) (FBI)
Subject: FW: Going Dark

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UNCLASSIFIED
NON-RECORD

For tomorrow's GD planning session.

From: THOMAS, MARCUS C. (OTD) (FBI)
Sent: Thursday, January 31, 2008 1:00 PM
To: HAYNES, KERRY E. (DO) (FBI); GREVER, LOUIS E. (DO) (FBI)
Subject: Going Dark

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NON-RECORD

Briefing.



Directors
Briefing_29Jan08_v18

Marcus C. Thomas
Assistant Director,
Operational Technology Division

[redacted]

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**FBI National Electronic Surveillance Strategy:
Countering ELSUR Impediments
on the road to "Going Dark"**

Briefing for the Director

January 24, 2008

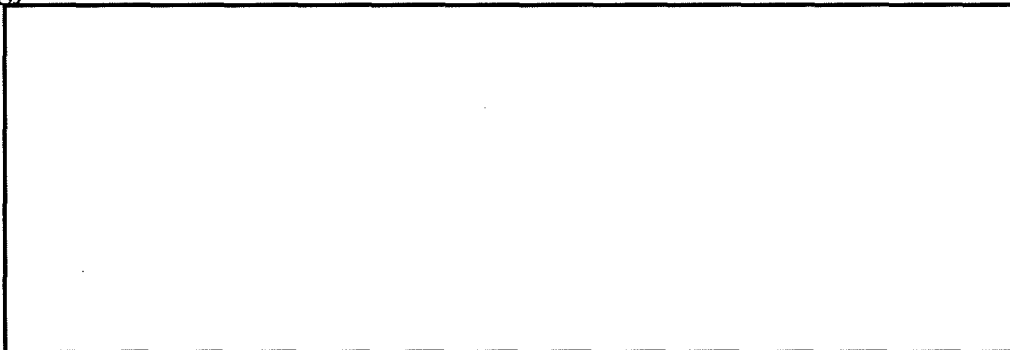
by the Operational Technology Division

the FBI is barely keeping its head above water. All law enforcement agencies are in imminent danger of "Going Dark."

- Working with industry to ensure effective service provider lawful intercept target identifiers and [redacted] exist is becoming more difficult as the industry expands to include new entrants never before responsible for facilitating any form of lawful interception.
- Finding the substantial technical resources, personnel, and funding required to field and operate complex and costly systems to "collect," "process," "decrypt," "view," "analyze," and "share" lawful intercept information.

Background: Key law enforcement and industry representatives have devised a comprehensive five-pronged National Lawful Intercept Strategy to meet the serious threats to lawful intercept. While self-help has always been a first instinct for law enforcement agencies, we are at a point where additional funding and continued, enhanced, outside help is required. The five prongs of the National Lawful Intercept Strategy include:

A.



B.

- C. **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.
- D. **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.
- E. **Resources:** To accomplish the above four prongs of the National Lawful Intercept Strategy, additional resources are required.

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Legal Authorities: The legal authorities under which lawful intercept takes place include, but are not limited to Title III of the Omnibus Crime Control and Safe Streets Act, the Electronic Communications Privacy Act (ECPA), and the Foreign Intelligence Surveillance Act (FISA). Further, much of the interaction between law enforcement and the communications industry, particularly the mandate for telecommunications carriers to design into their networks capabilities to perform lawful intercept, is based on the Communications Assistance for Law Enforcement Act [CALEA]).

Recommendations / Actions: 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.

- A. 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. The FBI will finalize the five-pronged National Lawful Intercept Strategy based on the above described continuing dialog.
- B. 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.
- C. Socialize the Strategy with key Congressional members and staff (e.g., Judiciary, Intelligence, Appropriations) as appropriate.
- D. 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.

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Operational Technology Division Going Dark

Law Enforcement's Need to Preserve Lawful Intercept Capabilities

Issue: Court-authorized lawful interception 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. [REDACTED]

[REDACTED] Practically speaking, failing to maintain lawful intercept technical capabilities effectively repeals the lawful authority created by the Congress to conduct lawful interception. Lawful interception capabilities must be maintained.

A. [REDACTED] and evidence in criminal and

B. 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.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- The costs of conducting lawful intercepts are increasing daily. State and locale law enforcement agencies are being shut out; and



“Going Dark”

Law Enforcement’s Need to Preserve Lawful Intercept Capabilities

I. **Issue:** Court-authorized lawful interception 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. [redacted]

[redacted] Practically speaking, failing to maintain lawful intercept technical capabilities effectively repeals the lawful authority created by the Congress to conduct lawful interception. Lawful interception capabilities must be maintained.

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A. [redacted] and evidence in criminal and

- [redacted]
- [redacted]

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B. 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.

- [redacted]
- [redacted]
- [redacted]

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- The costs of conducting lawful intercepts are increasing daily. State and local law enforcement agencies are being shut out; and the FBI is barely keeping its head above water. All law enforcement agencies are in imminent danger of “Going Dark.”
- Working with industry to ensure effective service provider lawful intercept target identifiers and [redacted] exist is

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becoming more difficult as the industry expands to include new entrants never before responsible for facilitating any form of lawful interception.

- Finding the substantial technical resources, personnel, and funding required to field and operate complex and costly systems to “collect,” “process,” “decrypt,” “view,” “analyze,” and “share” lawful intercept information.

II. Background: Key law enforcement and industry representatives have devised a comprehensive five-pronged National Lawful Intercept Strategy to meet the serious threats to lawful intercept. While self-help has always been a first instinct for law enforcement agencies, we are at a point where additional funding and continued, enhanced, outside help is required. The five prongs of the National Lawful Intercept Strategy include:

A.

B.

C. **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.

D. **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.

E. **Resources:** To accomplish the above four prongs of the National Lawful Intercept Strategy, additional resources are required.

III. Legal Authorities: The legal authorities under which lawful intercept takes place include, but are not limited to Title III of the Omnibus Crime Control and Safe Streets Act, the Electronic Communications Privacy Act (ECPA), and the Foreign Intelligence Surveillance Act (FISA). Further, much of the interaction between law enforcement and the communications industry, particularly the mandate for telecommunications carriers to design into their networks capabilities to perform

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lawful intercept, is based on the Communications Assistance for Law Enforcement Act [CALEA]).

IV. Budget: There is no current budget allocated for the Going Dark Initiative. The

[REDACTED] would support the expansion of capacity of certain critical lawful intercept collection tools.

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V. Recommendations / Actions: 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.

- A. 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. The FBI will finalize the five-pronged National Lawful Intercept Strategy based on the above described continuing dialog.
- B. 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.
- C. Socialize the Strategy with key Congressional members and staff (e.g., Judiciary, Intelligence, Appropriations) as appropriate.
- D. 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.

VI. Point(s) of Contact:

- A. Marcus Thomas, Assistant Director, OTD
[REDACTED]
- B. Patrick Cook, Deputy Assistant Director, OTD
[REDACTED]
- C. Barry Smith, Chief, Technical Programs Section (TPS), OTD
[REDACTED]
- D. [REDACTED] Acting Chief, CALEA Implementation Unit (CIU), OTD
[REDACTED]@askcalea.net

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Information provided by: Section Chief Charles Barry Smith

Information Approved by: AD Marcus Thomas _____

Dated: 07/30/2008



GOING DARK

What is "Going Dark"?

Response:

- The term "Going Dark," is used to refer to constriction of the law enforcement's ability to comprehensively and lawfully collect data and information, conduct electronic surveillance and analyze the raw data [REDACTED]
- The challenge is due to two factors:
 - the rapid evolution of telecommunications and data collection technology and services; and,
 - Law enforcement's inability to quickly develop and deploy robust surveillance, intercept/collection, and analytical capabilities.
- These circumstances reflect an emerging "capability gap" for the FBI and other law enforcement. [REDACTED]

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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.
- I will be happy to work further on this matter with you and the Committee.

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

Response:

- [REDACTED]

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[Redacted]

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• [Redacted]

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.

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

Response:

- The FBI is well suited to gain consensus regarding advanced methods of electronic surveillance and to ensure comprehensive understanding of the challenges faced by law enforcement and help devise and implement solutions. The FBI routinely works with the communications industry to develop intercept capabilities for the law enforcement community, as industry is comfortable working with the FBI under its domestic authority. In addition, the FBI has long assisted other federal, state, and local law enforcement effect criminal and Cyber-based electronic surveillance and provides vital support in national security matters.

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



1776 MAIN STREET
P.O. BOX 2138
SANTA MONICA, CA
90407-2138

TEL 310.393.0411
FAX 310.393.4818

July 7, 2008

[Redacted]
Contracting Officer
Federal Bureau of Investigation
935 Pennsylvania Ave., N.W., Room 10254
Washington, D.C. 20535
[Redacted]

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Subject: RAND Change Proposal 2008-0782 for Contract No. J-FBI-03-290 for the "FBI Going Dark Initiative Electronic Surveillance Analysis Project"

Dear [Redacted]

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RAND is pleased to submit the subject change proposal in response to your email request dated, June 26, 2008. It is assumed that the resulting funding will be provided as a modification to Contract No. J-FBI-03-290, including a new purchase order.

If you have any questions related to the technical proposal, please feel free to contact [Redacted] at [Redacted] x [Redacted] or by email at [Redacted]@rand.org or [Redacted] at (310) 393-0411 x [Redacted] or by email at [Redacted]@rand.org.

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For contractual or administrative matters, please contact the undersigned at (310) 393-0411 x [Redacted] or by email at [Redacted]@rand.org.

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Sincerely,

[Redacted Signature]

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Enclosed as stated

cc: [Redacted]

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- RAND RESEARCH AREAS
- THE ARTS
- CHILD POLICY
- CIVIL JUSTICE
- EDUCATION
- ENERGY AND ENVIRONMENT
- HEALTH AND HEALTH CARE
- INTERNATIONAL AFFAIRS
- NATIONAL SECURITY
- POPULATION AND AGING
- PUBLIC SAFETY
- SCIENCE AND TECHNOLOGY
- SUBSTANCE ABUSE
- TERRORISM AND HOMELAND SECURITY
- TRANSPORTATION AND INFRASTRUCTURE
- WORKFORCE AND WORKPLACE
- OFFICES
- SANTA MONICA, CA
- WASHINGTON, DC
- PITTSBURGH, PA
- JACKSON, MS/NEW ORLEANS, LA
- CAMBRIDGE, UK
- DOHA, QA
- www.rand.org



2008-0782

**FBI Going Dark Initiative Electronic
Surveillance Analysis Project**

[redacted] and [redacted]
Principal Investigators

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**Submitted to
Federal Bureau of Investigation**

**Submitted by
RAND
1776 Main Street
Santa Monica, California 90407-2138**

July 7, 2008

This material is considered proprietary to RAND. These data shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than evaluation, provided that if work is approved as a result of or in connection with the submission of these data, the Government shall have the right to duplicate, use or disclose the data to the extent provided in the contract. This restriction does not limit the Government's right to use information contained in the data if it is obtained from another source without restriction.

Data Acquisition/Intercept Section Unit Chief Meeting
Aug. 21, 2008 1:30 pm - 2:30 pm

Attendees:

Items of Discussion:

- A whitepaper on Going Dark will be distributed to each Unit Chief. *This was sent out in the August 22, 2008 mail run.* Comments from each Unit Chief are due August 29, 2008.

Going Dark Whitepaper Edits

From DITU [redacted]:

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In the section titled '[redacted]' starting on page 10, a paragraph should be added on page 11 stating something to the effect of:

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[redacted]

On page 12 there is a bullet that provides a suggestion on [redacted] however there was no prior mention of the problem which this suggestion addresses.

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From SPTU [redacted]:

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Page 7 uses the phrase "[redacted]" while on page 11 says "[redacted]". This should be consistent (I like the first usage on page 7).

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Page 10, second paragraph, gives [redacted]. I think they should change this to [redacted]. Alternatively, they could [redacted].

I thought the document was difficult to get through due to the heavy use of acronyms. In particular, [redacted] and LI (Lawful interception) were rather forgetful and often had me wondering what the heck they stood for.

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From TICTU [redacted]:

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I requested TICTU's SSAs and Program Managers to read and provide input to the "Going Dark" whitepaper. The team overall believe that the whitepaper had validity and provided a good overview from past to present challenges. There seemed to be consensus that [redacted] as mentioned on page 11 of this write-up. However, [redacted].

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The team agreed that a move in the right direction is with the five-pronged National LI Strategy.

- Modernization of LI LAWS-
- LI Authorities Enactment-
- Enhanced LEA Coordination
- Greater Industry/LEA Cooperation
- New Federal Resources

If additional information is required, please advise.

[Redacted]

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- <<
- New Message**
- Inbox**
- Trash (253) [purge]
- Sent Items
- Drafts
- saved-messages
- sent-mail
- Bulletins...
- Manage Folders...
- Addresses**
- Search**
- Autoresponder**
- Options**
- Log out**
- Help**

< Prev Reply Forward Delete Reply All Move to folder... Next >

From [Redacted]@askcalea.net
 (Add to address book) (Add to recent addresses) (Add to blacklist)

Date 2/11/2009 4:49:14 pm

To [Redacted]@fbiaacademy.edu

Subject Going Dark ETR Section

Attachments: ETR Composite.docx (92k)

- Back to list
- Headers
- Inline Images
- Variable width font
- Enable Scripts
- Open in New Window
- Enable Offsite Images*

change view

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Hello [Redacted]

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The attached file contains sections that I have written towards the Going Dark ETR Bulletin. I seem to be at a point where the information needs to be reviewed before going to editing.

Whenever you get a chance, please let me know where changes/addition/deletions need to be made.

[Redacted]@askcalea.net

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P.S.

Not that I suspect it would be a problem, but don't worry about hurting my feelings. My approach is to get a product out for comment and then modify it as directed.

Save email to disk as a text file

Print email

< Prev Reply Forward Delete Reply All Move to folder... Next >

**Director's Advisory Board
March 18, 2009 Meeting
Going Dark Initiative
Agenda**

- 10:00 am: *Overview of the National Lawful Intercept Strategy* - Marcus Thomas, Assistant Director - Operational Technology Division
(15-minute presentation followed by 15 minute Q&A)
- 10:30 am *Research and Development* - [redacted]
[redacted] - Data Acquisition and Intercept Section (DAIS)
(15-minute presentation followed by 15 minute Q&A)
- 11:00 am: *Operational Obstacles* - [redacted]
DAIS
(15-minute presentation followed by 15 minute Q&A)
- 11:30 am Break
- 11:45 am *CALEA / New Legislative Efforts* - [redacted] Acting Section Chief, Technical Programs Section (TPS)
(15-minute presentation followed by 15 minute Q&A)
- 12:15 pm *New Lawful Intercept Authorities* - Tony DiClemente, Section Chief, DAIS
(15-minute presentation followed by 15 minute Q&A)
- 12:45 pm Break
- 1:00 pm *Law Enforcement Outreach* - [redacted] / [redacted]
[redacted] DAIS
(15-minute presentation followed by 15 minute Q&A)
- 1:30 pm *Industry Outreach* - Marcus Thomas
(15-minute presentation followed by 15 minute Q&A)
- 2:00 pm Round Table: *The Future of Lawful Intercept* - All
One-hour discussion
- 3:00 pm Close

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[redacted] (OTD) (FBI)

From: [redacted] (CQ) (CON)
Sent: Monday, March 16, 2009 1:28 PM
To: [redacted] (OTD) (FBI)
Subject: Agenda

Attachments: Director's Advisory Board Agenda 20090316.doc

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[redacted]

Attached is the revised agenda.

Thanks,

[redacted]



Director's Advisory
Board Agen...

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[redacted] (OTD) (FBI)

From: [redacted] (OTD) (FBI)
Sent: Thursday, October 02, 2008 8:27 AM
To: [redacted] (OTD) (FBI)
Subject: RE: Major accomplishments

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Will do.

Thanks

[redacted]

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Management & Program Analyst
Strategic Resources Unit
Operational Technology Division

[redacted]

Voice
Mobile
Fax

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From: [redacted] (OTD) (FBI)
Sent: Thursday, October 02, 2008 8:21 AM
To: [redacted] (OTD) (FBI)
Subject: Major accomplishments

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Mr. Thomas indicated one accomplishment could be Going Dark and for others he suggested that you canvass the SCs to see what they have for suggestions.

[redacted]

Executive Assistant
Operational Technology Division

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[redacted]

Blackberry
@ic.fbi.gov

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[redacted] (OGC)(FBI) b6 b7C

From: [redacted] (FD) (FBI)
Sent: Tuesday, June 16, 2009 11:07 AM
To: [redacted] (OGC)(FBI); [redacted] (OGC) (FBI)
Subject: FW: Surveillance Worksheet

Attachments: Consolidated Surveillance Questionnaire LECG.doc



Consolidated Surveillance Ques... UNCLASSIFIED
NON-RECORD

[redacted] or [redacted]. In SC McNally's absence, Would you please advise if this is going to the appropriate OGC person?

Thanks,
[redacted]

[redacted]
Budget Formulation and Presentation Unit
Finance Division
[redacted]

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

From: [redacted] (FD) (FBI)
Sent: Tuesday, June 16, 2009 11:04 AM
To: [redacted] (OGC) (FBI)
Cc: [redacted] (FD) (FBI); [redacted] (FD) (FBI); [redacted] (OGC) (FBI)
Subject: FW: Surveillance Worksheet

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Hello [redacted].

I spoke with [redacted] who referred me to you. While [redacted] provided her comments on these FBI responses, we thought it should also be reviewed by someone in NSLB as well. I am unsure if [redacted] is the correct contact and I have not yet heard from her--- if it needs to be farmed out to someone else in OGC would you please advise?

Thank you,
[redacted]

[redacted]
Budget Formulation and Presentation Unit
Finance Division
[redacted]

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

From: [redacted] (OGC) (FBI)
Sent: Tuesday, June 16, 2009 10:15 AM
To: [redacted] (FD) (FBI)
Subject: RE: Surveillance Worksheet

UNCLASSIFIED
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[redacted] - I will try to get you some comments ASAP.

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

From: [redacted] (FD) (FBI)
Sent: Monday, June 15, 2009 5:30 PM
To: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Cc: [redacted] (FD) (FBI); [redacted] (FD) (FBI); [redacted] (FD) (FBI); [redacted] (FD) (FBI)
Subject: FW: Surveillance Worksheet

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[redacted] and [redacted]

DOJ has been asked by the Hill to compile Department Surveillance activities. As the attached questionnaire received from DOJ has legal references (questions I., II. 1, and II.3), would you please review. These responses were provided by OTD, CIRG, and CD.

DOJ initially asked us to submit this by COB today, however, now that we've deemed it to require OGC review we've pushed back on them for the deadline (tomorrow COB if possible). Please note that our responses must be unclassified.

Call with any questions,
[redacted]

PS please forward to appropriate persons, thanks.

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[redacted]
Budget Formulation and Presentation Unit
Finance Division
[redacted]

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

From: [redacted] (FD) (FBI)
Sent: Monday, June 15, 2009 4:35 PM
To: [redacted] (IR) (FBI); [redacted] (CD) (FBI); [redacted] (IR) (FBI); [redacted] (OTD) (FBI); [redacted] (CD) (FBI); [redacted] (OTD) (FBI); [redacted] (FD) (FBI); [redacted] (FD) (FBI); [redacted] (FD) (FBI)
Subject: RE: Surveillance Worksheet

UNCLASSIFIED
NON-RECORD

CIRG, OTD, and CD-

Attached please find the consolidated "Surveillance Questionnaire" with your submitted information. A reminder that this needs to be unclassified, so please advise if you have any concerns or see anything which needs revision before submission to DOJ tonight.

Please advise within the hour, Thanks.
[redacted]

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[redacted]
Budget Formulation and Presentation Unit
Finance Division
[redacted]

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

From: [redacted] (FD) (FBI)

Sent: Thursday, June 11, 2009 1:31 PM

To: [redacted] (IR) (FBI); [redacted] (CD) (FBI); [redacted] (IR) (FBI); [redacted] (CD) (FBI)

Cc: [redacted] (FD) (FBI)

Subject: FW: Surveillance Worksheet
Importance: High

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CIRG and CD-

Please see the attached questionnaire and below email for context, concerning a Department collection of information on surveillance activities. Would you please individually complete the attached concerning your respective surveillance programs and send back to me by Friday COB so that we are able to consolidate responses and return to DOJ by Monday deadline.

Please note that DOJ is looking for high-level unclassified information only.

Please advise if you have any concerns,

[redacted]

[redacted]

Budget Formulation and Presentation Unit
Finance Division

[redacted]

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

From: [redacted] (FD) (FBI)

Sent: Wednesday, June 10, 2009 2:30 PM

To: [redacted] (FD) (FBI); Koscielny, Kristin M.; [redacted] (FD) (FBI)

Cc: [redacted] (FD) (FBI); [redacted]; Klein, Richard L.;

Subject: FW: Surveillance Worksheet

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I think [redacted] is taking the lead on answering these question. She has reached out to CIRG, CD and OTD.

Where they are looking for performance measures, I suggest we use the ones we already provide in the DU narratives. There are some questions about what challenges we face. We could answer those in terms of our FY 2010 budget request and how the FY 2010 budget request answers those challenges to some extent. Technical challenges would include the going dark discussion. Statutory issues might include issues related to the patriot act.

[redacted] please include this on the tracker, with [redacted] as the lead and note due date, June 15.

Others, FYI only.

[redacted]

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

From: [redacted] [mailto:[redacted]@usdoj.gov]

Sent: Wednesday, June 10, 2009 11:02 AM

To: [redacted] (FD) (FBI); [redacted] (FD) (FBI); [redacted]

Cc: [redacted] (FD) (FBI)

Subject: FW: Surveillance Worksheet

Please take a look at the email below and let me know if you have questions.

Thanks!

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[Redacted]
Department of Justice, Budget Staff
Justice Management Division
[Redacted]

From: [Redacted]
Sent: Wednesday, June 10, 2009 11:01 AM
To: [Redacted] (JMD); [Redacted]
Cc: [Redacted]
Subject: Surveillance Worksheet

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Good Morning,

We have been asked by the hill to compile Department Surveillance Activities. Please have your components (DEA, ATF, USMS, FBI) complete the attached and return by COB Monday June 15th. Please note that we are looking for high-level unclassified information only. Let me know if you have any questions at all.

Thanks!

<<Surveillance Questionnaire LECG.doc>>

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[Redacted]
Department of Justice, Budget Staff
Justice Management Division
[Redacted]

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FBI Responses to DOJ Surveillance Questionnaire
(Law Enforcement Components)

I. Legal Statutes

1. Under what legal authorities does the component operate and how is approval obtained? (1-2 paragraphs response maximum)

A) Physical Surveillance

The Special Surveillance Group and Lookout Program operate pursuant to EO 12333, the Foreign Intelligence Act, US PATRIOT Act. Surveillance operation authority is outlined in the Attorney Generals Guidelines (AGG) and the FBI Domestic Investigations and Operations Guidelines (DIOG). Each physical surveillance case request is reviewed and approved by a Supervisory Special Agent (SSA) and Assistant Special Agent in Charge (ASAC) in the field division where the investigation is occurring.

B) Electronic Surveillance

The FBI conducts lawful electronic surveillance and searches under Title 18 USC 2510 (Wiretap), Rule 41 Search Warrants, Title 18 USC 3123 Pen Register/Trap and Trace, Title 50 Foreign Intelligence Surveillance Act (FISA) authorities for Electronic Surveillance, Physical Search and Pen Register. Some other electronic surveillance is performed under consent of a party to the communications as an exception to the order. In addition, the FBI conducts lawful electronic surveillance under state authority as authorized by the Attorney General (AG Order 2954-2008).

II. Current Surveillance Capabilities

1. What kind of surveillance (Physical, electronic) requires a warrant and what kind of warrant? (1-3 sentences per type of surveillance)

A) Physical Surveillance

Does not require a warrant.

B) Electronic Surveillance

Any electronic surveillance that involves a scenario where a person has an expectation of privacy necessitates the need for a court order or a lawful exception.

2. Please provide a brief description of where in the organization surveillance activities occur (under which division/branch, etc) and who performs surveillance? (1-2 paragraphs maximum)

A) Physical Surveillance

Within FBI Headquarters, the physical surveillance program is part of the Critical Incident Response Group (CIRG). This includes the Special Operations Group (SOG), Special Surveillance Group (SSG), Lookout program, and the Aviation program.

Actual surveillance activities are carried out by armed FBI SOG Agents assigned to SOG surveillance teams in the field divisions. These SOG teams are assigned to squads managed by a Supervisory Special Agent (SSA), reporting to an Assistant Special Agent in Charge (ASAC). Surveillance operations are also conducted by personnel of the Special Surveillance Group and Lookout Program in the field divisions.

Headquarters oversight of the aviation component of the surveillance program is handled by the Field Flight Operations Unit. The pilots assigned to the surveillance teams also normally report to the field SOG SSA.

B) Electronic Surveillance

Electronic Surveillance is conducted in each FBI Field Office by Technically Trained Agents (TTAs) assigned to the Technical Investigative Program or by those individuals assigned to the Operational Technology Division (OTD) at the Engineering Research Facility, Quantico, Virginia.

3. What kind of surveillance does the organization do (physical, electronic)? For what purpose and under which authorities? (1-3 paragraphs maximum)

The FBI does both physical and electronic surveillance under the authorities described in section I (above).

4. Please provide a brief description of any specialized operational training provided for surveillance? (1-2 sentences maximum)

A) Physical Surveillance

Surveillance non-Agent personnel receive a six week Basic Surveillance for new hires, Advance Field Training for experienced personnel, related cultural training delivered by the FBI and/or the Joint Counterintelligence Training Academy and other FBI approved vendors, Mentoring Seminar for Surveillance Program managers, training for technology introduced into the work environment, among others.

SOG Agent surveillance personnel receive basic physical surveillance training at the FBI Academy as part of New Agent training. After being assigned to an SOG squad later in their career, they participate in on the job training at the SOG squad, complete on-line Virtual Academy training courses, attend the advanced surveillance course sponsored by SOGU, attend the Tactical Emergency Vehicle Operations Course (TEVOC) and attend an advanced photography course to achieve surveillance certification. Additional courses are available to continue to increase the skills of surveillance agent operators.

B) Electronic Surveillance

Training for Technically Trained Agents (TTAs) and those individuals assigned to the Operational Technology Division (OTD) who perform electronic surveillance intercepts is conducted by the OTD.

5. Please provide a description of the different types of technologies used in surveillance, what it is used for, and any new technologies that the component is developing (2-3 paragraphs maximum)?

A) Physical Surveillance

Technologies currently used includes:

- 1)
- 2)
- 3)
- 4)
- 5)
- 6)

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Technology that is being tested and fielded includes:

- 1)
- 2)
- 3)
- 4)
- 5)

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B) Electronic Surveillance

The OTD is involved in the development and deployment of surveillance technologies. This includes

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6. Please provide some details on workload that the component currently tracks (number of wiretaps, FISA's executed, etc.) (1-3 paragraphs maximum).

A) Physical Surveillance

The number of surveillances requested, conducted, or unaddressed and underaddressed, support to priority matters and threat issues (Time Utilization Record Keeping-(TURK)) are tracked for [redacted]

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The workload that SOGU currently tracks include [redacted]

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B) Electronic Surveillance

The number of FISA ELSUR intercepts is classified. Criminal numbers for wiretap and pen register are reported to DOJ separately and are identified in the annual Wiretap Report.

III. Challenges/Future

1. What are some challenges (in the area of surveillance) the component faces related to (few sentences maximum per item):

Lack of sufficient base funding to support daily operations such as [redacted] [redacted] which will eliminate the requirement to realign equipment funding to maintain daily operations.

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a. Training (for example, are there any special training needs?)

A) Physical Surveillance

Personnel of the Surveillance corps need an appropriately designed training program. [redacted]

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Challenges related to training include [redacted]

[redacted] maintain a proficiency regarding [redacted]

Training is necessary to

[redacted] for example [redacted]

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[Redacted]

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Funding for training remains a concern.

B) Electronic Surveillance

The FBI and the law enforcement community have developed a National Strategy to ensure the continued viability of lawful electronic surveillance intercept capabilities. These challenges are explained in the Going Dark initiative of the FBI.

b. Workforce Retention

A) Physical Surveillance

Workforce retention is complicated by the nature of the work which requires

[Redacted]

b2
b7E

This will begin in the locations with highest threats.

B) Electronic Surveillance

N/A

c. Workload

A) Physical Surveillance

There continues to be a substantial unaddressed/underaddressed work load.

B) Electronic Surveillance

Training and workload requirements continue to increase.

2. What are some technological challenges (in the area of surveillance) the component faces?

Technological challenges include

[Redacted]

b2
b7E

2. Are there any statutory issues the component faces?

N/A

[redacted] (OGC)(FBI)

From: SABOL, SHERRY E. (OGC) (FBI)
Sent: Thursday, March 19, 2009 3:33 PM
To: SIEGEL, STEVEN N. (OGC) (FBI); MCNALLY, RICHARD (OGC) (FBI)
Cc: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Subject: RE: Budget

(U)

~~SECRET//NOFORN~~
~~RECORD none~~

I know. So was I. Although [redacted] really is not in tomorrow or Monday.

b6
b7c

From: SIEGEL, STEVEN N. (OGC) (FBI)
Sent: Thursday, March 19, 2009 3:22 PM
To: SABOL, SHERRY E. (OGC) (FBI); MCNALLY, RICHARD (OGC) (FBI)
Cc: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Subject: RE: Budget

(U)

~~SECRET//NOFORN~~
~~RECORD none~~

I was joking. [redacted] and [redacted] have been working on it today. [redacted] will be back tomorrow and will pitch in then. This is due on Monday, right?

Steven N. Siegel, Section Chief
NSLB - Policy, Litigation, Training and Oversight

[redacted] (fax)
[redacted] (blackberry)

b2
b6
b7c

THIS IS A PRIVILEGED ATTORNEY-CLIENT WORK PRODUCT/COMMUNICATION AND IS NOT TO BE DISTRIBUTED OUTSIDE OF OGC WITHOUT PRIOR APPROVAL

From: SABOL, SHERRY E. (OGC) (FBI)
Sent: Thursday, March 19, 2009 3:18 PM
To: SIEGEL, STEVEN N. (OGC) (FBI); MCNALLY, RICHARD (OGC) (FBI)
Cc: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Subject: RE: Budget

(U)

~~SECRET//NOFORN~~
~~RECORD none~~

He's not in tomorrow or Monday.

b6
b7c

From: SIEGEL, STEVEN N. (OGC) (FBI)
Sent: Thursday, March 19, 2009 3:17 PM
To: SABOL, SHERRY E. (OGC) (FBI); MCNALLY, RICHARD (OGC) (FBI)
Cc: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Subject: RE: Budget

(U)

~~SECRET//NOFORN~~
~~RECORD none~~

We were hoping that [redacted] would handle them for us. Is he in tomorrow and Monday?

Steven N. Siegel, Section Chief
NSLB - Policy, Litigation, Training and Oversight

b2
b6
b7C

[redacted] (fax)
[redacted] blackberry)

THIS IS A PRIVILEGED ATTORNEY-CLIENT WORK PRODUCT/COMMUNICATION AND IS NOT TO BE DISTRIBUTED OUTSIDE OF OGC WITHOUT PRIOR APPROVAL

From: SABOL, SHERRY E. (OGC) (FBI)
Sent: Thursday, March 19, 2009 3:15 PM
To: MCNALLY, RICHARD (OGC) (FBI); SIEGEL, STEVEN N. (OGC) (FBI)
Subject: FW: Budget
Importance: High

~~SECRET//NOFORN~~
~~RECORD none~~

Who's working the budget issues in NSLB? I've heard [redacted] is out?

b6
b7C

From: [redacted] (OGC) (FBI)
Sent: Thursday, March 19, 2009 2:54 PM
To: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); MCNALLY, RICHARD (OGC) (FBI); [redacted] (OGC) (FBI)
Cc: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); SABOL, SHERRY E. (OGC) (FBI)
Subject: RE: Budget
Importance: High

~~SECRET//NOFORN~~
~~RECORD none~~

Everyone:

Can you please tell me if your branches are planning to request any FSL as part of the Computer Intrusions initiatives? If so, how many?

According to my records, for Fy2011 (only): [redacted]

[redacted] Are you going to reduce these numbers proportionately or are your priorities shifting? Please advise ASAP so I can integrate into the overall threat request.

b2
b7E

NSLB - I need more than numbers from you this time - metrics would be ideal.

Please be sure to include SC Sherry Sabol on any responses because after today I will be on A/L until next Tuesday.

FYI - for FY 2011 [redacted] for Operational R&D/Going Dark.

[redacted] I hope to have a blurb/justification to [redacted] before I go. If I don't get it to you, then please contact Sherry.

Thanks,

[redacted]

b6
b7C

From: [redacted] (OGC) (FBI)
Sent: Thursday, March 19, 2009 1:02 PM
To: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); MCNALLY, RICHARD (OGC) (FBI); [redacted] (OGC) (FBI)

Cc:

[redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted]

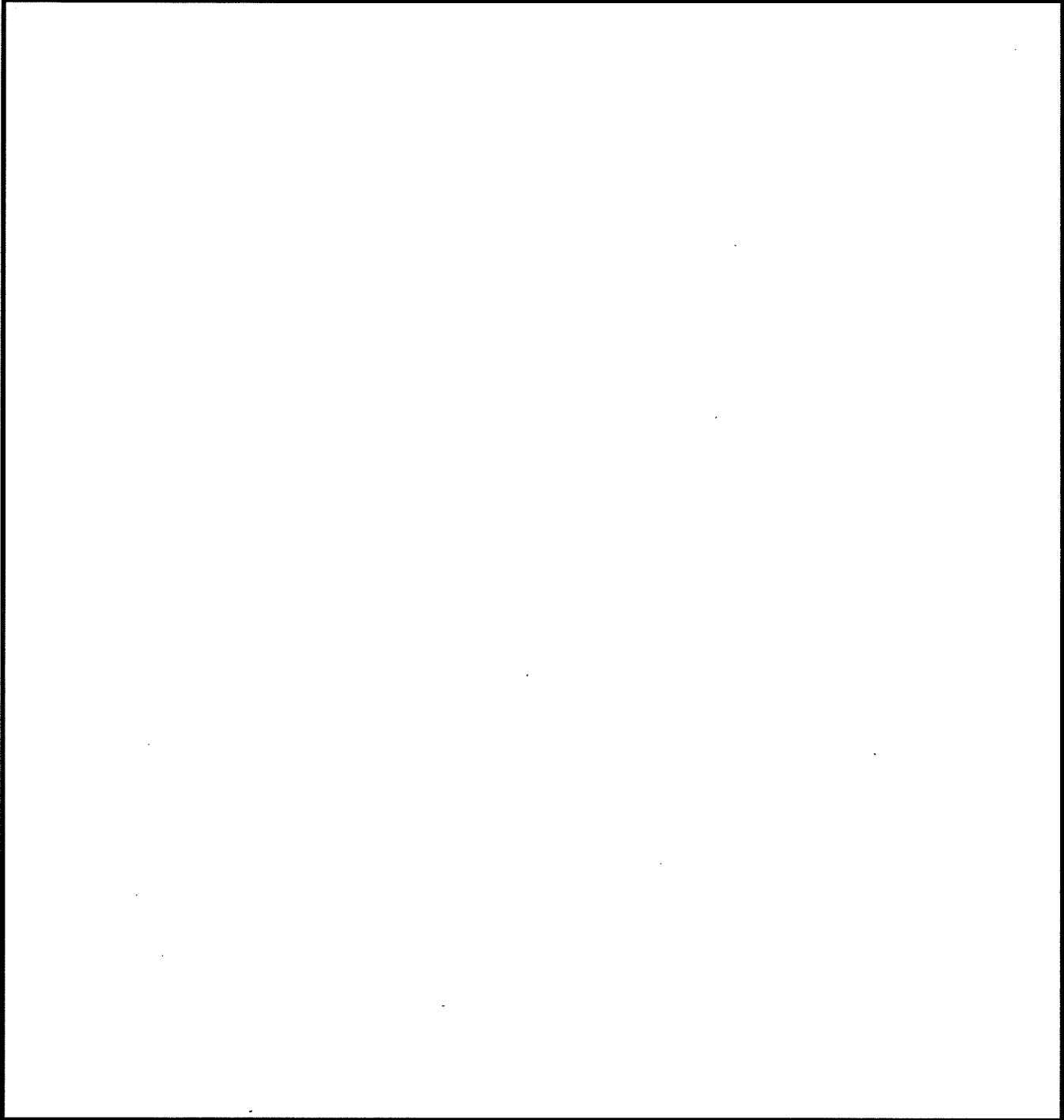
b6
b7C

Subject:
Importance:

(OGC) (FBI)
RE: Budget
High

~~SECRET//NOFORN~~
~~RECORD none~~

Since all the submissions are pretty much branch composites, I'm not at all sure how useful individual unit data will be. But here are first quick (warty) scratchings from PCLU:



b2
b5
b7E

[Redacted]

b2
b5
b7E

[Redacted]

[Redacted]

Bottom line:

The requested enhancements are necessary to support efforts by

[Redacted]

(U)

~~DERIVED FROM: Multiple Sources
DECLASSIFY ON: 20340318
SECRET//NOFORN~~

~~DERIVED FROM: Multiple Sources
DECLASSIFY ON: 20340318
SECRET//NOFORN~~

~~DERIVED FROM: Multiple Sources
DECLASSIFY ON: 20340318
SECRET//NOFORN~~

~~DERIVED FROM: Multiple Sources
DECLASSIFY ON: 20340318
SECRET//NOFORN~~

~~DERIVED FROM: Multiple Sources
DECLASSIFY ON: 20340318
SECRET//NOFORN~~

~~DERIVED FROM: Multiple Sources
DECLASSIFY ON: 20340318
SECRET//NOFORN~~

~~DERIVED FROM: Multiple Sources~~

[Redacted] (OGC)(FBI)

From: MCNALLY, RICHARD (OGC) (FBI)
Sent: Thursday, March 19, 2009 3:11 PM
To: SIEGEL, STEVEN N. (OGC) (FBI); [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI)
Subject: FW: Budget

(U) **Importance:** High

b6
b7C

~~SECRET//NOFORN
RECORD none~~

From: [Redacted] (OGC) (FBI)
Sent: Thursday, March 19, 2009 2:54 PM
To: [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI); MCNALLY, RICHARD (OGC) (FBI); [Redacted] (OGC) (FBI)
Cc: [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI); SABOL, SHERRY E. (OGC) (FBI)
Subject: RE: Budget
Importance: High

(U)

~~SECRET//NOFORN
RECORD none~~

Everyone:

Can you please tell me if your branches are planning to request any FSL as part of the Computer Intrusions initiatives? If so, how many?

According to my records, for Fy2011 (only): [Redacted]

[Redacted] Are you going to reduce these numbers proportionately or are your priorities shifting? Please advise ASAP so I can integrate into the overall threat request.

b2
b7E

NSLB - I need more than numbers from you this time - metrics would be ideal.

Please be sure to include SC Sherry Sabol on any responses because after today I will be on A/L until next Tuesday.

FYL: [Redacted] (for Operational R&D/Going Dark), [Redacted]

Thanks,

[Redacted]

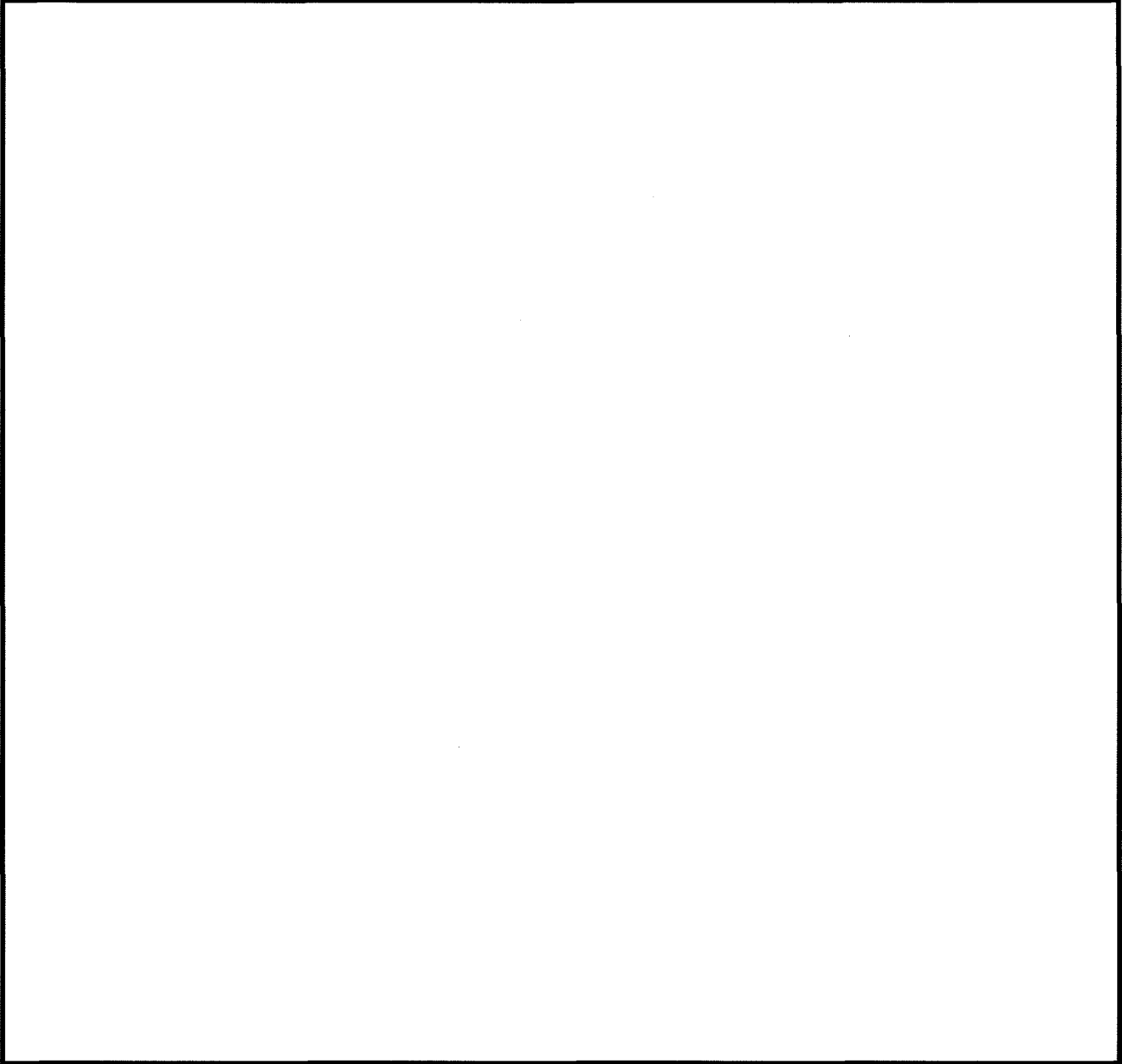
From: [Redacted] (OGC) (FBI)
Sent: Thursday, March 19, 2009 1:02 PM
To: [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI); MCNALLY, RICHARD (OGC) (FBI); [Redacted] (OGC) (FBI)
Cc: [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI)
Subject: RE: Budget
Importance: High

b6
b7C

(U)

~~SECRET//NOFORN~~
~~RECORD none~~

Since all the submissions are pretty much branch composites, I'm not at all sure how useful individual unit data will be. But here are first quick (warty) scratchings from PCLU:



b2
b5
b7E

[Redacted]

[Redacted]

Bottom line:

The requested enhancements are necessary to support efforts by

[Redacted]

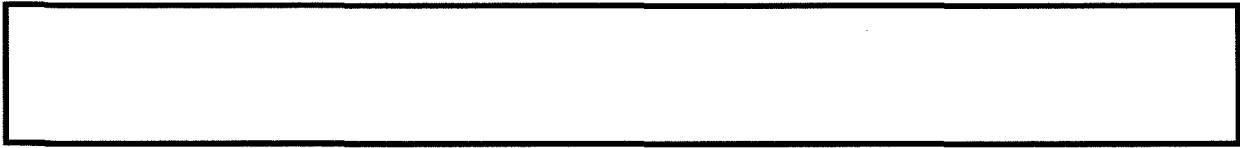
(U)

b2
b5
b7E

~~DERIVED FROM: Multiple Sources
DECLASSIFY ON: 20340318
SECRET//NOFORN~~

~~DERIVED FROM: Multiple Sources
DECLASSIFY ON: 20340318
SECRET//NOFORN~~

~~DERIVED FROM: Multiple Sources
DECLASSIFY ON: 20340318
SECRET//NOFORN~~



b2
b7E

FYI: Democracy Going Dark - The Electronic Police State

[redacted]@askcalea.net [redacted]@askcalea.net]

b6
b7c

Sent: Tuesday, May 26, 2009 6:47 PM

To: Sabol, Sherry E.; [redacted]

<http://revolutionradio.org/2009/05/22/democracy-going-dark-the-electronic-police-state/>

Democracy Going Dark: The Electronic Police State

Posted on May 22, 2009 by Paul Martin in Facism, Government Evil, New World Order, Police State, Surveillance, Technology | 0 Comments

The FBI's Multi-Billion "High-Tech Surveillance" Program

by Tom Burghardt

The Federal Bureau of Investigation's budget request for Fiscal Year 2010 reveals that America's political police intend to greatly expand their high-tech surveillance capabilities.

According to ABC News, the FBI is seeking additional funds for the development of "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."

Known as "Going Dark," the program is designed to beef up the Bureau's already formidable electronic surveillance, intelligence collection and evidence gathering capabilities "as well as those of the greater Intelligence Community," ABC reports. An FBI spokesperson told the network:

"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."

"The term applies to the research and development of new tools, technical support and training initiatives." (Jason Ryan, "DOJ Budget Details High-Tech Crime Fighting Tools," ABC News, May 9, 2009)

Led by Assistant Director Marcus C. Thomas, OTD describes the office as supporting "the FBI's investigative and intelligence-gathering efforts—and those of our federal, state, and local law enforcement/intelligence partners—with a wide range of sophisticated technological equipment, examination tools and capabilities, training, and specialized experience. You won't hear about our work on the evening news because of its highly sensitive nature, but you will continue to hear about the fruits of our labor..."

According to OTD's website, the Division possesses "seven core capabilities": Digital Forensics; Electronic Surveillance; Physical Surveillance; Special Technology and Applications; Tactical Communications; Tactical Operations and finally, Technical Support/Coordination.

Under the heading "Electronic Surveillance," OTD deploys "tools and techniques for performing lawfully-authorized intercepts of wired and wireless telecommunications and data network communications technologies; enhancing unintelligible audio; and working with the communications industry as well as regulatory and legislative bodies to ensure that our continuing ability to

conduct electronic surveillance will not be impaired as technology evolves.”

But as we have seen throughout the entire course of the so-called “war on terror,” systemic constitutional breaches by the FBI—from their abuse of National Security Letters, the proliferation of corporate-dominated Fusion Centers to the infiltration of provocateurs into antiwar and other dissident groups—the only thing “impaired” by an out-of-control domestic spy agency have been the civil liberties of Americans.

Communications Backdoor Provided by Telecom Grifters

While the Bureau claims that it performs “lawfully-authorized intercepts” in partnership with the “communications industry,” also known as telecommunications’ grifters, the available evidence suggests otherwise.

As Antifascist Calling reported last year, security consultant and whistleblower Babak Pashar, in a sworn affidavit to the Government Accountability Project (GAP), provided startling details about the collusive—and profitable alliance—between the FBI and America’s wireless carriers.

Pashar furnished evidence that FBI agents have instantly transferred data along a high-speed computer circuit to a Bureau technology office in Quantico, Virginia. The so-called Quantico Circuit was provided to the FBI by Verizon, The Washington Post revealed.

According to published reports, the company maintains a 45 megabit/second DS-3 digital line that allowed the FBI and other security agencies virtually “unfettered access” to the carrier’s wireless network, including billing records and customer data “transferred wirelessly.” Verizon and other telecom giants have supplied FBI technical specialists with real-time access to customer data.

“The circuit was tied to the organization’s core network,” Pashar wrote. Such access would expose customers’ voice calls, data packets, even their physical movements and geolocation to uncontrolled—and illegal—surveillance.

In April, Wired obtained documents from the FBI under a Freedom of Information Act request. Those files demonstrate how the Bureau’s “geek squad” routinely hack into wireless, cellular and computer networks.

Although the FBI released 152 heavily-redacted pages, they withheld another 623, claiming a full release would reveal a “sensitive investigative technique.” Nevertheless, Wired discovered that the FBI is deploying spyware called a “computer internet protocol address verifier,” or CIPAV, designed to infiltrate a target’s computer and gather a wide range of information, “which it sends to an FBI server in eastern Virginia.” While the documents do not detail CIPAV’s capabilities, an FBI affidavit from a 2007 case indicate it gathers and reports,

a computer’s IP address; MAC address; open ports; a list of running programs; the operating system type, version and serial number; preferred internet browser and version; the computer’s registered owner and registered company name; the current logged-in user name and the last-visited URL.

After sending the information to the FBI, the CIPAV settles into a silent “pen register” mode, in which it lurks on the target computer and monitors its internet use, logging the IP address of every server to which the machine connects. (Kevin Poulsen, “FBI Spyware Has Been Snaring Extortionists, Hackers for Years,” Wired, April 16, 2009)

“Going Dark” is ostensibly designed to help the Bureau deal with

technological changes and methods to intercept Voice Over Internet Protocol (VOIP) phone calls facilitated by programs such as Skype. But a tool that can seamlessly target hackers and cyber-criminals can just as easily be deployed against political opponents.

The FBI also intends to continue their use of automated link- and behavioral analysis derived from data mining as investigative tools. As a subset of applied mathematics, social network theory and its derivatives, link- and behavioral analysis, purport to uncover hidden relationships amongst social groups and networks. Over time, it has become an invasive tool deployed by private- and state intelligence agencies against political activists, most recently, as Antifascist Calling reported in February, against protest groups organizing against the Republican National Convention.

These methods raise very troubling civil liberties' and privacy concerns. The Electronic Privacy Information Coalition (EPIC) filed a Freedom of Information Act request, demanding that the General Services Administration (GSA) turn over agency records "concerning agreements the GSA negotiated between federal agencies and social networking services, including Flickr, YouTube, Vimeo, Blip.tv, and Facebook."

With the proliferation of social networking sites, applications allow users to easily share information about themselves with others. But as EPIC points out, "Many online services relay information about online associations as users create new relationships. While government agencies may use social networking, cloud computing, and Internet services to create greater transparency on their activities, it remains unclear if there are data collection, use, and sharing limitations."

And with "information discoverability" all the rage amongst spooky security agencies ranging from the FBI to the NSA, "connecting the dots," particularly when it comes to dissident Americans, "is gaining increasing attention from homeland security officials and experts in their ongoing attempt to corral anti-terrorism information that resides across federal, state and local jurisdictions," Federal Computer Week reports.

Will an agreement between Facebook and the FBI facilitate "dot connecting" or will it serve as a new, insidious means to widen the surveillance net, building ever-more intrusive electronic case files on dissident Americans?

The Electronic Police State

As Antifascist Calling reported earlier this month, citing the Electronic Frontier Foundation's (EFF) dossier on the FBI's Investigative Data Warehouse (IDW), the office had "transitioned to the operations and maintenance phase during FY 2008″ and now possesses some "997,368,450 unique searchable documents," ready for data mining.

But as study after study has revealed, most recently the comprehensive examination of various programs by the National Research Council, automated data mining is "likely to generate huge numbers of false leads."

Because the mountainous volumes of data "mined" for "actionable intelligence" are drawn from dozens of disparate sources on terrorism or criminal suspects, "they have an enormous potential for privacy violations because they will inevitably force targeted individuals to explain and justify their mental and emotional states."

EFF documented that the Bureau's Telephone Application (TA) "provides a central repository for telephone data obtained from investigations." TA allegedly functions as an "investigative tool ... for all telephone data

collected during the course of FBI investigations. Included are pen register data, toll records, trap/trace, tape-edits, dialed digits, airtel (pager intercepts), cellular activity, push-to-talk, and corresponding subscriber information."

Additionally, the civil liberties' group revealed that "records obtained through National Security Letters are placed in the Telephone Application, as well as the IDW by way of the ACS [Automated Case] system." It would appear that "Going Dark" will serve as a research subsystem feeding the insatiable appetite of the Investigative Data Warehouse.

In fact, these programs are part and parcel of what the security website Cryptohippie refers to as the Electronic Police State. Far from keeping us safe from all manner of dastardly plots hatched by criminals and/or terrorists, Cryptohippie avers:

An electronic police state is quiet, even unseen. All of its legal actions are supported by abundant evidence. It looks pristine.

An electronic police state is characterized by this:

State use of electronic technologies to record, organize, search and distribute forensic evidence against its citizens.

The two crucial facts about the information gathered under an electronic police state are these:

1. It is criminal evidence, ready for use in a trial.
2. It is gathered universally and silently, and only later organized for use in prosecutions.

In an Electronic Police State, every surveillance camera recording, every email you send, every Internet site you surf, every post you make, every check you write, every credit card swipe, every cell phone ping... are all criminal evidence, and they are held in searchable databases, for a long, long time. Whoever holds this evidence can make you look very, very bad whenever they care enough to do so. You can be prosecuted whenever they feel like it—the evidence is already in their database. ("The Electronic Police State, 2008 National Rankings," Cryptohippie, no date)

Unfortunately, this is not the stuff of paranoid fantasies, but American reality in the year 2009; one unlikely to change in the foreseeable future.

In addition to "Going Dark," the FBI is busily constructing what ABC News refers to as the "development of the Biometric Technology Center, a Joint Justice, FBI and DoD program." At a cost of \$97.6 million, the center will function as a research and development arm of the Bureau's Biometric Center of Excellence (BCOE), one which will eventually "be a vast database of personal data including fingerprints, iris scans and DNA which the FBI calls the Next Generation Identification (NGI)."

The program is closely tied with technology under development by West Virginia University's Center for Identification Technology Research (CITeR). As the FBI's "lead academic partner in biometrics research" according to a Bureau press release, CITeR provides "biometrics research support to the FBI and its law enforcement and national security partners and serve as the FBI liaison to the academic community of biometric researchers nationwide."

Indeed, CITeR director Lawrence A. Hornak, "a visionary of the Big Brother school of technology" told The Register, he awaits the day "when devices

will be able to 'recognize us and adapt to us'." The "long-term goal," Hornak declared, is the "ubiquitous use of biometrics."

But as The Register pointed out when the program was publicly rolled-out, "civil libertarians and privacy advocates are not amused."

They claim that the project presents nightmare scenarios of stolen biometric information being used for ever-more outlandish forms of identity theft, which would be nearly impossible to correct. Correcting an inaccurate credit report is already an insulting and hair-raising experience in America, and critics contend that the use of biometrics would make correcting inaccurate credit reports or criminal histories nearly impossible. Besides, they argue, the US government does not exactly have a sterling record when it comes to database security—what happens when, as seems inevitable, the database is hacked and this intimate and allegedly indisputable data is compromised? ...

Databases usually become less accurate, rather than more, the older and bigger they get, because there's very little incentive for the humans that maintain them to go back and correct old, inaccurate information rather than simply piling on new information. Data entry typically trumps data accuracy. Furthermore, the facial recognition technology in its current iteration is woefully inaccurate, with recognition rates as low as 10 per cent at night. All in all, there is ample reason for skepticism—not that it will make much of a difference. (Burke Hansen, "FBI preps \$1bn biometric database," The Register, December 24, 2007)

But WVU's CITeR isn't the only partner lining-up to feed at the FBI's trough. ABC reports that the Bureau "has awarded the NGI contract to Lockheed Martin to update and maintain the database which is expected to come online in 2010. After being fully deployed the NGI contract could cost up to \$1 billion."

However, Federal Computer Week reported in 2008 that although the initial contract will "consist of a base year," the potential for "nine option years" means that "the value of the multiyear contract ... could be higher." You can bet it will!

Additional firms on Lockheed Martin's "team" as subcontractors include IBM, Accenture, BAE Systems, Global Science & Technology, Innovative Management & Technology Services and Platinum Solutions. In other words, NGI is yet another in a gigantic herd of cash cows enriching the Military-Industrial-Security Complex.

Democracy "Going Dark"

The "vast apparatus of domestic spying" described by the World Socialist Web Site, greatly expanded under the criminal Bush regime is a permanent feature of the capitalist state; one that will continue to target political dissent during a period of profound economic crisis.

That the Obama administration, purportedly representing fundamental change from the previous government, has embraced the felonious methods of the Bush crime family and its capo tutti capo, Richard Cheney, should surprise no one. Like their Republican colleagues, the Democrats are equally complicit in the antidemocratic programs of repression assembled under the mendacious banner of the "global war on terror."

From warrantless wiretapping to the suppression of information under cover of state secrets, and from the waging of imperialist wars of conquest to torture, the militarist mind-set driving capitalist elites at warp speed towards an abyss of their own creation, are signs that new political provocations are being

prepared by America's permanent "shadow government"—the military-intelligence-corporate apparatus.

b2
b6
b7C

Global Research .ca

[redacted]
Assistant General Counsel
Science and Technology Law Unit
Office of the General Counsel
Federal Bureau of Investigation
Direct Dial: [redacted]
E-mail: [redacted]@askcalea.net

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[redacted] (OGC) (FBI)

b6
b7C

From: [redacted] (OTD) (FBI)
Sent: Tuesday, January 13, 2009 10:04 AM
To: [redacted] (OGC) (FBI)
Subject: FW: CALEA 2004 Audit

Attachments: Lawful InterceptStrategyWhitepaper 20081028.doc

UNCLASSIFIED
NON-RECORD

From: [redacted] (OTD) (FBI)
Sent: Wednesday, December 17, 2008 4:04 PM
To: [redacted] (INSD) (FBI)
Subject: RE: CALEA 2004 Audit

UNCLASSIFIED
NON-RECORD

Here is the National Lawful Intercept Strategy Whitepaper. It is law enforcement sensitive.



Lawful
InterceptStrategyWhite

From: [redacted] (INSD) (FBI)
Sent: Wednesday, December 17, 2008 11:18 AM
To: [redacted] (OTD) (FBI)
Cc: [redacted] (INSD) (FBI)
Subject: CALEA 2004 Audit

UNCLASSIFIED
NON-RECORD

Good Morning,

It has been a while since I've communicated with you and I was wondering if the living "draft" for the above audit has become a "final" version.

Thank you,

[redacted]

UNCLASSIFIED

UNCLASSIFIED

UNCLASSIFIED

"Going Dark" white paper

[Redacted]

Sent: Wednesday, August 06, 2008 4:29 PM

To: Sabol, Sherry E.; [Redacted]@askcalea.net; [Redacted]

b6
b7C

A few thoughts on the white paper:

High-level thoughts:

I sometimes got a feeling that the paper was missing the forest for the trees. I agree that there are several problems that are all contributing to relative darkness now, greater darkness in the near future, and near-total darkness in a few years, but doesn't the near-total darkness in a few years kind of dwarf the rest? And the near-total darkness, as far as I can tell, comes from

[Redacted]

There are other problems that are causing difficulties now, [Redacted] but aren't they pretty much overshadowed by the really big problems I've described above?

To me, [Redacted]

b2
b5
b7E

All of that is included in here, but sometimes it seems buried. Maybe it just didn't speak to me.

More-specific comments:

On page 2, [Redacted] Maybe I haven't been watching enough Law and Order.

On page 5, second ¶ under [Redacted] this sentence is overstated:
[Redacted]

This sentence makes it sound like [Redacted]
Recommended replacement:
[Redacted]

On page 8, the ¶ before [Redacted] I like the topic of the paragraph [Redacted] but two of the examples are not good:
[Redacted]

On page 12, the bullets under item 1:

The second bullet says we need to

[REDACTED]

b5

The third bullet says

- I suggest replacing

[REDACTED]

PRIVILEGED INTERNAL DELIBERATIVE DOCUMENT - ATTORNEY WORK PRODUCT

[REDACTED] FBI Science & Technology Law Unit (OGC), [REDACTED]

b2
b6
b7C

Re: "Going Dark" white paper

[redacted]@askcalea.net [redacted]@askcalea.net]

b6
b7C

Sent: Friday, August 08, 2008 2:42 PM

To: [redacted] Sabol, Sherry E.; [redacted]@askcalea.net; [redacted]

Attachments: [redacted]~1.pdf (229 KB); [redacted]~2.pdf (152 KB); [redacted]
[redacted]~1.pdf (380 KB)

b5

Sherry:

As I mentioned briefly when we spoke last night, I agree with [redacted] high-level comments on the Going Dark paper, and had the same reaction about missing the forest for the trees – the White Paper seems to be taking an "everything but the kitchen sink" approach rather than the more focused effort I think we were expecting to see.

b6
b7C

In addition to the editorial/line edit type stuff I mentioned to you (which I can redline in if we end up getting a soft copy of the document), I had a few substantive comments/suggestions on some of the text:

In footnote 1, which describes [redacted] I think the description they have is confusing and somewhat inaccurate. It makes it sound like [redacted]

b5

I'd recommend replacing it with this sentence:

[redacted]

b5

On Page 2, where the paper talks about [redacted] it might be helpful to drop a footnote off of that statement that lists a couple of examples for support/emphasis.

b5

One that I know of is [redacted]
[redacted]
[redacted] Copies of them are attached if

b5

you want to see what they say. By the way, you'll be interested to know that [redacted]

Another one I know of is [redacted]
[redacted]

b5

[Redacted]

[Redacted]

But I think you get the point of my comment...

On Page 4, under [Redacted] in the second sentence of the paragraph that follows the block quote, it says [Redacted] I'm wonder what they mean by [Redacted] and thinking it might be better to [Redacted] which I do not think there is here.

On Page 4, under [Redacted] the second and third sentence read [Redacted] I think that the third sentence is not only an over- and or inaccurate statement, but is also kind of shoots us in the foot. [Redacted] I'd suggest rewording the third sentence to say something like this:

[Redacted]

On Page 5, I would change the last sentence in footnote 10 to say:

[Redacted]

b5

On Page 5, in footnote 11, consider rewording the sentence to say:

[Redacted]

b5

[Redacted]

b5

Just a suggestion...

On Page 7, I'm wondering why we need that boxed quote when the same statement is at the top of the same page, but I guess that's neither here nor there. It just looks weird -- especially since there's no attribution as to who exactly said it. Just an observation...

On Page 9, in the first full paragraph, the second sentence says

[Redacted]

b5

So I'd suggest rewording it this way, because I think this is really what we are trying to say:

[Redacted]

b5

[Redacted] - do you have any thoughts on the above rewording?

b6
b7C

On Page 12, under

[Redacted] some of these bullets are not worded as well as they could be. I would suggest these changes:

b5

[Redacted]

b5

I'm confused by the 4th bullet concerning

[Redacted]

b5

[Redacted]

- do you have any thoughts on this one?

b2
b5
b6
b7C
b7E

I'm also confused by the 6th bullet about [Redacted]

I think the point we are trying to make in this bullet - but are not actually making - is that

[Redacted]

- do you have any thoughts on this one?

[Redacted]

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

From: [Redacted]@ic.fbi.gov>
To: [Redacted]@ic.fbi.gov>, [Redacted]@askcalea.net"
[Redacted]@askcalea.net>, [Redacted]@ic.fbi.gov>

b2
b6
b7C

Subject: "Going Dark" white paper
Date: Wed, 6 Aug 2008 16:29:03 -0400

>A few thoughts on the white paper:

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>High-level thoughts:

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>I sometimes got a feeling that the paper was missing the forest for the trees.
>I agree that there are several problems that are all contributing to relative
>darkness now, greater darkness in the near future, and near-total darkness in a
>few years, but doesn't the near-total darkness in a few years kind of dwarf the
>rest? And the near-total darkness, as far as I can tell, comes from

[Redacted]

b2
b5
b7E

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>There are other problems that are causing difficulties now, [Redacted]

b2
b5
b7E

>but aren't they pretty much overshadowed by the really big problems I've
>described above?

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>To me [Redacted]

b2
b5
b7E

[Redacted]

b2
b5
b7E

All of that is included
>in here, but sometimes it seems buried. Maybe it just didn't speak to me.

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>More-specific comments:

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>On page 2, [Redacted]

b5

[Redacted] Maybe
>I haven't been watching enough Law and Order.

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>On page 5, second ¶ under [Redacted] this sentence is overstated:

[Redacted]

>This sentence makes it sound like [Redacted]
[Redacted] Recommended replacement:

b5

[Redacted]

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>On page 8, the ¶ before [Redacted] I like the topic of the paragraph -
[Redacted] but two of the examples are not good:

b2
b5
b7E

[Redacted]

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>On page 12, the bullets under item 1:

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>The second bullet says we need to [Redacted]

b2
b5
b7E

[Redacted]

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>The third bullet says [redacted]

[redacted]

b5

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>- I suggest replacing [redacted]

[redacted]

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>PRIVILEGED INTERNAL DELIBERATIVE DOCUMENT - ATTORNEY WORK PRODUCT

b2
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b7C

[redacted] FBI Science & Technology Law Unit (OGC), [redacted]

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[Redacted]

From: [Redacted]@ic.fbi.gov
Sent: Friday, August 08, 2008 3:29 PM
To: [Redacted]@askcalea.net; Sabol, Sherry E.; [Redacted]
Subject: RE: "Going Dark" white paper

b6
b7C

Below, I respond in blue to a couple of points where [Redacted] directed questions to me (and one where she didn't). - DAK

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

From: [Redacted]@askcalea.net [mailto:[Redacted]@askcalea.net]
Sent: Friday, August 08, 2008 2:43 PM
To: [Redacted]; Sabol, Sherry E.; [Redacted]@askcalea.net; [Redacted]
Subject: Re: "Going Dark" white paper

b6
b7C

Sherry:

As I mentioned briefly when we spoke last night, I agree with [Redacted] high-level comments on the Going Dark paper, and had the same reaction about missing the forest for the trees - the White Paper seems to be taking an "everything but the kitchen sink" approach rather than the more focused effort I think we were expecting to see.

In addition to the editorial/line edit type stuff I mentioned to you (which I can redline in if we end up getting a soft copy of the document), I had a few substantive comments/suggestions on some of the text:

In footnote 1, which describes [Redacted] I think the description they have is confusing and somewhat inaccurate. It makes it sound like it [Redacted]

b5

I'd recommend replacing it with this sentence:

[Redacted]

b5

On Page 2, where the paper talks about [Redacted], it might be helpful to drop a footnote off of that statement that lists a couple of examples for support/emphasis.

b5

One that I know of is [Redacted]

[Redacted]

b5

Copies of them are attached if you want to see what they say. By the way, you'll be interested to know that [Redacted]

[Redacted]

[Redacted]

b5

Another one I know of is

[Redacted]

[Redacted]

b5

But I think you get the point of my comment...

On Page 4, under [Redacted] in the second sentence of the paragraph that follows the block quote, it says [Redacted]

[Redacted] I'm wonder what they mean by [Redacted] and thinking it might be better to [Redacted]

b5

[Redacted] which I do not think there is here.

On Page 4, under [Redacted] the second and third sentence read

[Redacted]

I think that the third sentence is not only an over- and or inaccurate statement, but is also kind of shoots us in the foot. I know that

b5

[Redacted] I'd suggest rewording

the third sentence to say something like this:

[Redacted]

b5

On Page 5, I would change the last sentence in footnote 10 to say:

[Redacted]

b5

[Redacted]

On Page 5, in footnote 11, consider rewording the sentence to say:

b5

[Redacted]

[Redacted]

b5

Just a suggestion...

On Page 7, I'm wondering why we need that

[Redacted]

b5

Just an observation...

On Page 9, in the first full paragraph, the second sentence says

[Redacted]

I'm not sure that's a fair statement - at least as to all of those things. I think it's probably more accurate to

b5

[Redacted]

So I'd suggest rewording it this way, because I think this is really what we are trying to say:

[Redacted]

b5

b6
b7C

[Redacted] - do you have any thoughts on the above rewording?

DAK>> I think you've reworded it well to more fairly say that

[Redacted]

On Page 12, under

[Redacted]

b5

[redacted] some of these bullets are not worded as well as they could be. I would suggest these changes:

b2
b5
b7E

[redacted]

DAK>> Or [redacted] would argue that [redacted]

b2
b5
b6
b7C
b7E

I'm confused by the 4th bullet concerning [redacted]

[redacted] we need to better explain that in this bullet. [redacted] - do you have any thoughts on this one?

DAK>> I interpreted this as [redacted]

b2
b5
b7E

[redacted] ? I don't think this [redacted]

I'm also confused by the 6th bullet about [redacted]

[redacted] I think the point we are trying to make in this bullet - but are not actually making - [redacted]

b2
b5
b6
b7C
b7E

[redacted] - do you have any thoughts on this one?

DAK>> I don't have it in front of me so I don't remember exactly how that bullet was worded, but I think the idea is that [redacted]

[redacted] Part of the solution, I think, is [redacted]

[redacted] But if we're talking about [redacted] I think the easiest-to-understand proposal is just to say that [redacted]

[redacted] That's what [redacted] says above -- that we want [redacted]

[redacted]

b6
b7C

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

From: [redacted]@ic.fbi.gov
To: "Sabol, Sherry E." <Sherry.Sabol@ic.fbi.gov>, "[redacted]@askcalea.net", [redacted]@askcalea.net, [redacted]@ic.fbi.gov

Subject: "Going Dark" white paper
Date: Wed, 6 Aug 2008 16:29:03 -0400

>A few thoughts on the white paper:

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>

>High-level thoughts:

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>I sometimes got a feeling that the paper was missing the forest for the trees.
>I agree that there are several problems that are all contributing to relative
>darkness now, greater darkness in the near future, and near-total darkness in a
>few years, but doesn't the near-total darkness in a few years kind of dwarf the
>rest? And the near-total darkness, as far as I can tell, comes from

[Redacted]

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>There are other problems that are causing difficulties now.

[Redacted]

b5

>but aren't they pretty much overshadowed by the really big problems I've
>described above?

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>To me,

[Redacted]

[Redacted] All of that is included
>in here, but sometimes it seems buried. Maybe it just didn't speak to me.

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>More-specific comments:

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>On page 2,

[Redacted]

[Redacted]

Maybe

>I haven't been watching enough Law and Order.

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>On page 5, second ¶ under [redacted] this sentence is overstated:

[redacted]

>This sentence makes it sound like [redacted]
[redacted] Recommended replacement:

b5

[redacted]

>On page 8, the ¶ before [redacted] I like the topic of the paragraph -
[redacted] but two of the examples are not good:

b5

[redacted]

>On page 12, the bullets under item 1:

b5

>The second bullet says we need to [redacted]

[redacted]

>The third bullet says [redacted]

b5

-- I suggest replacing [redacted]

[redacted]

>PRIVILEGED INTERNAL DELIBERATIVE DOCUMENT - ATTORNEY WORK PRODUCT

b2
b6
b7C

[redacted] FBI Science & Technology Law Unit (OGC), [redacted]

[redacted]

Consolidated STLU Comments on OTD "Going Dark" paper

[redacted]@askcalea.net [redacted]@askcalea.net]

Sent: Monday, September 15, 2008 1:33 PM

b6
b7C

To: Sabol, Sherry E.

Cc: [redacted]

Attachments: CONSOLIDATED COMMENTS FROM~1.doc (69 KB) ; CALEA Amendments and CALEA~1.doc (34 KB)

Sherry:

Per your request during our recent discussions regarding the OTD "Going Dark" paper, attached is a document that consolidates the "high level" and "specific" comments and line edits that [redacted] and I previously provided to you on the paper.

b6
b7C

I'm also attaching a document that consolidates the comments that [redacted] and I previously provided on our earlier proposed CALEA amendments, as well as our [redacted] "wish list" - the interplay between these and the paper should hopefully be pretty clear but we can further discuss if you want more background, information, or clarification.

b2
b5
b6
b7C
b7E

[redacted]

COMMENTS FROM SLTU ON THE OTD "GOING DARK" WHITE PAPER

A. *High-Level Comments*

The White Paper seems take an "everything but the kitchen sink" approach to the problem – rather than a more focused effort – and in doing so, appears to somewhat miss the forest for the trees. While there are obviously several problems that are all contributing to relative darkness now (e.g., [redacted] [redacted]), greater darkness in the near future, and near-total darkness in a few years, the near-total darkness in a few years would seem to dwarf the rest and drive the real problem.

b2
b7E

The near-total darkness appears to comes from [redacted]

b5

[redacted]

b5

All of that is included in the White Paper, but not in a very front-and-center manner, and thus often seems buried.

B. *More Specific Comments and Suggested Edits*

General: Although we assume that the proponent of this paper is the FBI – on behalf of itself and state, local and other federal law enforcement agencies – that is not entirely clear from the title and summary. We suggest clarifying that point up front.

Page 1:

The description of [redacted] in footnote 1 is confusing and somewhat inaccurate. As currently worded, it gives the impression that [redacted]

[redacted]

b5

We suggest the following replacement text for footnote 1:

[redacted]

b5

Page 2:

On Page 2, where the paper talks about [redacted]

[redacted] it might

be helpful to drop a footnote off of that statement that lists a couple of examples for support/emphasis. The following are some examples that could be cited here:

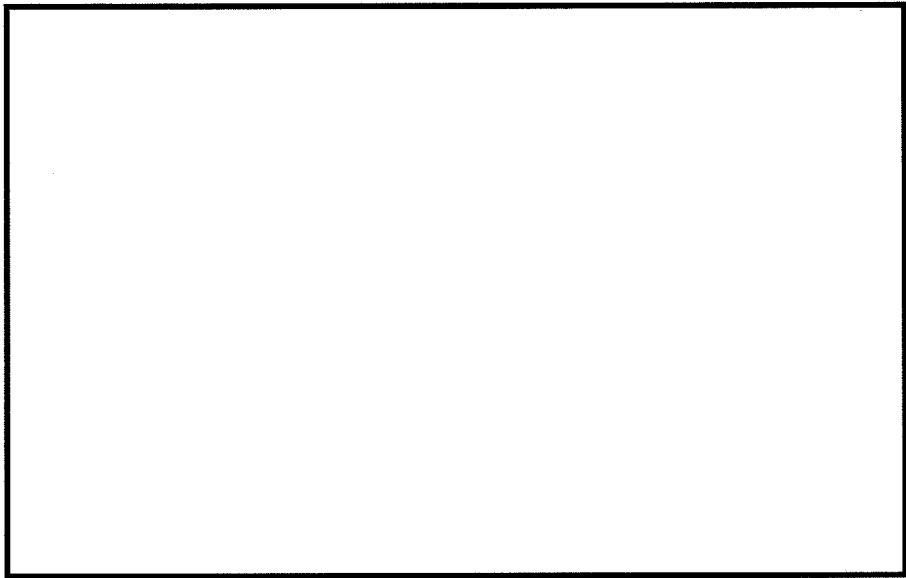
b2
b5
b7E

- [redacted]

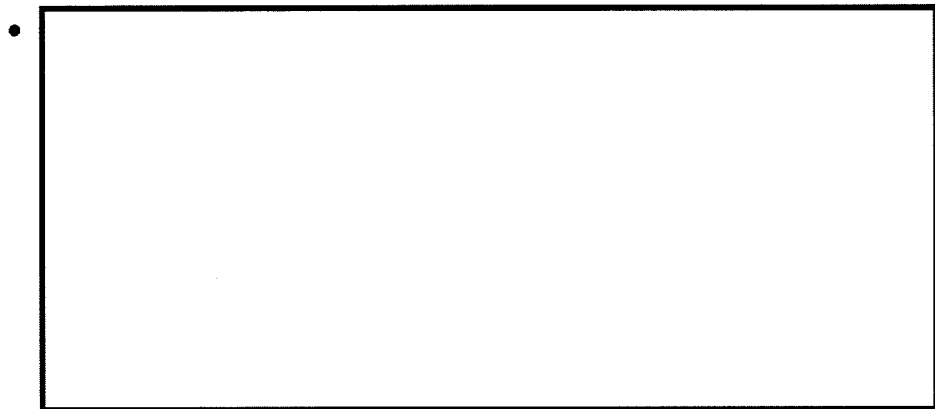
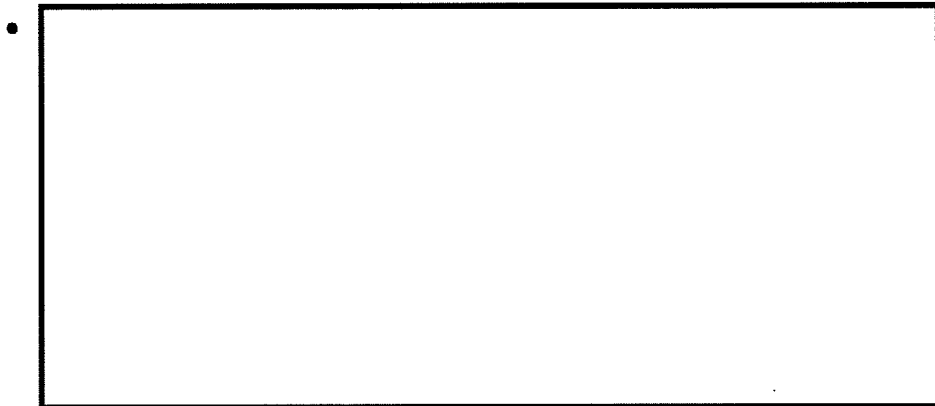
b5

- [redacted]

b5



b5



[REDACTED]

Page 2: Under [REDACTED] the paper says that [REDACTED]
[REDACTED] - we wonder whether that is an overstatement.

Page 3: In the section regarding [REDACTED], we are unclear about why this section references [REDACTED] when the paper is supposed to be emphasizing lawful interception. The reference to [REDACTED] is fine, but we suggest deleting the reference to [REDACTED] since it does not really have anything to do with lawful interception and may confuse the matter or make it seem as though we are overstating the importance.

Page 3: We have the same concern in the section regarding [REDACTED] regarding the reference to [REDACTED]. The reference to [REDACTED] is fine, but we suggest deleting the reference to [REDACTED] since it does not really have anything to do with lawful interception and may confuse the matter or make it seem as though we are overstating the importance.

b5

Page 4: Under [REDACTED] in the second sentence of the paragraph that follows the block quote, it says [REDACTED]
[REDACTED] We are
curious as to what is meant by [REDACTED] and think it
might be better to [REDACTED]
[REDACTED]
which we do not think there is here.

Page 4: Under [REDACTED] the second and third sentence read [REDACTED]
[REDACTED]
[REDACTED] We think that the third sentence is not only an overstatement and/or an inaccurate statement, but also kind of shoots us in the foot.
[REDACTED]
[REDACTED] We suggest rewording the third sentence as follows (choose from one of the two bracketed phrases):

[Redacted]

Page 5: We think there is a stronger legal point that could be made in the last sentence of footnote 10, and suggest changing that sentence to read as follows:

[Redacted]

[Redacted] The reworded sentence helps [Redacted]

b5

Page 5: In the second paragraph under [Redacted] we think the sentence that reads [Redacted] is overstated. As currently written, this sentence makes it sound like [Redacted]. We suggest the following replacement text:

[Redacted]

Page 5: We suggest rewording the sentence in footnote 11 to read as follows:

[Redacted]

[Redacted]

b5

Page 7: We wonder if the boxed quote on this page is necessary when the same statement is at the top of the same page – it seems misplaced to us, especially since there is no attribution with respect to who exactly made this statement.

Page 8: In the paragraph right before the [Redacted] section, the topic of the paragraph is good but two of the examples provided are not good.

[Redacted]

b2
b5
b7E

We do think that [Redacted]
[Redacted]
We also think it would [Redacted]

b5

Page 9: The second sentence in the first full paragraph says [Redacted]
[Redacted] We are not sure that is a fair statement – at least as to all of those things. We think it is probably more accurate to [Redacted]

b5

[Redacted]
We think this a way to more fairly get the point across that [Redacted]

[Redacted]

We suggest rewording the sentence to read as follows, because we think this is really what we are trying to say here:

[Redacted]

Page 9:

We think it might be helpful to

[Redacted]

b5

Page 12:

The second bulleted sentence under

[Redacted]

says we need to

Page 12:

The fourth bulleted sentence under

[Redacted]

concerning the

[Redacted]

Page 12:

The sixth bulleted sentence under [Redacted]

[Redacted] concerning [Redacted]

is also somewhat confusing.

[Redacted]

b5

Part of the solution may be [Redacted]

[Redacted]

In terms of statutory fixes, the goal would be [Redacted]

[Redacted] The easiest-to-understand

proposal would be to [Redacted]

[Redacted]

- but

our preference is really for [Redacted]

[Redacted]

Page 12:

We think that some of the bulleted thoughts under [Redacted]

[Redacted] are not

worded as well as they could be and could benefit from some rewording.

We suggest the following changes.

➤ Split the first bulleted thought into two separate bulleted thoughts that read as follows:

- [Redacted]

- [Redacted]

➤ Replace [Redacted] in the third bullet so that it reads as follows:

- [Redacted]

➤ Replace the text in the seventh bullet with one of the following sentences:

- [Redacted]

or

b5

- [Redacted]

Page 12:

We think it would be helpful to have a separate bullet on [Redacted] that discusses [Redacted]. We suggest adding an additional bullet that says:

- [Redacted]

Page 12:

We think it would be helpful to have a bullet that talks about [Redacted]. We suggest adding an additional bullet to the list that reads something like:

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

b2
b5
b7E

[Redacted]

b2
b6
b7C

From: [Redacted]@askcalea.net on behalf of [Redacted]@askcalea.net
Sent: Thursday, October 02, 2008 12:47 PM
To: barry.smith@ic.fbi.gov; [Redacted]@ic.fbi.gov; [Redacted]@askcalea.net
Cc: sherry.sabol@ic.fbi.gov
Subject: OGC Comments on OTD "Going Dark" paper



CONSOLIDATED
IMMENTS FROM STIdments and CALEA

CALEA

b6
b7C

Barry and [Redacted]

At Sherry's request, I am forwarding OGC's high level and specific comments on the "Going Dark" White Paper.

Also attached is a document that contains our thoughts regarding the current relevance of [Redacted]

Sherry mentioned that there was some confusion as to what [Redacted]

b5

But as mentioned in the attached document, there are [Redacted]

[Redacted]

b6
b7C

[Redacted]

From: [Redacted]
Sent: Wednesday, August 06, 2008 4:29 PM
To: Sabol, Sherry E.; [Redacted]@askcalea.net; [Redacted]
Subject: "Going Dark" white paper

b6
b7c

A few thoughts on the white paper:

High-level thoughts:

I sometimes got a feeling that the paper was missing the forest for the trees. I agree that there are several problems that are all contributing to relative darkness now, greater darkness in the near future, and near-total darkness in a few years, but doesn't the near-total darkness in a few years kind of dwarf the rest? And the near-total darkness, as far as I can tell, comes from

[Redacted]

b5

There are other problems that are causing difficulties now, like [Redacted] but aren't they pretty much overshadowed by the really big problems I've described above?

b5

To me, [Redacted]
[Redacted] All of that is included in here, but sometimes it seems buried. Maybe it just didn't speak to me.

b5

More-specific comments:

On page 2, [Redacted] Maybe I haven't been watching enough Law and Order.

b5

On page 5, second ¶ under [Redacted] this sentence is overstated:

[Redacted]

b5

This sentence makes it sound like [Redacted]
Recommended replacement:

[Redacted]

b5

On page 8, the ¶ before [Redacted] I like the topic of the paragraph - [Redacted] but two of the examples are not good:

b5

[Redacted]

b5

On page 12, the bullets under item 1:

The second bullet says we need to [redacted]

[redacted]

The third bullet says [redacted]
-- I suggest replacing [redacted]

[redacted]

b6
b7C

From: [redacted]@ic.fbi.gov
Sent: Friday, August 08, 2008 10:21 PM
To: [redacted] Sabol, Sherry E.; [redacted]
Subject: RE: White House briefing and CALEA

Just a few thoughts (from the luddite in the group):

1. It is unclear from the title/beginning exactly who is the proponent of this paper. The FBI? LE as a whole? Federal LE?
2. Page 2 - [redacted] - the first sentence of that paragraph appears to be an overstatement [redacted] The next sentence says that [redacted]
3. Page 3 - [redacted] - not sure why it cites to [redacted] when this paper is supposed to emphasize LI. Maybe remove the reference to [redacted] Same concern for the [redacted] section when it mentions [redacted]. The latter halves of these examples have nothing to do with LI so they may only confuse the matter, or make it look like we are overstating the importance once again. Also, what is [redacted] and how recent a case is it? I like the real world examples, but the language is off. b2
b5
b7E
4. Page 4 - [redacted] - the final paragraph mentions [redacted] and indicates that it will be discussed below. I was unable to figure out exactly where. Maybe a more clear reference to a page will do that, otherwise it should be clarified/defined.
5. Page 4 - [redacted] - the third sentence indicated that [redacted] We may want to clarify this or tone it down because I believe that there are still a few issues here.
6. Page 5 - [redacted] - can we really call [redacted]?
7. Page 6 - Do we need to clarify what is in the Wiretap Report? all wiretaps nationwide? only Federal? FBI?
8. Page 7 - [redacted] - Not sure what [redacted] will face, but they may be worth spelling out (e.g. [redacted]). Also, might want to beef up [redacted] that is cited.
9. Page 8 - [redacted] examples are merely referenced, with no explanation of those unique problems or any proposed solutions for that. In such a comprehensive document, why mention this and then propose no answers? Also, under [redacted] aren't [redacted] [redacted]? If so, we should emphasize that and point out deficiencies and potential results.

Otherwise, I concur with [redacted] and [redacted] comments.

b6
b7C

[redacted]

From: [redacted]@askcalea.net [redacted]@askcalea.net]

Sent: Thursday, August 07, 2008 6:13 PM

To: [redacted]; Sabol, Sherry E.; [redacted]@askcalea.net'

b6
b7C

Cc: [redacted]

Subject: RE: White House briefing and CALEA

Sherry:

On the discussion of the earlier CALEA amendment package, I don't have much to add to the points made (with which I concur), except to throw in an additional plug about [redacted]

[redacted]

b2
b5
b6
b7C
b7E

On [redacted] category, I agree with all of [redacted] points, and don't have any additional to add. But I would consider modifying the bullet on [redacted] to say [redacted]

[redacted]
I would also consider adding to [redacted] bullet that [redacted]

I don't have much to add on [redacted] you mentioned, except to say that I thought that much of [redacted]

[redacted] But there may be other things we are looking to do - like [redacted] - that we still need support for.

b2
b5
b7E

I'll send my specific thoughts on the Going Dark paper separately to you as an add on to [redacted] comments...

b6
b7C

[Redacted]

b6
b7C

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

From: [Redacted]@ic.fbi.gov
To: "Sabol, Sherry E." <Sherry.Sabol@ic.fbi.gov> [Redacted]@ic.fbi.gov,
[Redacted]@askcalea.net" <[Redacted]@askcalea.net>
Cc: [Redacted]@ic.fbi.gov
Subject: RE: White House briefing and CALEA
Date: Thu, 7 Aug 2008 16:07:29 -0400

[Redacted]

b2
b5
b7E

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v
v
v*

[Large Redacted Area]

[Redacted]

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>

>Come to think of it, I guess I would like to add one more suggestion to
>my comments on the white paper:

[Redacted]

That said, I really wouldn't want that statement
>to leak.

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>

>So here are my thoughts on some general bullets that could go under the
>category of [Redacted] based in part on taking the white
>paper's word for what OTD has found are important problems:

b2
b5
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>
>1) [Redacted]

>2) [Redacted] As mentioned on page 12 of the white
>paper. I assume this refers to [Redacted]

>3) [Redacted] I'm not sure we can [Redacted]

And we might
>also try to ensure that [Redacted]

>
>4) [Redacted]

[Redacted]

>

>5) [Redacted] Some ideas:

[Redacted]

>

>6) [Redacted]

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b7E

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>7) [Redacted]

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>This list has a lot of similarity to the list on page 12 of the white
>paper.

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>PRIVILEGED INTERNAL DELIBERATIVE DOCUMENT - ATTORNEY WORK PRODUCT

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[Redacted] FBI Science & Technology Law Unit (OGC), [Redacted]

b2
b6
b7C

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>-----Original Message-----

>From: Sabol, Sherry E.

>Sent: Thursday, August 07, 2008 1:45 PM

>To: [Redacted]

>Cc:

>Subject: White House briefing and CALEA

>Importance: High

b6
b7C

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[Redacted]

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[redacted]

>subject is the going dark initiative, particularly [redacted]
>possible legislative initiatives that would assist in overcoming
>the obstacles we anticipate will reduce our ability to conduct
>electronic surveillance in the future. I need to put together a one
>page overview/leave behind that outlines the issues. I am literally
>talking about an outline with general statements - not specific
>legislative proposals. As of now, we see [redacted] breaking
>down into categories as follows:

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>1) [redacted]

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>2) [redacted]

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>3) [redacted]

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b7E

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>4) [redacted]

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>5) [redacted]

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>One of you has, at some indicated, that if we were to go forward with
>the CALEA amendment package [redacted] had worked on, we may need to
>tweak or change our approach to some issues - can you tell me what you
>meant? Was it the nuts and bolts of a legislative amendment we've made
>or something broader?

b5
b6
b7C

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>

[redacted] I haven't had a chance to digest your comments on the going dark
>paper but will review those this afternoon - the information I'm
>looking for may lie in your comments - in the meantime, could you and
>[redacted] come up with a few bullets that would fall under the
>[redacted] arena? If you have thoughts on any of the other
>areas based on your review of the Going Dark paper, I'm open to them
>as well.

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b7C
b7E

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[redacted] - same for you if you have had a chance to review the Going Dark
>paper and have any thoughts.

b6
b7c

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>

>I told Marcus I'd have something for him to review Friday morning. I
>would like to have something to Valerie tomorrow afternoon and intend
>to work on it tonight and tomorrow - if anyone has any thoughts - I'm
>open to hearing them.

>

>

b6
b7C

From: [redacted]@askcalea.net on behalf of [redacted]@askcalea.net
Sent: Friday, August 08, 2008 2:43 PM
To: [redacted] Sabol, Sherry E. [redacted]@askcalea.net; [redacted]
Subject: Re: "Going Dark" white paper

Attachments: [redacted].pdf; [redacted].pdf; [redacted].pdf

b2
b5
b7E



[redacted]

Sherry:

As I mentioned briefly when we spoke last night, I agree with [redacted] high-level comments b6
on the Going Dark paper, and had the same reaction about missing the forest for the trees b7C
- the White Paper seems to be taking an "everything but the kitchen sink" approach rather
than the more focused effort I think we were expecting to see.

In addition to the editorial/line edit type stuff I mentioned to you (which I can redline
in if we end up getting a soft copy of the document), I had a few substantive
comments/suggestions on some of the text:

In footnote 1, which describes [redacted], I think the description they have is
confusing and somewhat inaccurate. It makes it sound like [redacted]

b2
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b7E

I'd recommend replacing it with this sentence:

[redacted]

On Page 2, where the paper talks about [redacted]
[redacted], it might be helpful to drop a footnote off of that
statement that lists a couple of examples for support/emphasis.

One that I know of is [redacted]

Copies

of them are attached if
you want to see what they say. By the way, you'll be interested to know
that [redacted]

Another one I know of is [redacted]

b2
b5
b7E

[Redacted]

[Redacted]

But I think you get the point of my comment...

On Page 4, under [Redacted] in the second sentence of the paragraph that follows the block quote, it says

[Redacted] I'm wonder what they mean by [Redacted] and thinking it might be better to [Redacted]

b2
b5
b7E

which I do not think there is here.

On Page 4, under [Redacted] the second and third sentence read [Redacted]

[Redacted] I think that the third sentence is not only an over- and or inaccurate statement, but is also kind of shoots us in the foot. [Redacted]

[Redacted] I'd suggest rewording the third sentence to say something like this:

[Redacted]

On Page 5, I would change the last sentence in footnote 10 to say:

[Redacted]

[Redacted]

On Page 5, in footnote 11, consider rewording the sentence to say:

[Redacted]

[Redacted]

Just a suggestion...

b2
b5
b7E

On Page 7, I'm wondering why we need that boxed quote when the same statement is at the top of the same page, but I guess that's neither here nor there. It just looks weird - especially since there's no attribution as to who exactly said it. Just an observation...

On Page 9, in the first full paragraph, the second sentence says

[Redacted]

So I'd suggest rewording it this way, because I think this is really what we are trying to say:

[Redacted]

b6
b7C

[Redacted] - do you have any thoughts on the above rewording?

On Page 12, under

[Redacted]

some of these bullets are not worded as well as they could be. I would suggest these changes:

[Redacted]

b2
b5
b7E

I'm confused by the 4th bullet concerning

[Redacted]

- do you have any thoughts on this one?

I'm also confused by the 6th bullet about

[Redacted]

I think the point we are trying to make in this bullet - but are not actually making - is that

[Redacted]

- do you have any thoughts on this one?

b6
b7C

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

From: [Redacted]@ic.fbi.gov
To: "Sabol, Sherry E." <Sherry.Sabol@ic.fbi.gov>, [Redacted]@askcalea.net"
[Redacted]@askcalea.net>, [Redacted]@ic.fbi.gov

Subject: "Going Dark" white paper
Date: Wed, 6 Aug 2008 16:29:03 -0400

b2
b5
b7E

>A few thoughts on the white paper:

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>

>High-level thoughts:

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>

>I sometimes got a feeling that the paper was missing the forest for the trees.

>I agree that there are several problems that are all contributing to

>relative darkness now, greater darkness in the near future, and

>near-total darkness in a few years, but doesn't the near-total darkness

>in a few years kind of dwarf the rest? And the near-total darkness, as

>far as I can tell, comes from

[REDACTED]

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>There are other problems that are causing difficulties now,

[REDACTED]

[REDACTED], but aren't they pretty much overshadowed by the

>really big problems I've described above?

>
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>

>To me,

[REDACTED]

[REDACTED] All of that is included in here, but sometimes
it seems buried. Maybe it just didn't speak to me.

>
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>

>More-specific comments:

>
>
>

>On page 2,

[REDACTED]

[REDACTED]

Maybe I haven't been watching enough Law and Order.

>
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>

>On page 5, second ¶ under [REDACTED] this sentence is overstated:

[REDACTED]

>
>This sentence makes it sound like [redacted]
[redacted] Recommended replacement:

b2
b5
b7E

[redacted]

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>
>On page 8, the ¶ before [redacted]. I like the topic of the
>paragraph - [redacted], but two of the examples are
not good:

[redacted]

b2
b5
b7E

>On page 12, the bullets under item 1:

>The second bullet says we need to [redacted]
[redacted]

b2
b5
b7E

[redacted]

>The third bullet says [redacted]
[redacted]

>-- I suggest replacing [redacted]
[redacted]

>PRIVILEGED INTERNAL DELIBERATIVE DOCUMENT - ATTORNEY WORK PRODUCT

b2
b6
b7C

[redacted] FBI Science & Technology Law Unit (OGC), [redacted]

From: [redacted]
Sent: Friday, August 08, 2008 10:21 PM
To: [redacted] Sabol, Sherry E.; [redacted]
Subject: RE: White House briefing and CALEA

Just a few thoughts (from the luddite in the group):

1. It is unclear from the title/beginning exactly who is the proponent of this paper. The FBI? LE as a whole? Federal LE?

2. Page 2 - [redacted] - the first sentence of that paragraph appears to be an [redacted]. The next sentence says that [redacted]

3. Page 3 - [redacted] section - not sure why it cites to [redacted] when this paper is supposed to emphasize LI. Maybe remove the reference to [redacted]. Same concern for the [redacted] section when it mentions [redacted]. The latter halves of these examples have nothing to do with LI so they may only confuse the matter, or make it look like we are overstating the importance once again. Also, what is [redacted] and how recent a case is it? I like the real world examples, but the language is off.

4. Page 4 - [redacted] - the final paragraph mentions [redacted] and indicates that it will be discussed below. I was unable to figure out exactly where. Maybe a more clear reference to a page will do that, otherwise it should be clarified/defined.

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b7E

5. Page 4 - [redacted] - the third sentence indicated that [redacted]. We may want to clarify this or tone it down because I believe that there are still a few issues here.

6. Page 5 - [redacted] - can we really call [redacted] [redacted]?

7. Page 6 - Do we need to clarify what is in the Wiretap Report? all wiretaps nationwide? only Federal? FBI?

8. Page 7 - [redacted] - Not sure what [redacted] will face, but they may be worth spelling out (e.g. [redacted]). Also, might want to beef up [redacted] that is cited.

9. Page 8 - [redacted] examples are merely referenced, with no explanation of those unique problems or any proposed solutions for that. In such a comprehensive document, why mention this and then propose no answers? Also, under [redacted] aren't [redacted]? If so, we should emphasize that and point out deficiencies and potential results.

Otherwise, I concur with [redacted] and [redacted] comments.

[redacted]

b6
b7C

From: [redacted]@askcalea.net [redacted]@askcalea.net]
Sent: Thursday, August 07, 2008 6:13 PM
To: [redacted]; Sabol, Sherry E.; [redacted]@askcalea.net'
Cc: [redacted]

Subject: RE: White House briefing and CALEA

Sherry:

On the discussion of the earlier CALEA amendment package, I don't have much to add to the points [redacted] made (with which I concur), except to throw in an additional plug about [redacted]

On [redacted] category, I agree with all of [redacted] points, and don't have any additional [redacted] to add. But I would consider modifying the bullet on [redacted] say [redacted] to [redacted] I would also consider adding to [redacted] bullet that [redacted]

I don't have much to add on [redacted] you mentioned, except to say that I thought that much of [redacted] But there may be other things we are looking to do - like [redacted] - that we still need support for.

I'll send my specific thoughts on the Going Dark paper separately to you as an add on to [redacted] comments...

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

From: [redacted]@ic.fbi.gov
To: "Sabol, Sherry E." <Sherry.Sabol@ic.fbi.gov>, [redacted]@ic.fbi.gov, "[redacted]@askcalea.net" <[redacted]@askcalea.net>
Cc: [redacted]@ic.fbi.gov
Subject: RE: White House briefing and CALEA
Date: Thu, 7 Aug 2008 16:07:29 -0400

[redacted]

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>*

[redacted]



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>Come to think of it, I guess I would like to add one more suggestion to
>my comments on the white paper:



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>

>So here are my thoughts on some general bullets that could go under the
>category of [redacted] based in part on taking the white
>paper's word for what OTD has found are important problems:

b2
b5
b7E

>1) [redacted]

>2) [redacted] As mentioned on page 12 of the white
[redacted]

>3) [redacted] I'm not sure we can [redacted]

[redacted] And we might
>also try to ensure that [redacted]

>4) [redacted]

>5) [redacted] Some ideas:
[redacted]

>6) [redacted]

b2
b5
b7E

[redacted]
>7) [redacted]

>This list has a lot of similarity to the list on page 12 of the white paper.

>PRIVILEGED INTERNAL DELIBERATIVE DOCUMENT - ATTORNEY WORK PRODUCT

b2
b6
b7C

[redacted] FBI Science & Technology Law Unit (OGC), [redacted]

>-----Original Message-----

>From: Sabol, Sherry E.
>Sent: Thursday, August 07, 2008 1:45 PM
>To: [redacted]
>Cc: [redacted]
>Subject: White House briefing and CALEA
>Importance: High

b6
b7C

[redacted]

[redacted] -
>subject is the going dark initiative, particularly [redacted]
>issues/possible legislative initiatives that would assist in overcoming
>the obstacles we anticipate will reduce our ability to conduct
>electronic surveillance in the future. I need to put together a one
>page overview/leave behind that outlines the issues. I am literally
>talking about an outline with general statements - not specific legislative proposals.
As of now, we see [redacted]
>breaking down into categories as follows:

b2
b5
b7E

- >1) [redacted]
- >2) [redacted]
- >3) [redacted]
- >4) [redacted]
- >5) [redacted]

>One of you has, at some indicated, that if we were to go forward with
>the CALEA amendment package [redacted] had worked on, we may need to
>tweak or change our approach to some issues - can you tell me what you
>meant? Was it the nuts and bolts of a legislative amendment we've made or something
broader?

b6
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b2
b5
b6
b7C
b7E

>
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> [redacted] - I haven't had a chance to digest your comments on the going dark
> paper but will review those this afternoon - the information I'm
> looking for may lie in your comments - in the meantime, could you and
> [redacted] come up with a few bullets that would fall under the
> [redacted] arena? If you have thoughts on any of the other
> areas based on your review of the Going Dark paper , I'm open to them as well.
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> [redacted] - same for you if you have had a chance to review the Going Dark
> paper and have any thoughts.

b6
b7C

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> I told Marcus I'd have something for him to review Friday morning. I
> would like to have something to Valerie tomorrow afternoon and intend
> to work on it tonight and tomorrow - if anyone has any thoughts - I'm open to hearing
them.
>
>

RE: "Going Dark" white paper

[Redacted]

b6
b7C

Sent: Friday, August 08, 2008 3:29 PM

To: [Redacted]@askcalea.net; Sabol, Sherry E.; [Redacted]

Below, I respond in blue to a couple of points where [Redacted] directed questions to me (and one where she didn't).
- DAK

b6
b7C

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

From: [Redacted]@askcalea.net [mailto:[Redacted]@askcalea.net]

Sent: Friday, August 08, 2008 2:43 PM

To: [Redacted]; Sabol, Sherry E.; [Redacted]@askcalea.net'; [Redacted]

B.

Subject: Re: "Going Dark" white paper

Sherry:

As I mentioned briefly when we spoke last night, I agree with [Redacted] high-level comments on the Going Dark paper, and had the same reaction about missing the forest for the trees - the White Paper seems to be taking an "everything but the kitchen sink" approach rather than the more focused effort I think we were expecting to see.

b6
b7C

In addition to the editorial/line edit type stuff I mentioned to you (which I can redline in if we end up getting a soft copy of the document), I had a few substantive comments/suggestions on some of the text:

In footnote 1, which describes [Redacted] I think the description they have is confusing and somewhat inaccurate. It makes it sound like [Redacted]

b2
b5
b7E

[Redacted] I'd recommend

replacing it with this sentence:

[Redacted]

b2
b5
b7E

On Page 2, where the paper talks about [Redacted], it might be helpful to drop a footnote off of that statement that lists a couple of examples for support/emphasis.

One that I know of is [Redacted]

b2
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b7E

[Redacted] Copies of them are attached if you want to see what they say. By the way, you'll be interested to know

that

[Redacted]

b2
b5
b7E

Another one I know of is

[Redacted]

[Redacted]

But I think you get the point of my comment...

On Page 4, under [Redacted] in the second sentence of the paragraph that follows the block quote, it says

[Redacted] I'm
wonder what they mean by [Redacted] and thinking it might
be better to [Redacted]
[Redacted] which I do not
think there is here.

On Page 4, under [Redacted] the second and third sentence read

[Redacted]
I think that the third sentence is not only an over- and or
inaccurate statement, but is also kind of shoots us in the foot.
[Redacted]

[Redacted]

I'd suggest rewording the third sentence to say something like this:

b2
b5
b7E

[Redacted]

On Page 5, I would change the last sentence in footnote 10 to say:

[Redacted]

b2
b5
b7E

On Page 5, in footnote 11, consider rewording the sentence to say:

[Redacted]

b2
b5
b7E

[Redacted] Just a suggestion...

On Page 7, I'm wondering why we need that boxed quote when the same statement is at the top of the same page, but I guess that's neither here nor there. It just looks weird - especially since there's no attribution as to who exactly said it. Just an observation...

On Page 9, in the first full paragraph, the second sentence says [Redacted]

[Redacted]

I'm not sure that's a fair statement - at least as to all of those things. I think it's probably more accurate to [Redacted]

b2
b5
b7E

[Redacted]

So I'd suggest rewording it this way, because I think this is really what we are trying to say:

[Redacted]

b2
b5
b7E

[Redacted] - do you have any thoughts on the above rewording?

DAK>> I think you've reworded it well to more fairly say that [Redacted]

[Redacted]

b2
b5
b7E

[redacted]

On Page 12, under [redacted] some of these bullets are not worded as well as they could be. I would suggest these changes:

b2
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b7E

[redacted]

DAK>> Or [redacted] (I would argue that [redacted])

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b6
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I'm confused by the 4th bullet concerning [redacted]
[redacted] - do you have any thoughts on this one?

DAK>> I interpreted this as [redacted] I don't think this [redacted]

b2
b5
b7E

I'm also confused by the 6th bullet about [redacted]. I think the point we are trying to make in this bullet - but are not actually making - is that [redacted] - do you have any thoughts on this one?

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b7E

DAK>> I don't have it in front of me so I don't remember exactly how that bullet was worded, but I think the idea is that [redacted] Part of the solution, I think, is [redacted] But if we're talking about [redacted] I think the easiest-to-understand proposal is just to say that [redacted] That's what [redacted] says above - that we want [redacted]

b6
b7C

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

From: [redacted]@ic.fbi.gov
To: "Sabol, Sherry E." <Sherry.Sabol@ic.fbi.gov>, "[redacted]@askcalea.net", [redacted]@askcalea.net, [redacted]@ic.fbi.gov
Subject: "Going Dark" white paper
Date: Wed, 6 Aug 2008 16:29:03 -0400

b6
b7C

>A few thoughts on the white paper:

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>High-level thoughts:

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>I sometimes got a feeling that the paper was missing the forest for the trees.
>I agree that there are several problems that are all contributing to relative
>darkness now, greater darkness in the near future, and near-total darkness in a
>few years, but doesn't the near-total darkness in a few years kind of dwarf the
>rest? And the near-total darkness, as far as I can tell, comes from [redacted]

[redacted]

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>There are other problems that are causing difficulties now, like [redacted]

b2
b5
b7E

>but aren't they pretty much overshadowed by the really big problems I've
>described above?

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>To me, [redacted]

[redacted]

[redacted] All of that is included
>in here, but sometimes it seems buried. Maybe it just didn't speak to me.

>
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>More-specific comments:

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>

>On page 2, [redacted]

[redacted]

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b2
b5
b7E

[Redacted]

Maybe

>I haven't been watching enough Law and Order.

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>

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>On page 5, second ¶ under [Redacted] this sentence is overstated:

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[Redacted]

>

>This sentence makes it sound like this has happened often. [Redacted]

[Redacted]

Recommended replacement:

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[Redacted]

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>On page 8, the ¶ before [Redacted] I like the topic of the paragraph -

[Redacted]

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>On page 12, the bullets under item 1:

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>The second bullet says we need to [Redacted]

[Redacted]

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[Redacted]

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>The third bullet says [Redacted]

[Redacted]

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>PRIVILEGED INTERNAL DELIBERATIVE DOCUMENT - ATTORNEY WORK PRODUCT

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[Redacted]

FBI Science & Technology Law Unit (OGC),

[Redacted]

b2
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[redacted]
From: [redacted]
Sent: Friday, August 08, 2008 3:29 PM
To: [redacted]@askcalea.net; Sabol, Sherry E. [redacted]
Subject: RE: "Going Dark" white paper

Below, I respond in blue to a couple of points where [redacted] directed questions to me (and one where she didn't). - DAK

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

From: [redacted]@askcalea.net [mailto:[redacted]@askcalea.net]
Sent: Friday, August 08, 2008 2:43 PM
To: [redacted]; Sabol, Sherry E.; [redacted]@askcalea.net'; [redacted]
Subject: Re: "Going Dark" white paper

b6
b7C

Sherry:

As I mentioned briefly when we spoke last night, I agree with [redacted] high-level comments on the Going Dark paper, and had the same reaction about missing the forest for the trees - the White Paper seems to be taking an "everything but the kitchen sink" approach rather than the more focused effort I think we were expecting to see.

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[redacted] I'd recommend replacing it with this sentence:

On Page 2, where the paper talks about [redacted], it might be helpful to drop a footnote off of that statement that lists a couple of examples for support/emphasis.

b2
b5
b7E

One that I know of is [redacted]

Another one I know of is [redacted]

[REDACTED]

[REDACTED]

. But I think you get the point of my comment...

On Page 4, under [REDACTED] in the second sentence of the paragraph that follows the block quote, it says [REDACTED] wonder what they mean by [REDACTED] and thinking it might be better to [REDACTED] I'm [REDACTED] which I do not think there is here.

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[REDACTED]

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[REDACTED]

[Redacted]

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b2
b5
b7E

[Redacted]

[Redacted]

Just a suggestion...

On Page 7, I'm wondering why we need that boxed quote when the same statement is at the top of the same page, but I guess that's neither here nor there. It just looks weird - especially since there's no attribution as to who exactly said it. Just an observation...

On Page 9, in the first full paragraph, the second sentence says

[Redacted]

b2
b5
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So I'd suggest rewording it this way, because I think this is really what we are trying to say:

[Redacted]

b6
b7C

[Redacted] - do you have any thoughts on the above rewording?

DAK>> I think you've reworded it well to more fairly say that

[Redacted]

On Page 12, under

[Redacted] some of these bullets are not worded as well as they could be. I would suggest these changes:

b2
b5
b7E

[Redacted]

DAK>> Or [Redacted] would argue that

[Redacted]

(1

I'm confused by the 4th bullet concerning [redacted]

[redacted] - do you have any thoughts on this one?

DAK>> I interpreted this as [redacted]

[redacted] I don't think this point is about [redacted]

I'm also confused by the 6th bullet about [redacted]

[redacted] I think the point we are trying to make in this bullet - but are not actually making - is that [redacted]

b2
b5
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[redacted] - do you have any thoughts on this one?

DAK>> I don't have it in front of me so I don't remember exactly how that bullet was worded, but I think the idea is that [redacted]

[redacted] Part of the solution, I think, is [redacted]

But if we're talking about [redacted]

[redacted] I think the easiest-to-understand proposal is just to say that [redacted]

[redacted] That's what [redacted] says above -- that we want [redacted]

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

From: [redacted]@ic.fbi.gov
To: "Sabol, Sherry E." <Sherry.Sabol@ic.fbi.gov>, "[redacted]@askcalea.net", [redacted]@askcalea.net, [redacted]@ic.fbi.gov
Subject: "Going Dark" white paper
Date: Wed, 6 Aug 2008 16:29:03 -0400

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>A few thoughts on the white paper:

>
>

>High-level thoughts:

>
>
>

>I sometimes got a feeling that the paper was missing the forest for the trees.
>I agree that there are several problems that are all contributing to relative
>darkness now, greater darkness in the near future, and near-total darkness in a
>few years, but doesn't the near-total darkness in a few years kind of dwarf the
>rest? And the near-total darkness, as far as I can tell, comes from [redacted]

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[Redacted]

>
>
>

>There are other problems that are causing difficulties now, [Redacted]

>but aren't they pretty much overshadowed by the really big problems I've
>described above?

>
>
>

>To me, [Redacted]

>in here, but sometimes it seems buried. Maybe it just didn't speak to me.

>
>
>

>More-specific comments:

>
>
>

>On page 2, [Redacted]

[Redacted]

[Redacted] Maybe

>I haven't been watching enough Law and Order.

>
>
>

>On page 5, second ¶ under [Redacted], this sentence is overstated:

[Redacted]

>This sentence makes it sound like [Redacted]

[Redacted] Recommended replacement:

[Redacted]

>
>
>

>On page 8, the ¶ before [Redacted], I like the topic of the paragraph -

[Redacted] but two of the examples are not good:

[Redacted]

>
>
>

Revised Going Dark Initiative Summary and Amendment Charts

[redacted]@askcalea.net]

Sent: Monday, March 09, 2009 6:19 PM
To: [redacted]@askcalea.net
Cc: Sabol, Sherry E.; [redacted]
Attachments: Revised (OGC Redline) Vers~1.doc (211 KB)

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Per our conversation a little while ago, here are revised/redlined versions of the Going Dark Initiative one-page executive summary and the Attachment 1 and 2 charts that go with the summary. As I mentioned, I revised the one-page executive summary to make sure that the scope matched what we're proposing in the amendments (i.e., ELSUR and ELSUR plus).

I also did some light revisions in Attachments 1 and 2. I did not give them a full and complete scrub (just a quick skim) but fixed stuff where something caught my eye. Most of the revisions are non-substantive and should be self-explanatory. The only substantive revisions are

[redacted]

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Sherry is still awaiting confirmation from Marcus about whether we are correct about the scope of "Going Dark" for purposes of the legislative effort - once she hears back, we (OTD and OGC) can finalize the summary and attachments and then get them up to OCA.

Thanks,
[redacted]

b6
b7C

[redacted]
Assisfant General Counsel
Science and Technology Law Unit
Office of the General Counsel
Federal Bureau of Investigation
Direct Dial: [redacted]
E-mail: [redacted]@askcalea.net

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.....
This e-mail message and any attached files are confidential and are intended solely for the use of the addressee(s) named above. This communication may contain material protected by attorney-client, work product, or other privileges. If you are not the intended recipient or person responsible for delivering this confidential communication to the intended recipient, you have received this communication in error, and any review, use, dissemination, forwarding, printing, copying, or other distribution of this e-mail message and any attached files is strictly prohibited. If you have received this confidential communication in error, please notify the sender immediately by reply e-mail message and permanently delete the original message.
.....

[redacted] (OGC) (FBI)

From: SABOL, SHERRY E. (OGC) (FBI)
Sent: Wednesday, April 29, 2009 9:55 AM
To: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Subject: FW: Five prong
Attachments: fiveprong.pdf

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NON-RECORD

[redacted]

OTD provided the following document this morning which outlines the Going Dark Initiative (again). This document sets forth categories of concern on the legislative front I understand there was already a follow on legislative meeting set for May 14th. They claim to be waiting for the "lawyers" to continue their conversations. Upon my objection, Marcus agreed that they should have a follow on meeting without the lawyers to have something in hand on May 14 that we can discuss. Marcus tasked [redacted] to produce two documents with a rough draft by end of next week: 1) [redacted]

[redacted] and, 2) [redacted]

I also talked to [redacted] on [redacted] - as we discussed yesterday.

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[redacted] He is leaving town this afternoon and asked that we have a follow up conversation next week specifically on this issue. Bottom line, [redacted]

[redacted] according to [redacted]

[redacted] - as we have discussed to some extent, there are several issues [redacted] that OGC may not agree with... [redacted] and [redacted] have already had some level of discussion with them on certain issues that fall into this category - Marcus indicated he thought the conversation was fruitful and gives them something to think about. I think this is where we will have to weigh in once they produce their documents next week. At your convenience, I can bring you up to speed on what other issues they are likely to request that [redacted] or, like the issue above, we believe we can [redacted]

Thanks
Sherry.

From: [redacted] (OTD) (FBI)
Sent: Wednesday, April 29, 2009 8:22 AM
To: SABOL, SHERRY E. (OGC) (FBI)
Subject: Five prong

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NON-RECORD

Here you go



fiveprong.pdf (55
KB)

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Executive Assistant
Operational Technology Division



Blackberry
@ic.fbi.gov

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WHITEPAPER

"Going Dark"

Law Enforcement's Need to Preserve Lawful Intercept (LI) Capabilities

July 2008

DRAFT

Law Enforcement and Lawful Interception Information - FBI Approval Required Prior to Dissemination

Sensitive Law Enforcement and Lawful Interception Information - FBI Approval Required Prior to Dissemination

[Redacted] (OGC) (FBI)

From: [Redacted] (OGC) (FBI)
Sent: Thursday, March 12, 2009 2:35 PM
To: [Redacted] (DO)(FBI)
Cc: [Redacted] (OGC) (FBI); SABOL, SHERRY E. (OGC) (FBI); THOMAS, MARCUS C. (OTD) (FBI); [Redacted] (OTD) (FBI); [Redacted] (OGC) (FBI)
Subject: Going Dark Initiative Legislative Package

Attachments: Executive Summary of The Going Dark Initiative and Proposed Legislative Amendments for OCA (FINAL) 20090312.doc

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Attached as discussed with OCA in connection with the DOJ legislative call due on March 13, 2009 are a one-page Going Dark Initiative executive summary and two charts (Attachments 1 and 2) that summarize the legislative proposals associated with the initiative.

Please let us know if you or others have any questions or need additional information,



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Executive Summary
of The Going...



Assistant General Counsel
Science and Technology Law Unit
Office of the General Counsel
Federal Bureau of Investigation
Direct Dial: [Redacted]
Fax: [Redacted]

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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.

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.

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**

[Redacted] (OGC) (FBI)

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From: [Redacted] (OGC) (FBI)
Sent: Friday, March 06, 2009 1:54 PM
To: [Redacted] (OGC) (FBI)
Subject: Going Dark Blurb

Attachments: Going Dark Blurb.doc

UNCLASSIFIED
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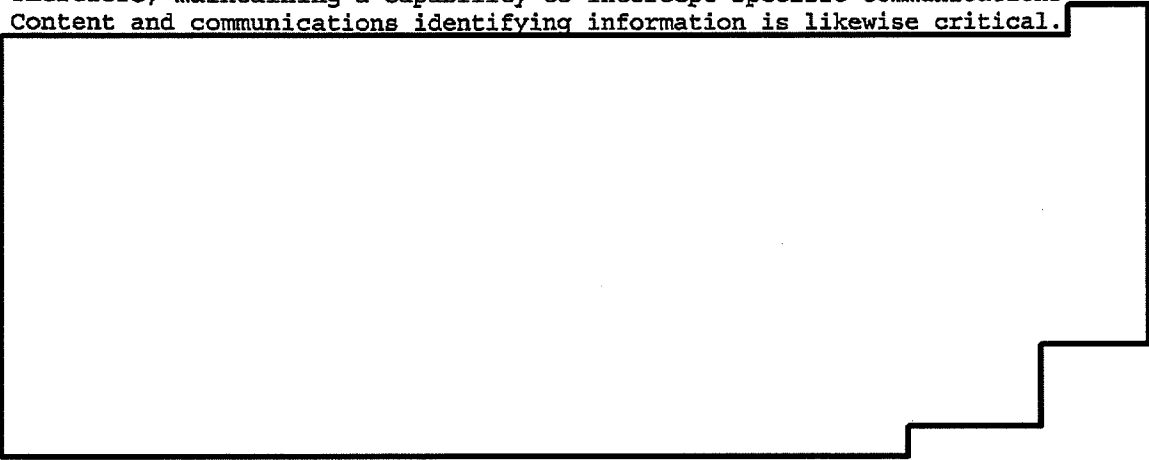
Going Dark
Blurb.doc (27 KB)

[Redacted]
Assistant General Counsel
Science and Technology Law Unit
Office of the General Counsel
Federal Bureau of Investigation
Direct Dial: [Redacted]
Fax: [Redacted]

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Court-authorized electronic surveillance (ELSUR) is critical to enforcing the law, protecting our citizens, and maintaining our Nation's security. Therefore, maintaining a capability to intercept specific communications content and communications identifying information is likewise critical.



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Sabol, Sherry E.

Sent: Wednesday, March 11, 2009 12:34 PM
To: [redacted] Thomas, Marcus C.
Cc: [redacted]
Attachments: Executive Summary of The G~1.doc (178 KB)

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Marcus/[redacted]

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Attached is a catalogue of legislative proposals that support Going Dark and other OTD interests. [redacted] and [redacted] have been working on this in response to DOJ's recent call for the top 5 agency legislative issues. We've coordinated with OCA and they agree on this format (our concern was it wasn't just one legislative proposal).

Marcus - I revised this a bit (just the first page) from the version you saw yesterday so want to make sure you see it again before it goes forward.

As soon as we hear from both of you we'll send it forward to OCA - they need it asap as usual.

Sherry E. Sabol
Section Chief
Office of Science and Technology Law
Federal Bureau of Investigation

o: [redacted]
bb: [redacted]

b2

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.

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.

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