

**Demers, John**

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**From:** Olsen, Matthew [redacted]@usdoj.gov  
**Sent:** Friday, October 19, 2007 6:01 PM  
**To:** [redacted]@ssci.senate.gov; Wainstein, Kenneth (NSD); Demers, John (NSD); Eisenberg, John; Gerry, Brett; [redacted]  
**Subject:** 2.5 issue

**Exemption 6**

Jack - We are working on getting you information on our 2.5 practice. A quick look reveals that about one-third of the AG-approved requests this year would not have met the FISA definition of an agent of a foreign power (as required in the bill) -- the problem is FISA section 1801(b)(1)(a). We can talk more this weekend or Monday about your other questions.

NSDI

321

**Demers, John**

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**From:** Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov  
**Sent:** Tuesday, November 27, 2007 1:09 PM  
**To:** Demers, John (NSD)  
**Subject:** RE: Emailing: Proposed RockefellerBond Managers Amendment 11 26

**Attachments:** Proposed RockefellerBond Managers Amendment 11 26(redline).wpd



Proposed  
ckefellerBond Manag

What do you think of these modifications to your version?

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

**From:** Demers, John (NSD) [mailto:REDACTED@usdoj.gov]  
**Sent:** Tuesday, November 27, 2007 9:31 AM  
**To:** Livingston, J (Intelligence)  
**Subject:** Emailing: Proposed RockefellerBond Managers Amendment 11 26

<<Proposed RockefellerBond Managers Amendment 11 26.wpd>> Jack,

Attached is a first crack at a re-draft. It is still being reviewed by folks here and outside the Department so we may have additional changes.

Let me know if you have questions.

Thanks,  
John

The message is ready to be sent with the following file or link attachments:

Proposed RockefellerBond Managers Amendment 11 26

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

**Exemption 6**

NSD

328

**Demers, John**

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**From:** Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov]

**Sent:** Friday, November 30, 2007 12:00 PM

**To:** Demers, John (NSD)

**Subject:** RE: Here's the latest draft for our meeting in a few minutes

**Exemption 6**

Still waiting on Leg Counsel. I stayed late to give her all the changes. She started on them this morning. I'm hopeful that I'll have something soon. As soon as I get it, I will forward it to you (unless it comes during our afternoon meeting).

DW

NSD,

330

9/25/2008

**Demers, John**

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**From:** Livingston, J (Intelligence) [redacted]@ssci.senate.gov  
**Sent:** Friday, November 30, 2007 5:41 PM  
**To:** Demers, John (NSD)  
**Subject:** RE: New amendment is attached (EAS07D01.xml)

(b)(3)

No big deal. Actually, you can use the thread to make sure I made all the changes we discussed.

**Exemption 6**

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**From:** Demers, John (NSD) [mailto:redacted]@usdoj.gov  
**Sent:** Friday, November 30, 2007 5:40 PM  
**To:** Livingston, J (Intelligence)  
**Subject:** RE: New amendment is attached (EAS07D01.xml)

Well, I forwarded it with the thread but only in DOJ. I think Ben's taking care of the IC.

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**From:** Livingston, J (Intelligence) [mailto:redacted]@ssci.senate.gov  
**Sent:** Friday, November 30, 2007 5:21 PM  
**To:** Demers, John (NSD)  
**Subject:** RE: New amendment is attached (EAS07D01.xml)

If it's not too late, try to forward it without the message thread. Thanks.

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**From:** Demers, John (NSD) [mailto:redacted]@usdoj.gov  
**Sent:** Friday, November 30, 2007 3:53 PM  
**To:** Livingston, J (Intelligence); [redacted]  
**Subject:** RE: New amendment is attached (EAS07D01.xml)

Great. Thanks Jack. I believe this will give us something we can say we like better (though still oppose in principle).

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**From:** Livingston, J (Intelligence) [mailto:redacted]@ssci.senate.gov  
**Sent:** Friday, November 30, 2007 2:29 PM  
**To:** Demers, John (NSD); [redacted]  
**Subject:** Fw: New amendment is attached (EAS07D01.xml)

Here is the leg counsel version of fixing the 2.5 version.

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Sent from my BlackBerry Wireless Device

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

**From:** Easley, Stephanie (Legis Counsel) <[redacted]@slc.senate.gov>  
**To:** Livingston, J (Intelligence)  
**Sent:** Fri Nov 30 14:19:54 2007  
**Subject:** New amendment is attached (EAS07D01.xml)

Please let me know if you have additional edits for me.

NSD.

331

9/25/2008

Thanks.

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

From: Livingston, J (Intelligence) [mailto: [REDACTED]@ssci.senate.gov]

Sent: Friday, November 30, 2007 12:25 PM

To: Easley, Stephanie (Legis Counsel)

Subject: RE: New amendment is attached (EAS07C97.xml)

Stephanie,

Any chance this might be ready before 1:00? We have a FISA meeting with SJC, SSCI, DOJ, and the IC then, and it would be nice to share text.

Thanks.

Jack

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

From: Easley, Stephanie (Legis Counsel)

[mailto: [REDACTED]@slc.senate.gov]

Sent: Friday, November 30, 2007 9:00 AM

To: Livingston, J (Intelligence)

Subject: RE: New amendment is attached (EAS07C97.xml)

Ok. I'll work on these this morning.

Thanks.

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

From: Livingston, J (Intelligence) [mailto: [REDACTED]@ssci.senate.gov]

Sent: Thursday, November 29, 2007 9:41 PM

To: Easley, Stephanie (Legis Counsel)

Cc: Rice, K (Intelligence); Tucker, L (Intelligence)

Subject: RE: New amendment is attached (EAS07C97.xml)

Okay. I just got back from DOJ, and it appears that we have a larger than expected number of edits. Working off of EAS07C99, here they are:

Page 3, line 1, strike "surveillance" and insert "acquisition"

Page 3, line 5, strike "have returned to" and insert "be in"

Page 3, line 7, strike "surveillance" and insert "acquisition"

Page 3, line 8, strike "an order under Title I of this Act is obtained" and insert "authority is obtained pursuant to this Act"

Page 3, line 15, strike "subsection (a)" and insert "this subsection"

Page 3, line 19, strike "electronic surveillance" and insert "acquisition"

Page 3, line 20, strike "declaration containing a"

Page 3, line 23, strike "electronic surveillance" and insert "acquisition"

Page 4, line 8, strike "electronic surveillance" and insert "acquisition"

Page 4, line 10, strike "surveillance" and insert "acquisition"

Page 4, line 13, strike "[and, if applicable section 301(4)]" and insert "or section 301(4)"

Page 4, line 17, strike "surveillance" and insert "acquisition"

Page 4, line 20, strike "electronic surveillance" and insert "acquisition"

Page 5, line 5, strike "electronic surveillance" and insert

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"acquisition"

Page 5, line 13, strike "electronic surveillance" and insert "acquisition"

Page 5, line 18, strike "electronic surveillance" and insert "acquisition"

Page 6, line 3, strike "and, if applicable," and insert "or"

Page 7, line 5, strike "and, if applicable," and insert "or"

Page 7, line 9, remove brackets

Page 7, line 12, strike "Directives" and insert "Directions"

Page 7, line 13, strike "electronic surveillance" and insert "acquisition"

Page 7, line 17, strike "communication" and insert "communications"

Page 7, line 21, strike "electronic surveillance" and insert "acquisition authorized under this subsection,"

Page 7, line 22, strike "surveillance" and insert "acquisition"

Page 8, line 1, strike "munication" and insert "munications"

Page 8, line 4, strike "providers" and insert "provider"

Page 8, line 6, strike "elec-tronic surveillance" and insert "acquisition"

Page 8, line 8, strike "communication" and insert "communications"

Page 8, line 16, strike "paragraph (3)" and insert "this paragraph"

Hmmm. The closer this provision tracks to the current FISA emergency request language, the easier it will be for me to sell.

Page 8, strike line 25 through Page 9, line 14 and insert "reasonably determines that--(A) an emergency situation exists with respect to the acquisition of foreign intelligence information, to include the acquisition of stored electronic communications, within the United States to target a United States person reasonably believed to be located outside the United States before an order authorizing such acquisition can with due diligence be obtained; and (B) the factual basis for issuance of an order under this subsection to approve such acquisition exists; he may authorize the emergency acquisition if a judge having jurisdiction under section 103 is informed by the Attorney General or his designee at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this subsection is made to that judge as soon as practicable, but not more than 168 hours after the Attorney General authorizes such acquisition."

Page 9, line 17, strike "employment of electronic surveillance" and insert "acquisition"

Page 9, line 23, strike "electronic surveillance" and insert "acquisition"

Page 9, line 24, strike "surveillance" and insert "acquisition"

Page 10, line 6, strike "electronic surveil-lance" and insert "acquisition"

Page 10, line 8, strike "surveillance" and insert "acquisition"

Page 10, line 9, strike "surveil-lance" and insert "acquisition"

Page 10, line 17, strike "sur-veillance" and insert "acquisition"

Page 10, strike lines 24 through Page 11, line 13.

Page 11, line 18, strike "a directive" and insert "an order or request for emergency assistance"

Page 11, line 23, remove brackets

Page 12, line 1, strike "(4) not later than 7 days after the issuance of such decision." and insert "(4)."

Page 12, line 15, strike "Acquisition Outside the United States" and insert "Other Acquisition"

Page 12, line 20, strike all after "In General.--" through Page 13, line 4 and insert "Acquisition by electronic, mechanical, or other"

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surveillance device may not intentionally target a United States person reasonably believed to be located outside the United States to acquire the contents of a wire or radio communication sent by or intended to be received by that United States person under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes if the technique were used inside the United States, unless the Foreign Intelligence Surveillance Court has entered an ex parte order pursuant to paragraph (3). The Foreign Intelligence Surveillance Court shall have jurisdiction to enter such order pursuant to paragraph (3)."

Page 13, strike line 6 and all that follows through line 25 and insert "(j) Moving or Misidentified Targets.--In the event"

Page 14, line 2, strike "have returned to" and insert "be in"

Page 14, line 5, strike "an order under title I of this Act is obtained" and insert "authority is obtained pursuant to this Act"

Page 14, after line 10, insert new clause (ii) Applicability.--If the acquisition constitutes electronic surveillance targeting a United States person reasonably believed to be located outside the United States to acquire foreign intelligence information, to include the acquisition of stored electronic communications, when acquisition is conducted within the United States, the procedures in subsection (a) shall apply.

Page 14, line 13, strike "sub-section (a)" and insert "this subsection"

Page 15, line 6, strike [and, if applicable section 301(4)] and insert "or section 301(4)"

Hmmm. I think we have to go back to the language similar to the original formulation here for the order. Your formulation has the court authorizing the acquisition. We can't have the Court actually authorizing acquisitions in this context, because the means of surveillance might violate the laws of some foreign country. Thus, the Court can only issue an order stating that the required elements have been met.

Page 15, line 19, strike "Upon an application" and all that follows through line 24 and insert "If, upon an application made pursuant to paragraph (2), the Foreign Intelligence Surveillance Court finds that--"

Page 16, line 13, strike "with" and insert "with respect to their dissemination provisions,"

Page 16, strike line 15 and insert "or section 301(4); it shall issue an ex parte order so stating."

Page 17, line 13, strike "proposed minimization procedures required under subparagraph (A)(ii)" and insert "minimization procedures applicable to dissemination of information obtained through an acquisition under this subsection"

Page 17, line 16, strike "and, if applicable," and insert "or"

Page 17, line 20, remove brackets

Page 17, line 23, strike all through page 18, line 1 and insert "(D) Duration.--An order under this"

Page 18, strike line 11 through line 23 and insert "reasonably determines that--(A) an emergency situation exists with respect to the acquisition of foreign intelligence information, to include the acquisition of stored electronic communications, to target a United States person reasonably believed to be located outside the United States before an order authorizing such acquisition can with due diligence be obtained; and (B) the factual basis for issuance of an

order under this subsection to approve such acquisition exists; he may authorize the emergency acquisition if a judge having jurisdiction under section 103 is informed by the Attorney General or his designee at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this subsection is made to that judge as soon as practicable, but not more than 168 hours after the Attorney General authorizes such acquisition."

Page 20, strike lines 7 through line 20.

Page 20, line 23, remove brackets

Page 21, line 1, strike "(4) not later than 7 days after the issuance of such decision." and insert "(4)."

I think that's all of them. (Kathleen, feel free to chime in if I've missed anything.)

I imagine that there will be some modifications to this text after we negotiate with Mike, but it's my hope that this will largely be acceptable to them. If you have time once you've finished with this, it might be good to have this text cut and pasted into EAS07C96 (substitute Managers' Amendment) starting on page 25 and going through page 39. Thanks.

Jack

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

From: Easley, Stephanie (Legis Counsel)

[mailto: [REDACTED]@slc.senate.gov]

Sent: Thursday, November 29, 2007 4:23 PM

To: Livingston, J (Intelligence)

Subject: RE: New amendment is attached (EAS07C97.xml)

A new version is attached for your review (EAS07C99.xml).

Thanks.

Stephanie

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

From: Livingston, J (Intelligence) [mailto: [REDACTED]@ssci.senate.gov]

Sent: Thursday, November 29, 2007 3:14 PM

To: Easley, Stephanie (Legis Counsel)

Subject: RE: New amendment is attached (EAS07C97.xml)

Here is another redline/strike out with edits for EAS07C97. This is the version I'm taking to DoJ for comment. Hopefully, there won't be many edits after that. I apologize for submitting it in this format. If I had more time, I'd give you the standard page/line references. Thanks.

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

From: Easley, Stephanie (Legis Counsel)

[mailto: [REDACTED]@slc.senate.gov]

Sent: Thursday, November 29, 2007 1:34 PM

To: Livingston, J (Intelligence)

Subject: New amendment is attached (EAS07C97.xml)

Here it is. Let me know if you have questions or edits.

Thanks.

9/25/2008

Stephanie

9/25/2008

NSD  
1/2/08

**Demers, John**

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**From:** Livingston, J (Intelligence) [redacted]@ssci.senate.gov]  
**Sent:** Monday, December 03, 2007 11:51 AM  
**To:** Demers, John (NSD)  
**Subject:** RE: New amendment is attached (EAS07D01.xml)

I've found a few problems with our version (e.g., on page 19, line 7, I need to strike the words "for approval" and change the "surveillance" on line 11 to "acquisition"). There are some others, but we can talk about them this afternoon.

**Exemption 6**

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**From:** Demers, John (NSD) [mailto:redacted@usdoj.gov]  
**Sent:** Monday, December 03, 2007 11:47 AM  
**To:** Livingston, J (Intelligence)  
**Subject:** RE: New amendment is attached (EAS07D01.xml)

Nope. Just curious for when I talk to him.

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**From:** Livingston, J (Intelligence) [mailto:redacted@ssci.senate.gov]  
**Sent:** Monday, December 03, 2007 9:21 AM  
**To:** Demers, John (NSD)  
**Subject:** Re: New amendment is attached (EAS07D01.xml)

Yes, but I haven't talked with him yet. I also shared it with Mike and other SSCI lawyers. Is there a problem?

Sent from my BlackBerry Wireless Device

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

**From:** Demers, John (NSD) <redacted@usdoj.gov>  
**To:** Livingston, J (Intelligence)  
**Sent:** Sun Dec 02 20:30:28 2007  
**Subject:** Re: New amendment is attached (EAS07D01.xml)

Have you shared this with Pelovsky?

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

**From:** Livingston, J (Intelligence) <redacted@ssci.senate.gov>  
**To:** Demers, John (NSD)  
**Sent:** Fri Nov 30 17:41:00 2007  
**Subject:** RE: New amendment is attached (EAS07D01.xml)

No big deal. Actually, you can use the thread to make sure I made all the changes we discussed.

DJP

NSD

334

9/25/2008

DUP  
/

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

From: Livingston, J (Intelligence) [mailto: [REDACTED]@ssci.senate.gov]

9/25/2008

Sent: Friday, November 30, 2007 12:25 PM  
To: Easley, Stephanie (Legis Counsel)  
Subject: RE: New amendment is attached (EAS07C97.xml)

Stephanie,

Any chance this might be ready before 1:00? We have a FISA meeting with SJC, SSCI, DOJ, and the IC then, and it would be nice to share text.  
Thanks.

Jack

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

From: Easley, Stephanie (Legis Counsel)  
[mailto: [REDACTED]@slc.senate.gov]  
Sent: Friday, November 30, 2007 9:00 AM  
To: Livingston, J (Intelligence)  
Subject: RE: New amendment is attached (EAS07C97.xml)

Ok. I'll work on these this morning.

Thanks.

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

From: Livingston, J (Intelligence) [mailto: [REDACTED]@ssci.senate.gov]  
Sent: Thursday, November 29, 2007 9:41 PM  
To: Easley, Stephanie (Legis Counsel)  
Cc: Rice, K (Intelligence); Tucker, L (Intelligence)  
Subject: RE: New amendment is attached (EAS07C97.xml)

Okay. I just got back from DOJ, and it appears that we have a larger than expected number of edits. Working off of EAS07C99, here they are:

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Page 3, line 7, strike "surveillance" and insert "acquisition"  
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Page 4, line 8, strike "electronic surveillance" and insert "acquisition"  
Page 4, line 10, strike "surveillance" and insert "acquisition"  
Page 4, line 13, strike "[and, if applicable section 301(4)]" and insert "or section 301(4)"  
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Page 5, line 5, strike "electronic surveillance" and insert "acquisition"  
Page 5, line 13, strike "electronic surveillance" and insert "acquisition"  
Page 5, line 18, strike "electronic surveillance" and insert "acquisition"

Page 6, line 3, strike "and, if applicable," and insert "or"  
Page 7, line 5, strike "and, if applicable," and insert "or"  
Page 7, line 9, remove brackets  
Page 7, line 12, strike "Directives" and insert "Directions"  
Page 7, line 13, strike "electronic surveillance" and insert  
"acquisition"  
Page 7, line 17, strike "communication" and insert "communications"  
Page 7, line 21, strike "electronic surveillance" and insert  
"acquisition authorized under this subsection,"  
Page 7, line 22, strike "surveillance" and insert "acquisition"  
Page 8, line 1, strike "munication" and insert "munications"  
Page 8, line 4, strike "providers" and insert "provider"  
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"acquisition"  
Page 8, line 8, strike "communication" and insert "communications"  
Page 8, line 16, strike "paragraph (3)" and insert "this paragraph"

Hmmm. The closer this provision tracks to the current FISA emergency request language, the easier it will be for me to sell.

Page 8, strike line 25 through Page 9, line 14 and insert "reasonably determines that--(A) an emergency situation exists with respect to the acquisition of foreign intelligence information, to include the acquisition of stored electronic communications, within the United States to target a United States person reasonably believed to be located outside the United States before an order authorizing such acquisition can with due diligence be obtained; and (B) the factual basis for issuance of an order under this subsection to approve such acquisition exists; he may authorize the emergency acquisition if a judge having jurisdiction under section 103 is informed by the Attorney General or his designee at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this subsection is made to that judge as soon as practicable, but not more than 168 hours after the Attorney General authorizes such acquisition."

Page 9, line 17, strike "employment of electronic surveillance" and insert "acquisition"  
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Page 10, line 17, strike "sur-veillance" and insert "acquisition"  
Page 10, strike lines 24 through Page 11, line 13.  
Page 11, line 18, strike "a directive" and insert "an order or request for emergency assistance"  
Page 11, line 23, remove brackets  
Page 12, line 1, strike "(4) not later than 7 days after the issuance of such decision." and insert "(4)."  
Page 12, line 15, strike "Acquisition Outside the United States" and insert "Other Acquisition"

Page 12, line 20, strike all after "In General.--" through Page 13, line 4 and insert "Acquisition by electronic, mechanical, or other surveillance device may not intentionally target a United States person reasonably believed to be located outside the United States to acquire the contents of a wire or radio communication sent by or intended to be received by that United States person under circumstances in which a person has a reasonable expectation of privacy and a warrant would be

required for law enforcement purposes if the technique were used inside the United States, unless the Foreign Intelligence Surveillance Court has entered an ex parte order pursuant to paragraph (3). The Foreign Intelligence Surveillance Court shall have jurisdiction to enter such order pursuant to paragraph (3)."

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Page 14, after line 10, insert new clause (ii) Applicability.--If the acquisition constitutes electronic surveillance targeting a United States person reasonably believed to be located outside the United States to acquire foreign intelligence information, to include the acquisition of stored electronic communications, when acquisition is conducted within the United States, the procedures in subsection (a) shall apply.

Page 14, line 13, strike "sub-section (a)" and insert "this subsection"

Page 15, line 6, strike [and, if applicable section 301(4)] and insert "or section 301(4)"

Hmmm. I think we have to go back to the language similar to the original formulation here for the order. Your formulation has the court authorizing the acquisition. We can't have the Court actually authorizing acquisitions in this context, because the means of surveillance might violate the laws of some foreign country. Thus, the Court can only issue an order stating that the required elements have been met.

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Page 17, line 16, strike "and, if applicable," and insert "or"

Page 17, line 20, remove brackets

Page 17, line 23, strike all through page 18, line 1 and insert "(D) Duration.--An order under this"

Page 18, strike line 11 through line 23 and insert "reasonably determines that--(A) an emergency situation exists with respect to the acquisition of foreign intelligence information, to include the acquisition of stored electronic communications, to target a United States person reasonably believed to be located outside the United States before an order authorizing such acquisition can with due diligence be obtained; and (B) the factual basis for issuance of an order under this subsection to approve such acquisition exists; he may authorize the emergency acquisition if a judge having jurisdiction under section 103 is informed by the Attorney General or his designee at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this

subsection is made to that judge as soon as practicable, but not more than 168 hours after the Attorney General authorizes such acquisition."

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Page 21, line 1, strike "(4) not later than 7 days after the issuance of such decision." and insert "(4)."

I think that's all of them. (Kathleen, feel free to chime in if I've missed anything.)

I imagine that there will be some modifications to this text after we negotiate with Mike, but it's my hope that this will largely be acceptable to them. If you have time once you've finished with this, it might be good to have this text cut and pasted into EAS07C96 (substitute Managers' Amendment) starting on page 25 and going through page 39. Thanks.

Jack

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

From: Easley, Stephanie (Legis Counsel)

[mailto: [REDACTED]@slc.senate.gov]

Sent: Thursday, November 29, 2007 4:23 PM

To: Livingston, J (Intelligence)

Subject: RE: New amendment is attached (EAS07C97.xml)

A new version is attached for your review (EAS07C99.xml).

Thanks.

Stephanie

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From: Livingston, J (Intelligence) [mailto: [REDACTED]@ssci.senate.gov]

Sent: Thursday, November 29, 2007 3:14 PM

To: Easley, Stephanie (Legis Counsel)

Subject: RE: New amendment is attached (EAS07C97.xml)

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

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[mailto: [REDACTED]@slc.senate.gov]

Sent: Thursday, November 29, 2007 1:34 PM

To: Livingston, J (Intelligence)

Subject: New amendment is attached (EAS07C97.xml)

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Thanks.

Stephanie

9/25/2008

**Demers, John**

---

**From:** Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov  
**Sent:** Tuesday, December 04, 2007 10:54 AM  
**To:** Demers, John (NSD)  
**Subject:** FW: 2.5

**Exemption 6**

I just sent this to the relevant players w/i SSCI. Do you have any concerns, comments?

---

**From:** Livingston, J (Intelligence)  
**Sent:** Tuesday, December 04, 2007 10:53 AM  
**To:** Davidson, M (Intelligence); Pelofsky, Eric (Intelligence); Dickas, J (Intelligence)  
**Cc:** Rice, K (Intelligence); Healey, C (Intelligence); Starzak, Alissa (Intelligence)  
**Subject:** 2.5

Eric and I had a productive discussion last night on the 2.5 issue. I think we're in agreement on many issues (most of them being with respect to subsection (b) [in mine] and paragraph (2) [In Eric's]).

During our discussion, Eric fairly asked why we needed procedures different in subsection (a) [in mine] and paragraph (1) [in Eric's]. At that time, I could only come up with two. I thought of two more this morning. Here they are:

- 1) I think it's easier to solve the "officer, employee [or member] of a foreign power" issue with a separate set of procedures, rather than creating two definitions for agent of a foreign power within Title I.
- 2) The acquisitions authorized by Section 704 [in mine] and subsection (c) [in Eric's] involve both electronic surveillance and limited physical search (e.g., stored electronic communication), so reference to only Title I does not appear to suffice. This acquisition authority is a bit of a hybrid.
- 3) Unlike the proposed Section 704(a), neither Title I nor Title III of FISA contain a particularized probable cause requirement that the target of the surveillance must be reasonably believed to be located outside the United States. This makes sense, because FISA was never drafted to cover this sort of surveillance.
- 4) It's easier to reference the minimization procedure definitions in 101(h) and 301(4) in a separate set of procedures.

I think it's easier to develop acceptable procedures for this collection in subsection (a) or paragraph (2) than it is to attempt to revise Titles I and III remotely from Section 704 or subsection (c). I don't think we should make the changes in Title I or Title III, because of their limited applicability. I'm going to go through the FISA application and order provisions again to see if there are other useful elements that could be added to improve upon these Section 704(a) FISA court orders better. If you have any suggested additions, I'd appreciate your input.

Thanks.

NSD,

335

9/25/2008

**Demers, John**

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**From:** Demers, John (NSD)  
**Sent:** Tuesday, December 04, 2007 9:56 AM  
**To:** 'Livingston, J (Intelligence)'  
**Cc:** 'Rice, K (Intelligence)'  
**Subject:** RE: Foreign Intelligence Information

**Exemption 6**

No, I think it's good if it's there.

---

**From:** Livingston, J (Intelligence) [mailto:██████████@ssci.senate.gov]  
**Sent:** Tuesday, December 04, 2007 9:55 AM  
**To:** Demers, John (NSD)  
**Cc:** Rice, K (Intelligence)  
**Subject:** FW: Foreign Intelligence Information

I just sent the following change to EAS07D01 to leg counsel:

On page 12, line 6, strike "Acquisition by" and insert "Acquisition of foreign intelligence information by". I think that addresses at least part of Mike's concern.

---

**From:** Livingston, J (Intelligence)  
**Sent:** Tuesday, December 04, 2007 9:44 AM  
**To:** 'Demers, John (NSD)'  
**Subject:** Foreign Intelligence Information

For subsection (b) of our 2.5 draft (EAS07D01), we do not tie acquisition to foreign intelligence information in paragraph (1)(A). It's difficult to work it into the current formulation because the first sentence is worded in the negative to account for the "warrant would be required" language. This is essentially your preferred language. Did you leave out the reference to foreign intelligence information out on purpose? If not, we need to find a way to work it back in.

NSD

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9/25/2008

**Demers, John**

---

**From:** Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov  
**Sent:** Tuesday, December 04, 2007 8:12 PM  
**To:** Demers, John (NSD)  
**Subject:** Re: 2.5

Yes. Call me if you can please. [REDACTED] Thanks.

**Exemption 6**

-----  
Sent from my BlackBerry Wireless Device

----- Original Message -----  
**From:** Demers, John (NSD) <[REDACTED]@usdoj.gov>  
**To:** Livingston, J (Intelligence)  
**Sent:** Tue Dec 04 20:08:46 2007  
**Subject:** Re: 2.5

Well, I would hate to be in a position where Eric's draft is easier to fix than yours if there are problems. Does your draft now cover all acquisitions for FII abroad where there is a reasonable expectation of privacy?

----- Original Message -----  
**From:** Livingston, J (Intelligence) <[REDACTED]@ssci.senate.gov>  
**To:** Demers, John (NSD)  
**Sent:** Tue Dec 04 20:03:37 2007  
**Subject:** Re: 2.5

Yes. But ideally we wouldn't want to.

-----  
Sent from my BlackBerry Wireless Device

----- Original Message -----  
**From:** Demers, John (NSD) <[REDACTED]@usdoj.gov>  
**To:** Livingston, J (Intelligence)  
**Sent:** Tue Dec 04 20:01:01 2007  
**Subject:** Re: 2.5

Is there a chance to do anything after it's been filed?

----- Original Message -----  
**From:** Livingston, J (Intelligence) <[REDACTED]@ssci.senate.gov>  
**To:** Demers, John (NSD)  
**Sent:** Tue Dec 04 19:59:33 2007  
**Subject:** 2.5

Leg counsel probably won't have text for me sometime until tomorrow. I'll forward it to you when I get it. We won't have much time to check it, because I'm getting the sense that they might want to file it tomorrow.

-----  
Sent from my BlackBerry Wireless Device

NSD

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**Demers, John**

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4 p. 563

**From:** Demers, John (NSD)  
**Sent:** Wednesday, December 05, 2007 1:36 PM  
**To:** [REDACTED]@ssci.senate.gov  
**Subject:** Re: New amendment is attached (EAS07D01.xml)

We will scan and send by email.

**Exemption 6**

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

**From:** Livingston, J (Intelligence) <[REDACTED]@ssci.senate.gov>  
**To:** Demers, John (NSD)  
**Sent:** Wed Dec 05 13:16:43 2007  
**Subject:** RE: New amendment is attached (EAS07D01.xml)

I'm still preparing for conference. I'd prefer to meet and get them if possible, or arrange for a time when I can be standing by the fax. If you have time to have someone type them up, we've got the time. Thanks.

**From:** Demers, John (NSD) [mailto:[REDACTED]@usdoj.gov]  
**Sent:** Wednesday, December 05, 2007 1:11 PM  
**To:** Livingston, J (Intelligence)  
**Subject:** RE: New amendment is attached (EAS07D01.xml)

Jack,

We will get your comments ASAP. I have made them on the draft. Can I fax them to you?

John

---

**From:** Livingston, J (Intelligence) [mailto:[REDACTED]@ssci.senate.gov]  
**Sent:** Wednesday, December 05, 2007 12:11 PM  
**To:** Demers, John (NSD)  
**Subject:** RE: New amendment is attached (EAS07D01.xml)

I think you've got time. We're all focused on Intel Auth right now. I haven't even had a chance to work through the documents myself yet. My only concern is that Bond might want me to file something today, although I will be recommending against that.

**From:** Demers, John (NSD) [mailto:[REDACTED]@usdoj.gov]  
**Sent:** Wednesday, December 05, 2007 12:09 PM  
**To:** Livingston, J (Intelligence)  
**Subject:** RE: New amendment is attached (EAS07D01.xml)

NSD

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Jack,

We may have significant comments here that I'm working through now. What's the timing?

Thanks,

John

---

From: Livingston, J (Intelligence) [mailto: [REDACTED]@ssci.senate.gov]  
Sent: Wednesday, December 05, 2007 7:52 AM  
To: Demers, John (NSD)  
Subject: Fw: New amendment is attached (EAS07D01.xml)

This came in late last night. I'll start looking at it soon.

-----  
Sent from my BlackBerry Wireless Device

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

From: Easley, Stephanie (Legis Counsel) < [REDACTED]@slc.senate.gov>  
To: Livingston, J (Intelligence)  
Cc: Rice, K (Intelligence)  
Sent: Wed Dec 05 00:08:08 2007  
Subject: RE: New amendment is attached (EAS07D01.xml)

Two versions of your request are attached (EAS07D09.xml and EAS07D11.xml). One is cut and bite amendments and the other is a stand alone bill. If you go forward with the stand alone bill, you may want to change to short and long titles. It would be very confusing to have multiple bills with the same short title floating around.

I think I got all your changes. Please let me know if I missed anything. I will look them both over again in the morning, but I wanted to get something to you in time for your meeting.

Thanks,

Stephanie

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

From: Livingston, J (Intelligence) [mailto: [REDACTED]@ssci.senate.gov]  
Sent: Tuesday, December 04, 2007 9:52 AM  
To: Easley, Stephanie (Legis Counsel)  
Cc: Rice, K (Intelligence)  
Subject: FW: New amendment is attached (EAS07D01.xml)

Okay, how about this? On page 12, line 6, strike "Acquisition by" and insert "Acquisition of foreign intelligence information by"

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

From: Livingston, J (Intelligence)  
Sent: Tuesday, December 04, 2007 9:50 AM  
To: Easley, Stephanie (Legis Counsel)  
Cc: Rice, K (Intelligence)  
Subject: FW: New amendment is attached (EAS07D01.xml)

Crap, forget that last change for now. I need to think this one through. I can't have the court "authorizing" anything with respect to subsection (b) orders.

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

From: Livingston, J (Intelligence)  
Sent: Tuesday, December 04, 2007 9:47 AM  
To: Easley, Stephanie (Legis Counsel)  
Cc: Rice, K (Intelligence)  
Subject: FW: New amendment is attached (EAS07D01.xml)

Could I add one more change please. On page 12, line 19, strike "order pursuant" and insert "order authorizing the acquisition of foreign intelligence information pursuant"

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

From: Livingston, J (Intelligence)  
Sent: Monday, December 03, 2007 9:33 PM  
To: Easley, Stephanie (Legis Counsel)  
Cc: Rice, K (Intelligence)  
Subject: RE: New amendment is attached (EAS07D01.xml)

Stephanie,

I have some changes to EAS07D01. I will need them incorporated into EAS07C96, although I need 96 restyled as a McConnell/Bond stand-alone bill that could be Rule 14ed onto the calendar in the event the current negotiations are not productive.

Page 1, strike lines 1-4 and insert "Beginning on page 6, strike line 13 and all that follows through page 8, line 24 and insert "(c) United States Person Located Outside the United States.--The intentional targeting of U.S. persons reasonably believed to be located outside the United States shall be conducted in accordance with section 704 of this Act." [This approach saves us from having to worry about all the conforming amendments caused by the deletion of subsection (c)].

Page 2, insert the following after line 6 but before line 7:

"On page 33, line 17, strike "eral--" and insert "eral reasonably--"  
"On page 37, line 22, strike "General--" and insert "General reasonably--" [somehow the word "reasonably" got dropped from both of these emergency authorization provisions]

Page 16, line 20, strike "(ii) Review of Minimization Procedures.--" and insert " (ii) Review of Probable Cause.--If the Foreign Intelligence Surveillance Court determines that there is insufficient probable cause to issue an order under subparagraph (A), the Court shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to paragraph (5).

(iii) Review of Minimization Procedures.--" [I'm sure that this is not the best way to do this, but I just need to insert a new clause (ii) and move the current clause (ii) down to clause (iii)].

Page 19, line 7, strike "for approval"

Page 19, line 11, strike "surveillance" and insert "acquisition"

I have one more change, but I'm not sure how to accomplish it or where to put it. Maybe you've run across a similar situation before. Let me describe the problem I'm trying to solve. Subsection (a) creates a FISC

order (approval) procedure for when the target is outside the US, but the acquisition will be done in the US. Subsection (b) creates a FISC order (finding, not approval) procedure for when the target is outside the US, but is silent on where the acquisition will occur (it also contains a forcing mechanism to subsection (a) when the acquisition occurs in the United States). Now, here's the problem. Let's say I have a target reasonably believed to be located outside the United States. I want to use the (a) procedures because I'm doing some of the acquisition in the United States, but I also want to use the (b) procedures to conduct an acquisition outside the United States. Ideally, I only want the Government to have to apply for one order on the same target, but that allows acquisition under both subsections (a) and (b). The trick is that it's important the Court not "approve" the acquisition outside the United States (only enter an order stating its findings) and that the Government shall not be required to provide any information on the means by which the acquisition outside the United States is being conducted (although it's fine that the means be specified for any acquisition inside the US). Maybe we can call them "(c) Joint Orders.--In situations in which the acquisition against a U.S. person target will be conducted both within and outside the United States, the Foreign Intelligence Surveillance Court may, upon the request of the Government, issue a joint ex parte order against such target that meets the requirements of both subsections (a) and (b)." I'm not sure that this is sufficient. What do you think? Sorry to force you through my convoluted thought process.

Thanks.

Jack

Ok. I'll work on these this morning.

Thanks.

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

From: Livingston, J (Intelligence) [mailto: [REDACTED]@ssci.senate.gov]

Sent: Thursday, November 29, 2007 9:41 PM

To: Easley, Stephanie (Legis Counsel)

Cc: Rice, K (Intelligence); Tucker, L (Intelligence)

Subject: RE: New amendment is attached (EAS07C97.xml)

Okay. I just got back from DOJ, and it appears that we have a larger than expected number of edits. Working off of EAS07C99, here they are:

Page 3, line 1, strike "surveillance" and insert "acquisition"  
Page 3, line 5, strike "have returned to" and insert "be in"  
Page 3, line 7, strike "surveillance" and insert "acquisition"  
Page 3, line 8, strike "an order under Title I of this Act is obtained" and insert "authority is obtained pursuant to this Act"  
Page 3, line 15, strike "subsection (a)" and insert "this subsection"  
Page 3, line 19, strike "electronic surveillance" and insert "acquisition"  
Page 3, line 20, strike "declaration containing a"  
Page 3, line 23, strike "electronic surveillance" and insert "acquisition"  
Page 4, line 8, strike "electronic surveillance" and insert "acquisition"  
Page 4, line 10, strike "surveillance" and insert "acquisition"  
Page 4, line 13, strike "[and, if applicable section 301(4)]" and insert "or section 301(4)"  
Page 4, line 17, strike "surveillance" and insert "acquisition"  
Page 4, line 20, strike "electronic surveillance" and insert "acquisition"  
Page 5, line 5, strike "electronic surveillance" and insert "acquisition"  
Page 5, line 13, strike "electronic surveillance" and insert "acquisition"  
Page 5, line 18, strike "electronic surveillance" and insert "acquisition"  
Page 6, line 3, strike "and, if applicable," and insert "or"  
Page 7, line 5, strike "and, if applicable," and insert "or"  
Page 7, line 9, remove brackets  
Page 7, line 12, strike "Directives" and insert "Directions"  
Page 7, line 13, strike "electronic surveillance" and insert "acquisition"  
Page 7, line 17, strike "communication" and insert "communications"  
Page 7, line 21, strike "electronic surveillance" and insert "acquisition authorized under this subsection,"  
Page 7, line 22, strike "surveillance" and insert "acquisition"  
Page 8, line 1, strike "munication" and insert "munications"  
Page 8, line 4, strike "providers" and insert "provider"  
Page 8, line 6, strike "elec-tronic surveillance" and insert "acquisition"  
Page 8, line 8, strike "communication" and insert "communications"  
Page 8, line 16, strike "paragraph (3)" and insert "this paragraph"

Hmmmm. The closer this provision tracks to the current FISA emergency request language, the easier it will be for me to sell.  
Page 8, strike line 25 through Page 9, line 14 and insert "reasonably determines that--(A) an emergency situation exists with respect to the acquisition of foreign intelligence information, to include the acquisition of stored electronic communications, within the United States to target a United States person reasonably believed to be located outside the United States before an order authorizing such

**Demers, John**

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**From:** Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov]

**Sent:** Wednesday, December 05, 2007 6:10 PM

**To:** Demers, John (NSD)

**Subject:** Take your time with those changes

**Exemption 6**

The intel auth conference didn't go well, so I'm not in much of a mood to work on FISA tonight. Thanks.

Sent from my BlackBerry Wireless Device

NSD.

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9/25/2008

**Demers, John**

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**From:** Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov]  
**Sent:** Wednesday, December 05, 2007 7:36 PM  
**To:** Demers, John (NSD)  
**Subject:** Re: Scanned Document

**Exemption 6**

Thanks. Louis wants me to do a final scrub on this first thing in the morning, so the input from the others sometime tomorrow morning would be helpful.

-----  
Sent from my BlackBerry Wireless Device

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

**From:** Demers, John (NSD) <[REDACTED]@usdoj.gov>  
**To:** Livingston, J (Intelligence)  
**Sent:** Wed Dec 05 18:15:55 2007  
**Subject:** FW: Scanned Document

Jack,

Attached are our revisions to the manager's amendment. It is a scanned PDF so you may have questions about the legibility of my handwriting or why I suggested certain changes. Please ignore my comments to myself on the upper left hand corner of page 3.

Other folks are still reviewing and will compile and forward any relevant comments.

Sorry to hear about intell auth.

Thanks,  
John

NSD/

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9/25/2008

**Demers, John**

---

**From:** [REDACTED] [REDACTED]@usdoj.gov]

**Sent:** Thursday, December 06, 2007 1:35 PM

**To:** [REDACTED]@ssci.senate.gov

**Cc:** Demers, John (NSD)

**Subject:** One other technical item

**Exemption 6**

Jack,

The one other technical item we spotted in the draft stand-alone bill you sent on Tuesday (EAS07D11) is on page 18, line 22 - "pending" should be "pendency."

Thanks,

[REDACTED]  
[REDACTED]

NSD

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9/25/2008

**Demers, John**

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**From:** Demers, John (NSD)  
**Sent:** Thursday, December 06, 2007 4:14 PM  
**To:** 'Livingston, J (Intelligence)'  
**Subject:** RE: Scanned Document

Yes, came.

**Exemption 6**

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

**From:** Livingston, J (Intelligence) [mailto: [REDACTED]@ssci.senate.gov]  
**Sent:** Thursday, December 06, 2007 4:11 PM  
**To:** Demers, John (NSD)  
**Subject:** RE: Scanned Document

I can come now. Can you get me cleared with the visitor center? I won't leave until you respond to this e-mail. Thanks.

Jack

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

**From:** Demers, John (NSD) [mailto: [REDACTED]@usdoj.gov]  
**Sent:** Thursday, December 06, 2007 4:06 PM  
**To:** Livingston, J (Intelligence)  
**Subject:** RE: Scanned Document

Can you come here? I have been away from my desk all day prepping the AG. I'm free other than a cc from 5:30-6:30. Or could do this by phone.

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

**From:** Livingston, J (Intelligence) [mailto: [REDACTED]@ssci.senate.gov]  
**Sent:** Thursday, December 06, 2007 3:22 PM  
**To:** Demers, John (NSD)  
**Subject:** RE: Scanned Document

You and I need to meet to discuss these. I'm pretty dense and some of these aren't making sense to me. What's better for you, to come up here or for me to come to you? Louis just came into my office and said I need to wrap this up as quickly as possible.

*DP*

NSD/

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**Demers, John**

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**From:** Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov  
**Sent:** Friday, December 07, 2007 1:00 PM  
**To:** [REDACTED]  
**Cc:** Demers, John (NSD)  
**Subject:** RE: One other technical item

**Exemption 6**

I'm actually thinking of deleting subsection (c) because I noticed that Stephanie had deleted it from the stand-alone bill and changed the cross references.

I'm fine with changing to the targeted US person has a reasonable expectation of privacy.

I don't think I can change the PC requirement by deleting U.S. How about inserting "or a presumed United States person" after "United States person"? The PC is mainly going to the fact that the target is reasonably believed to be located outside the U.S. My sense is that, in most cases, we know the legal status of these 2.5 targets, but I can envision situations in which we might not, and that a presumption might be in order. How big a deal is this one? Who's raising it?

---

**From:** [REDACTED] [mailto:[REDACTED]@usdoj.gov]  
**Sent:** Friday, December 07, 2007 12:29 PM  
**To:** Livingston, J (Intelligence)  
**Cc:** Demers, John (NSD)  
**Subject:** RE: One other technical item

Jack:

A few other items we received from the IC.

1. Page 2, lines 1-5 should be amended as follows:

"(c) UNITED STATES PERSON LOCATED OUTSIDE THE UNITED STATES.—Any intentional targeting of United States persons reasonably believed to be located outside the United States which could be authorized under section 704 of this Act shall be conducted in accordance with that section or any other applicable section of this Act."

As drafted, section 703(c) would prohibit a greater range of activities than those that could be authorized under section 704. The suggested language above clarifies the scope of the 703(c) prohibition.

2. Page 14, line 2 - the phrase "a person has a reasonable expectation of privacy" should be replaced by "that targeted United States person has a reasonable expectation of privacy."

We are concerned that the proposed language could cause confusion as to whose expectation of privacy is at issue. While the phrase "a person" is used in FISA, we think it should not be used in this context. In FISA, it is used to clarify that certain persons who might not otherwise have a reasonable expectation of privacy in the United States are covered by FISA. Here, the only rights at issue are those of the targeted United States person.

3. Page 4, lines 15; page 15, line 22 - we recommend replacing "a United States person" with "a person." Including a requirement to provide facts establishing that the person overseas is a United States person would burden the Government, while not enhancing the privacy rights of U.S. persons. If we are incorrect about our belief that the person is a United States person, then we will have provided a non-U.S. person abroad with the protections of the Act. But the absence of this requirement will not diminish the rights of U.S. persons abroad.

Thanks,

[REDACTED]

---

**From:** Livingston, J (Intelligence) [mailto:[REDACTED]@ssci.senate.gov]  
**Sent:** Thursday, December 06, 2007 2:02 PM  
**To:** [REDACTED]  
**Subject:** RE: One other technical item

Thanks. Let me know if anyone in the IC has changes that need to be made. I'm going through them now.

---

**From:** [REDACTED] [mailto:[REDACTED]@usdoj.gov]  
**Sent:** Thursday, December 06, 2007 1:35 PM  
**To:** Livingston, J (Intelligence)  
**Cc:** Demers, John (NSD)  
**Subject:** One other technical item

Jack,

The one other technical item we spotted in the draft stand-alone bill you sent on Tuesday (EAS07D11) is on page 18, line 22 - "pending" should be "pendency."

Thanks,

[REDACTED]  
[REDACTED]

**Demers, John**

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**From:** Demers, John (NSD)  
**Sent:** Tuesday, December 11, 2007 11:38 AM  
**To:** 'Livingston, J (Intelligence)'  
**Subject:** RE: What I sent

**Exemption 6**

Thanks Jack. We took a quick look and we had two comments:

1. Page 15, line 40, strike "authorizing such acquisition". (We mistakenly omitted this change in the version of the technicals we sent).
2. Page 17, line 10, strike "authorization" and replace with "order."

Thanks.

---

**From:** Livingston, J (Intelligence) [mailto:██████████@ssci.senate.gov]  
**Sent:** Tuesday, December 11, 2007 10:42 AM  
**To:** Demers, John (NSD)  
**Subject:** What I sent

NSD

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**Demers, John**

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**From:** Demers, John (NSD)  
**Sent:** Tuesday, December 11, 2007 5:44 PM  
**To:** 'Livingston, J (Intelligence)'  
**Subject:** RE: Question

**Exemption 6**

Jack,

Not sure where you are in the process, but we had one more issue if it's not too late.

In part (b), the authority applies "under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes if the technique were used inside the United States." Some folks have raised a concern that this language is ambiguous concerning whether it covers surveillance used inside the United States, as it's meant to. This ambiguity would be improved if we flipped the order of the phrases to read "... and a warrant would be required if the technique were used inside the United States for law enforcement purposes."

If it's too late, I think we can deal with the ambiguity.

Thanks,  
John

---

**From:** Livingston, J (Intelligence) [mailto:██████████@ssci.senate.gov]  
**Sent:** Tuesday, December 11, 2007 1:09 PM  
**To:** Demers, John (NSD)  
**Subject:** RE: Question

Sorry, I left out the page number reference for line 21, it was supposed to read page 34, line 21.

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**From:** Demers, John (NSD) [mailto:██████████@usdoj.gov]  
**Sent:** Tuesday, December 11, 2007 1:04 PM  
**To:** Livingston, J (Intelligence)  
**Subject:** RE: Question

I think there are two questions here:

Should the exception be reprinted in line 21? Not necessary. That first clause covers both types of info.

Should the exception clause be inserted in (a) as well as (b)? Yes, if we can get it, but remember (a) is supposed to track Title I. If we can do it, let's.

John

---

**From:** Livingston, J (Intelligence) [mailto:██████████@ssci.senate.gov]  
**Sent:** Tuesday, December 11, 2007 12:50 PM  
**To:** Demers, John (NSD)  
**Subject:** Question

John,

Should the exception language found on page 44, lines 8 through 12, be inserted on line 21, right before "no information"? It would seem equally applicable to 704(a) emergency procedures as to 704(b).

NSD

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9/25/2008

**Demers, John**

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**From:** Demers, John (NSD)  
**Sent:** Thursday, December 13, 2007 4:07 PM  
**To:** 'Livingston, J (Intelligence)'; [REDACTED]  
**Subject:** RE: FISA

**Exemption 6**

Jack,

Thanks for circulating. Several of these are critical—especially the reinsertion of the electronic surveillance and stored comms issue below. Happy to discuss any of them.

John

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**From:** Livingston, J (Intelligence) [mailto:[REDACTED]@ssci.senate.gov]  
**Sent:** Thursday, December 13, 2007 2:13 PM  
**To:** Bobb, George  
**Cc:** Demers, John (NSD)  
**Subject:** RE: FISA

We've got a hearing starting at 2:30, but there are votes scheduled for this afternoon. Let's hold off on meeting for now.

---

**From:** Bobb, George [mailto:[REDACTED]@usdoj.gov]  
**Sent:** Thursday, December 13, 2007 2:02 PM  
**To:** Livingston, J (Intelligence)  
**Cc:** Demers, John (NSD)  
**Subject:** RE: FISA

Jack,

Below is our initial technical assistance on this draft. We have not circulated the draft to the IC, which we would need to do to identify other issues, but we wanted to give you some initial comments.

Also, John is available to meet at 3:15 if you'd like. If so, please reply all, so that he knows to meet you.

Our initial comments are the following:

- P. 1, l. 23, insert "REASONABLY BELIEVED TO BE LOCATED" before "OUTSIDE"
- P. 2. l. 19, insert "REASONABLY BELIEVED TO BE LOCATED" before "OUTSIDE"
- P. 2, l. 26, "ex parte" should not be stricken, as these will be ex parte orders (see p. 4, l. 9).
- P. 2, l. 28-30, the phrase "constitutes electronic surveillance or the acquisition . . . , and such acquisition" is necessary to avoid a host of problems and should not be stricken.

NSD/

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9/25/2008

P. 4, l. 9, delete "Foreign Intelligence Surveillance Court" and insert "judge"

P. 4. l. 10, delete "Court" and insert "judge"

P. 6, line 29, consistent with your prior draft, insert after "no information" the phrase "except under circumstances in which the target of the acquisition is determined not be a United States person during the pendency of the 168-hour emergency acquisition period". Also, you might consider inserting that phrase without the final clause ("during the pendency . . .") as that restriction does not advance the privacy interests of U.S. persons.

P. 7, line 19, insert "REASONABLY BELIEVED TO BE LOCATED" before "OUTSIDE"

P. 9, line 24, insert "to establish" before "probable cause"

P. 9, line 38, delete "authorization" and insert "order"

P. 10, line 11, delete "section 103" and insert "subsection (a)"

P. 10, line 27, insert after "no information" the phrase "except under circumstances in which the target of the acquisition is determined not be a United States person during the pendency of the 168-hour emergency acquisition period". Again, you might consider inserting that phrase without the final clause ("during the pendency . . .").

P. 11, line 39, insert "of" before "this Title"

P. 13, line 5, delete "704" and insert "705"

P. 13, line 15, insert the following conforming amendment: "On page 29, line 7, insert the following before "The use of information": "Section 704(e) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to an order or request for emergency assistance under that section." This is necessary to ensure that the liability protection in 704 doesn't sunset.

P. 13, line 27, "Untied" should be "United"

Thanks,

George

---

**From:** Livingston, J (Intelligence) [mailto:██████████@ssci.senate.gov]  
**Sent:** Thursday, December 13, 2007 10:23 AM  
**To:** Demers, John (NSD)  
**Subject:** FISA

Here's the redline that I sent to leg counsel last night. I'm still waiting for the draft. These changes are based upon discussions with Mike and crew. It breaks 704 into two sections. They want more robust Title I provisions, so I added in some more of application and order components of Title I. Included is assess compliance and AG ability to seek additional information. I've also stricken "member." I'm sure I'm going to have to give a little

9/25/2008

more to beef up the certification. They want all the useless boilerplate stuff. They feel that they won't be able to sell it unless they can say it's essentially the same as a Title I application. I wouldn't bother farming this out, just yet, but wanted to give you a heads up. Thanks.

9/25/2008

## Demers, John

---

**From:** Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov  
**Sent:** Thursday, December 13, 2007 7:57 PM  
**To:** Easley, Stephanie (Legis Counsel)  
**Cc:** Rice, K (Intelligence)  
**Subject:** RE: Revisions to Managers Amendment

Stephanie,

**Exemption 6**

I have some changes based on input from DoJ and Mike:

Page 4, after line 8, insert "On page 18, line 21, strike "(g)" and insert "(f)".

Page 5, line 7, strike "(a)," and replace with "(a) "

Page 6, lines 1 through 2, can we swap with lines 3 through 5? [to put the pages in order]

Page 6, strike lines 6 through 7 and insert "On page 27, line 3, strike "subsections (h)" and insert "subsection (g)"

Page 6, line 20, strike "acquisition" and insert "acquisition constitutes electronic surveillance (as defined in section 101(f), regardless of the limitation of section 701) or the acquisition of stored electronic communications or data that requires an order under this Act, and such acquisition"

Page 8, strike lines 20 through 25 and insert the following: "(i) the certifying official deems the information sought to be foreign intelligence information; (ii) a significant purpose of the acquisition is to obtain foreign intelligence information; (iii) such information cannot reasonably be obtained by normal investigative techniques; (iv) designates the type of foreign intelligence information being sought according to the categories described in section 101(e); and (v) including a statement of the basis for the certification that--(I) the information sought is the type of foreign intelligence information designated; and (II) such information cannot reasonably be obtained by normal investigative techniques;"

Page 10, line 9, strike "the Foreign Intelligence Surveillance Court" and insert "a judge having jurisdiction under subsection (a)(1)" [I think (a)(1) might be slightly better than (a), because (a)(2) is more of a scope or limitation than a grant of jurisdiction, so unless you object, I recommend changing all the (a)s to (a)(1)s. I'll try to catch them below].

Page 10, line 12, strike "Court" and insert "judge"

Page 10, strike lines 13 through 24 and insert the following: "(A) the application has been made by a Federal officer and approved by the Attorney General; (B) on the basis of the facts submitted by the applicant, there is probable cause to believe that the specified target of the acquisition is--(i) a United States person reasonably believed to be located outside the United States; and (ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power; (C) the proposed minimization procedures meet the definition of minimization procedures under section 101(h) or section 301(4); (C) the application which has been filed contains all statements and certifications required by this section and the certification or certifications are not clearly erroneous on the basis of the statement made under subsection (b)(1)(F) and any other information furnished under subsection (b)(3)."

Page 11, line 4, strike "(a)" and insert "(a)(1)"

Page 11, line 15, strike "(a)" and insert "(a)(1)"

Page 12, line 19 [do you think the cross reference should be (b)(1) or (b)(1)(B)? I defer to your judgment]

Page 12, strike lines 20 through 24 and insert the following "(B) the nature and location of each of the facilities or places at which the acquisition will be directed, if known; (C) the type of information sought to be acquired and the type of communications or activities to be subjected to the acquisition; (D) the means by which the acquisition

will be conducted and whether physical entry is required to effect the acquisition; and (E) the period of time during which the acquisition is approved."

Page 13, line 19, strike "viders wish" and insert "vider wishes"

Page 15, line 3, strike "(a)" and insert "(a)(1)"

Page 16, line 4, strike "information" and insert "information, except under circumstances in which the target of the acquisition is determined not to be a United States person during the pendency of the 168-hour emergency acquisition period,"

Page 21, line 8, strike "(a)" and insert "(a)(1)"

Page 21, line 20, strike "(a)" and insert "(a)(1)"

Page 22, line 3, strike "insufficient" and insert "insufficient to establish"

Page 22, line 24, strike "authorization" and insert "order"

Page 23, line 17, strike "section 103" and insert "subsection (a)(1)"

Page 24, line 16, strike "information" and insert "information, except under circumstances in which the target of the acquisition is determined not to be a United States person during the pendency of the 168-hour emergency acquisition period,"

Page 26, line 1, strike "(a)" and insert "(a)(1)"

Page 26, line 1, strike "704(a)" and insert "704(a)(1)"

Page 26, line 4, strike "sections" and insert "section"

Page 27, line 8, strike "implementation" and insert "implementation of"

Page 27, line 12, strike "703(g)" and insert "703(f)"

Page 27, line 13, strike "703(h)" and insert "703(g)"

Page 27, line 24, strike "703(h)" and insert "703(g)"

Page 28, line 6, strike "703(h)" and insert "703(g)"

Page 28, line 9, strike "(e)" and insert "(d)"

Page 28, line 10, strike "(f)" and insert "(e)"

Page 28, line 14, strike "703(h)" and insert "703(g)"

Page 28, line 18, strike "703(l)(3)" and insert "703(k)(3)"

Page 29, after line 20 insert the following: "(3) Foreign Intelligence Surveillance Act.--Section 601(a)(1) is amended by striking subparagraphs (C) and (D) and insert the following: "(C) pen registers under section 402; (D) access to records under section 501; (E) acquisitions under section 704; and (F) acquisitions under section 705." [I'm not sure if this really is a conforming amendment or needs to go somewhere else].

Page 30, after line 1 insert the following: "On page 29, line 7, insert after "fect." the following: "Section 704(e) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to an order or request for emergency assistance under that section."

Page 30, line 19, strike "Untied" and insert "United"

If possible, I'd like to be able to discuss this with Mike sometime tomorrow morning. Thanks.

Jack

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

From: Easley, Stephanie (Legis Counsel)  
[mailto:██████████@slc.senate.gov]  
Sent: Thursday, December 13, 2007 4:11 PM  
To: Livingston, J (Intelligence)  
Cc: Rice, K (Intelligence)  
Subject: RE: Revisions to Managers Amendment

A new version is attached for your review (EAS07D41.xml).

Let me know if I can provide any additional assistance.

Thanks,

Stephanie

**Demers, John**

---

**From:** Demers, John (NSD)  
**Sent:** Friday, December 14, 2007 5:03 PM  
**To:** 'Livingston, J (Intelligence)'  
**Subject:** RE: Revisions to Managers Amendment

**Exemption 6**

Jack,

One more technical fix that needs to be in your manager's amendment: The exclusive means provisions in the SSCI bill unintentionally did not list chapter 206 of title 18, USC, as another way of doing surveillance. You'll see that Mike's version has included that chapter. You should also add "the procedures of" to track existing exclusive means language.

Just to lay it out plainly:

p. 29, 1.22 should be amended to insert "The procedures of" before "chapters 119 and 121 of title 18, United States Code..." Also, "206" should be inserted after "121" and before "of title 18."

Thanks,  
John

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

**From:** Livingston, J (Intelligence) [mailto:██████████@ssci.senate.gov]  
**Sent:** Thursday, December 13, 2007 7:58 PM  
**To:** Demers, John (NSD)  
**Subject:** FW: Revisions to Managers Amendment

FYI, here's the text being modified.

NSD

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**Demers, John**

---

**From:** Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov]  
**Sent:** Friday, December 14, 2007 6:07 PM  
**To:** Davidson, M (Intelligence); Healey, C (Intelligence); Starzak, Alissa (Intelligence); Rice, K (Intelligence)  
**Cc:** Pelofsky, Eric (Intelligence); Dickas, J (Intelligence)  
**Subject:** Updated Managers' Amendment **Exemption 6**  
**Importance:** High  
**Attachments:** EAS07D50\_xml.pdf

John Demers reminded me that this version of the managers' amendment did not add Chapter 206 into the exclusive means language of our bill. This draft includes that change and "other small changes" that were unspecified by Legislative Counsel. Thanks.

Jack

NSD/

355

9/25/2008

**Demers, John**

---

**From:** Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov]  
**Sent:** Friday, December 14, 2007 8:14 PM  
**To:** Demers, John (NSD)  
**Subject:** RE: Belay My Last

**Exemption 6**

We still haven't locked down a managers' amendment. The cloture vote on the motion to proceed is at noon on Monday. It's possible that we might get it done tonight, so the sooner the better. It's also possible that we might not get it done until over the weekend. Sorry I can't be more precise.

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

**From:** Demers, John (NSD) [mailto:REDACTED@usdoj.gov]  
**Sent:** Friday, December 14, 2007 6:24 PM  
**To:** Livingston, J (Intelligence)  
**Subject:** Re: Belay My Last

Jack,

When do you need the comments?

Thanks,  
John

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

**From:** Livingston, J (Intelligence) <REDACTED@ssci.senate.gov>  
**To:** Davidson, M (Intelligence) <REDACTED@ssci.senate.gov>; Healey, C (Intelligence) <REDACTED@ssci.senate.gov>; Starzak, Alissa (Intelligence) <REDACTED@ssci.senate.gov>; Rice, K (Intelligence) <K.Rice@ssci.senate.gov>  
**Cc:** Pelofsky, Eric (Intelligence) <REDACTED@ssci.senate.gov>; Dickas, J (Intelligence) <REDACTED@ssci.senate.gov>  
**Sent:** Fri Dec 14 18:13:07 2007  
**Subject:** Belay My Last

The last version I sent you only had the "small changes." This version has whatever the small changes were and the exclusive means fix with respect to chapter 206 (See page 32). Sorry for any confusion. Thanks.

Jack

NSD

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**Demers, John**

---

**From:** Demers, John (NSD)  
**Sent:** Saturday, December 15, 2007 10:26 AM  
**To:** [REDACTED]@ssci.senate.gov'; [REDACTED]@ssci.senate.gov'  
**Subject:** Fw: Comments on Manager's amendment

**Attachments:** Bond MA-DOJ comments.doc

**Exemption 6**



Bond MA-DOJ  
omments.doc (26 K.

Kathleen and Jack,

Here you go.

Thanks,  
John

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

**From:** John Demers <[REDACTED]@excite.com>  
**To:** Demers, John (NSD)  
**Sent:** Sat Dec 15 10:23:51 2007  
**Subject:** Comments on Manager's amendment

Jack,

Here's what I've gotten so far on the manager's amendment. It's looking pretty good. I will forward whatever else I get (if it is non-duplicative and makes sense) as soon as I get it.

Thanks,

John

---

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NSD

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**Demers, John**

---

**From:** Demers, John (NSD)  
**Sent:** Saturday, December 15, 2007 12:44 PM  
**To:** [REDACTED]@ssci.senate.gov'  
**Subject:** More nits

**Exemption 6**

P 8, l 15-16, "surveillance" should be "acquisition"

P 8, l 19 the "that" should move to the beginning of each (i) - (iv) to track FISA or change including to "includes" in (v)

P 14 line 1 change (o "a description of the nature of the information sought to be" so that it tracks the application language.

NSD/

358

**Demers, John**

---

**From:** Demers, John (NSD)  
**Sent:** Sunday, December 16, 2007 12:23 PM  
**To:** [REDACTED]@ssci.senate.gov  
**Subject:** Re: Manager's am

**Exemption 6**

No that's it. Thanks. The others should be the correct reference.

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

**From:** Livingston, J (Intelligence) <[REDACTED]@ssci.senate.gov>  
**To:** Demers, John (NSD)  
**Sent:** Sun Dec 16 11:09:39 2007  
**Subject:** RE: Manager's am

I couldn't find the word "intelligence" on page 30 that wasn't capitalized? On my latest version (EAS0752), I found the error on page 29, line 21.

This may be a problem for me with your other corrections, but I'll figure it out (I'm working through them now, backwards).

The SSCI lawyers are meeting at 1:00 p.m. to discuss the managers' amendment. I told them firmly yesterday, that we were unable to include any modification of exclusive means in the managers' amendment. I just hope we don't end up with a worse version coming from a floor amendment.

Thanks for your suggested edits.

---

**From:** Demers, John (NSD) [mailto:[REDACTED]@usdoj.gov]  
**Sent:** Sun 12/16/2007 9:58 AM  
**To:** Livingston, J (Intelligence)  
**Subject:** Manager's am

Just a couple of other nits:

P. 22, l. 17. I think that what follows the comma starting with "the Court shall issue" should not be intended since it completes the sentence by. Saying what happens if the two findings are made.

P. 30, l. 1. The "I" in "intelligence" should be capitalized.

What's the latest? We have gotten nothing official from Davidson.

NSD,

359

## Demers, John

---

**From:** Demers, John (NSD)  
**Sent:** Sunday, December 16, 2007 4:31 PM  
**To:** [REDACTED]@SSCI.Senate.Gov'; [REDACTED]@SSCI.Senate.Gov'  
**Subject:** Re: One last issue

We're certainly happy if you leave it as is. But if you do go down one path or another, we'd prefer having the phrase in both provisions. Its inclusion in sec 109, as they propose, is meaningless.

Thanks to you both of all the work on this.

**Exemption 6**

John

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

**From:** Tucker, L (Intelligence) <[REDACTED]@SSCI.Senate.Gov>  
**To:** Livingston, J (Intelligence) <[REDACTED]@SSCI.Senate.Gov>  
**Cc:** Demers, John (NSD)  
**Sent:** Sun Dec 16 16:21:44 2007  
**Subject:** Re: One last issue

We're done taking anything on FISA. Whatever they won't accept needed to make this bill acceptable Bond offers on the floor, we make them make the argument on the floor against provisions that improve the bill and gain Admin support. They have no more leverage left to get anything here.

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

**From:** Livingston, J (Intelligence)  
**To:** Tucker, L (Intelligence)  
**Cc:** 'Demers, John (NSD)' <[REDACTED]@usdoj.gov>  
**Sent:** Sun Dec 16 16:03:37 2007  
**Subject:** One last issue

Louis,

In our draft on page 31, we have a conforming amendment that amends a criminal provision in 18 USC 2232 (tipping someone to the existence of a FISA surveillance) to include the modified definition of "electronic surveillance" by section 701. Although Mike agrees with that conforming change, he won't agree to its inclusion in the managers' amendment unless we also agree to include a similar conforming amendment with respect to the criminal provisions in FISA (Section 109). This latter part of their proposed conforming amendment is included in the current text of their exclusive means provision.

I'm inclined to strike our existing conforming change instead of adopting part of their exclusive means provision.

Let me know how you want to proceed. For now, I'm going to recommend taking it out, unless you authorize me to make both changes.

John, if you want to weigh in here, feel free.

NSD

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Thanks.

Jack

**Demers, John**

---

**From:** Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov]  
**Sent:** Monday, December 17, 2007 10:29 AM  
**To:** Demers, John (NSD)  
**Subject:** Re: Draft managers' amendment

[REDACTED]

-----  
Sent from my BlackBerry Wireless Device

**Exemption 6**

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

**From:** Demers, John (NSD) <[REDACTED]@usdoj.gov>  
**To:** Livingston, J (Intelligence)  
**Sent:** Mon Dec 17 10:07:43 2007  
**Subject:** RE: Draft managers' amendment

What's his number?

---

**From:** Livingston, J (Intelligence) [mailto:[REDACTED]@ssci.senate.gov]  
**Sent:** Monday, December 17, 2007 9:59 AM  
**To:** Demers, John (NSD)  
**Subject:** Re: Draft managers' amendment

You need to talk with Mike ASAP!

-----  
Sent from my BlackBerry Wireless Device

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

**From:** Demers, John (NSD) <[REDACTED]@usdoj.gov>  
**To:** Livingston, J (Intelligence)  
**Sent:** Mon Dec 17 08:51:36 2007  
**Subject:** RE: Draft managers' amendment

Jack,

Thanks. On a quick review, the one thing I spotted is the deletion of "or data" after communications. That change will make this authority useless for searched of stored comms. I'm happy to talk to you or anyone about this secure.

Thanks,

John

NSD

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9/25/2008

From: Livingston, J (Intelligence) [mailto:██████████@ssci.senate.gov]  
Sent: Monday, December 17, 2007 8:27 AM  
To: Demers, John (NSD)  
Subject: FW: Draft managers' amendment

Did you see this? We're moving toward this text, so we need to make some of the same corrections we've been making to our draft these last couple of days.

From: Starzak, Alissa (Intelligence)  
Sent: Sunday, December 16, 2007 9:26 PM  
To: Livingston, J (Intelligence); Rice, K (Intelligence)  
Cc: Healey, C (Intelligence); Davidson, M (Intelligence)  
Subject: Draft managers' amendment

Attached is a draft managers' amendment from Stephanie that should reflect the changes we discussed this afternoon, as well as a redline from Jack's last draft (D52) that should show any remaining differences between the two drafts. The conforming amendments and fix to the reporting requirement issues are not currently included -- I warned Stephanie that this draft is not yet final.

Please take a careful look at this -- given all of the sheets of paper I had in front of me this afternoon, it would be pretty easy for me to have missed something. (I already found one error -- there's an extra element under specifications on page 14. I'll fix that.)

## Demers, John

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**From:** Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov  
**Sent:** Thursday, January 10, 2008 3:35 PM  
**To:** Demers, John  
**Subject:** FW: Managers' amendment

**Attachments:** EAS07D87\_xml.pdf; EAS07D88\_xml.pdf

**Exemption 6**



EAS07D87\_xml.pdf (70 KB)  
EAS07D88\_xml.pdf (148 KB)

I can't remember if I forwarded these to you. This is where Mike and I ended up on the day of the filibuster. There might be a couple of more changes before we come to a final settlement. I'm thinking we might need to add a limited certification to the 705 procedures that would include a limited certification that a significant purpose of the acquisition is to obtain foreign intelligence information. Nothing in the certification will refer to the means, as do current FISA certification requirements.

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

**From:** Starzak, Alissa (Intelligence)  
**Sent:** Monday, December 17, 2007 4:36 PM  
**To:** Healey, C (Intelligence); Davidson, M (Intelligence); Livingston, J (Intelligence); Rice, K (Intelligence)  
**Subject:** Managers' amendment

With the extra space corrected.

NSD

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**Demers, John**

---

**From:** Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov]  
**Sent:** Wednesday, January 16, 2008 2:20 PM  
**To:** Demers, John; Eisenberg, John  
**Cc:** Rice, K (Intelligence)  
**Subject:** FW: Senator Feinstein's immunity amendment (SA 3858)  
**Attachments:** Revised immunity provision.doc

**Exemption 6**

FYI. I told him that Senator Bond couldn't support his version because it still allows a court to second-guess the good faith determination made by the SSCI.

---

**From:** Davidson, M (Intelligence)  
**Sent:** Wednesday, January 16, 2008 11:27 AM  
**To:** Livingston, J (Intelligence); Rice, K (Intelligence)  
**Cc:** Healey, C (Intelligence); Starzak, Alissa (Intelligence)  
**Subject:** Senator Feinstein's immunity amendment (SA 3858)

Jack and Kathleen:

I don't know whether you've had a chance to review Senator Feinstein's immunity amendment (SA 3858), but it's possible that it might gain traction.

I've described to David concerns about some of the procedures in the amendment (transfer to the FISC, en banc review there, possible involvement of the plaintiffs in proceedings that would involve classified information). However, the core idea that there ought to be a statutory good faith test that is applied by a court could gain adherents. Numbers of members who support immunity might nonetheless conclude that Feinstein's idea is aligned with the manner in which the Congress has legislated on immunity in other circumstances (e.g., good Samaritan statutes).

We've drafted an alternative way to get at the point that an immunity statute should have, in addition to the AG's certification, a provider submission that it acted in the reasonable belief that the directive was lawful, and a court determination, on the basis of the AG's certification and the provider's declaration, that the provider acted in good faith. The bottom line is that the statute should provide for immunity. The question is how to do it.

Let me know what you think and the suggestions that you might have, and then I'd like to invite Carl's observations, both technical and policy, so that we can advise Senator Rockefeller, in the next couple of days, what your thoughts and DOJ's thoughts might be.

Mike

NSD

365

9/25/2008

**Demers, John**

---

**From:** Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov  
**Sent:** Wednesday, January 16, 2008 6:00 PM  
**To:** Demers, John; Eisenberg, John  
**Subject:** Will the world end if . . .  
**Attachments:** ManagersAmendmentTweaks.doc

**Exemption 6**

we add this limited certification language to Section 705. It may help undercut complaints by Senator Wyden's staff. No rush on this. I'm out tomorrow, but I'm going to meet with Mike early Friday to start working through our final tweaks to the managers' amendment. Thanks.

NSD/

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9/25/2008

**Demers, John**

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**From:** Dickas, J (Intelligence) [REDACTED]@ssci.senate.gov

(b)(3)

**Sent:** Wednesday, January 23, 2008 7:38 PM

**To:** Demers, John

**Subject:** fisa amendments act/managers' amendment

**Exemption 6**

Hey John,

Jack Livingston and [REDACTED] both suggested I talk to you about an issue with the proposed managers' amendment to the FISA amendments act. Are you around this evening?

John Dickas

NSD

369

9/25/2008

**Demers, John**

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**From:** Demers, John  
**Sent:** Wednesday, January 23, 2008 7:48 PM  
**To:** '[REDACTED]@ssci.senate.gov'  
**Subject:** Re: Any word on stored data?

**Exemption 6**

Understand you talked to ODNI and are going ahead w/o additional language. Good.

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

**From:** Livingston, J (Intelligence) <[REDACTED]@ssci.senate.gov>  
**To:** Demers, John  
**Sent:** Wed Jan 23 19:02:05 2008  
**Subject:** Any word on stored data?

NSD

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**Demers, John**

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**From:** Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov  
**Sent:** Wednesday, January 23, 2008 11:31 PM  
**To:** Davidson, M (Intelligence)  
**Subject:** FW: US persons overseas

**Exemption 6**

I can't do it. I didn't get the sense that DOJ or the DNI had any interest on yielding on this point either. We've made tremendous efforts to address their concerns and improve upon the original amendments. Certainly, these Senators are entitled to filibuster the Managers' Amendment. Frankly, I expect Senator Feingold and Wyden to filibuster the Managers' Amendment anyway on the issue of carrier liability. I'm afraid we just have to agree to disagree on this point.

---

**From:** Dickas, J (Intelligence)  
**Sent:** Wednesday, January 23, 2008 9:37 PM  
**To:** Livingston, J (Intelligence); Davidson, M (Intelligence); Healey, C (Intelligence); Starzak, Alissa (Intelligence)  
**Cc:** Dube, M (Intelligence)  
**Subject:** US persons overseas

I've talked to all of you at some point (and most of you at many points) about the proposed managers' amendment regarding protections for US persons overseas. I think we are very close to agreement on language for this issue, thanks in large part to significant efforts by the legal team. With the changes made in the most recent version of the managers' amendment, and Jack's assurances that Bond is prepared to fight off any efforts by Kyl, et al, to undermine this version, I believe that there is only one substantive issue outstanding – the question of whether or not the government should continue to provide the FISC with information about 'facilities' when seeking warrants pursuant to the proposed section 704.

I have discussed this issue with Jack, as well as [REDACTED] at NSA, and I'm still not persuaded that eliminating this requirement is necessary or a good idea. I've also discussed with Evan and Eric, and if this last piece was fixed, we believe that Senators Wyden, Feingold and Whitehouse would all consider the issue of US persons overseas closed, and not raise any more substantive objections. (Meaning, of course, that Senator Wyden would lift his hold on the managers' amendment).

Any questions obviously give me a shout.

John

NSD

373

9/25/2008

**Demers, John**

---

**From:** Demers, John  
**Sent:** Thursday, January 24, 2008 10:02 AM  
**To:** [REDACTED]  
**Subject:** FW: Exclusive means

**Tracking:** Recipient Read  
[REDACTED] Read: 1/24/2008 10:02 AM

**Exemption 6**

---

**From:** Livingston, J (Intelligence) [mailto:[REDACTED]@ssci.senate.gov]  
**Sent:** Thursday, January 24, 2008 9:57 AM  
**To:** Demers, John  
**Subject:** Exclusive means

Can you provide some practical examples of how the SJC exclusive means would harm us during a crisis?

-----  
Sent from my BlackBerry Wireless Device

NSD

375

9/25/2008

**Demers, John**

---

**From:** Demers, John  
**Sent:** Tuesday, January 29, 2008 6:05 PM  
**To:** 'Livingston, J (Intelligence)'  
**Subject:** RE: FISA Amendment

**Exemption 6**

Jack,

One comment:

I don't believe that the "special maritime and territorial jurisdiction of the US" includes the US itself. You could say on or within the United States, as defined in section 101 of this Act, or the "SMTJ, as defined in section 7 of Title 18"

Rest don't strike me a particularly problematic, other than giving away the AG's authority to the DNI...

Thanks  
John

---

**From:** Livingston, J (Intelligence) [mailto:██████████@ssci.senate.gov]  
**Sent:** Tuesday, January 29, 2008 5:57 PM  
**To:** Demers, John  
**Subject:** FW: FISA Amendment

If you can make sense of this, I thought I'd give you a heads up. Hopefully, I'll get a finished version sometime in the next couple of hours.

---

**From:** Livingston, J (Intelligence)  
**Sent:** Tuesday, January 29, 2008 5:54 PM  
**To:** Henderson, John (Legis Counsel)  
**Cc:** Rice, K (Intelligence)  
**Subject:** FISA Amendment

John,

Could I get a first degree amendment to SA 3911 (Bond/Rockefeller managers' amendment) that merges our second degree (Bond 3954, HEN08099) with Feinstein Amendment 3910 (HEN08076) with our second degree, but I need the following changes to the Bond second degree.

On page 2, line 6, insert "related to the attacks or authorizations described in paragraphs (1) through (4)" after "information" [or however you think is best].

On page 2, line 7, strike "180" and insert "90".

On page 2, line 9, insert "and the Director of National Intelligence" after "General".

On page 2, line 12, strike "attack on the United States" and insert "attack by a foreign power or agent of a foreign power on or within the special maritime and territorial jurisdiction of the United States"

NSD

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9/25/2008

On page 2, line 14, strike "an attack on the United States; or" and insert the following "an attack by a foreign power or agent of a foreign power on or within the special maritime and territorial jurisdiction of the United States; (3) an authorization for the use of military force within the meaning of section 2(c)(2) of the War Powers Resolution (60 U.S.C. 1541(c)(2)); or"

On page 2, line 15, strike "(3)" and insert "(4)".

On page 2, line 23, insert "related to the attacks or authorizations described in paragraphs (1) through (4)" after "information" [or however you think is best].

On page 2, line 23, strike "180" and insert "90".

On page 2, line 26, insert "and the Director of National Intelligence" after "General".

On page 3, line 3, strike "attack on the United States" and insert " attack by a foreign power or agent of a foreign power on or within the special maritime and territorial jurisdiction of the United States"

On page 3, line 5, strike "an attack on the United States; or" and insert the following "an attack by a foreign power or agent of a foreign power on or within the special maritime and territorial jurisdiction of the United States; (3) an authorization for the use of military force within the meaning of section 2(c)(2) of the War Powers Resolution (60 U.S.C. 1541(c)(2)); or"

On page 2, line 6, strike "(3)" and insert "(4)".

On page 3, line 15, insert "related to the attacks or authorizations described in paragraphs (1) through (4)" after "information" [or however you think is best].

On page 3, line 16, strike "180" and insert "90".

On page 3, line 18, insert "and the Director of National Intelligence" after "General".

On page 3, line 21, strike "attack on the United States" and insert " attack by a foreign power or agent of a foreign power on or within the special maritime and territorial jurisdiction of the United States"

On page 3, line 23, strike "an attack on the United States; or" and insert the following "an attack by a foreign power or agent of a foreign power on or within the special maritime and territorial jurisdiction of the United States; (3) an authorization for the use of military force within the meaning of section 2(c)(2) of the War Powers Resolution (60 U.S.C. 1541(c)(2)); or"

On page 3, line 24, strike "(3)" and insert "(4)".

Thanks.

Jack

9/25/2008

**Demers, John**

**From:** Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov]

**Sent:** Monday, February 04, 2008 7:18 PM

**To:** Demers, John

**Subject:** FW: Feinstein - Bond agreement on exclusivity amendment

**Exemption 6**

**Attachments:** Feinstein Bond exclusivity.pdf; HEN08125\_xml(Exclusive Means Deal).pdf

The first is David's version of the deal. The second was ours. Just need to know if you like these better than the last one I sent you.

**From:** Grannis, D (Intelligence)

**Sent:** Wednesday, January 30, 2008 5:22 PM

**To:** Grannis, D (Intelligence); Johnson, A (Intelligence); Dubee, M (Intelligence); Davidson, M (Intelligence); Healey, C (Intelligence); Tucker, L (Intelligence); Livingston, J (Intelligence); Rice, K (Intelligence); Weich, Ron (Reid); Lettre, Marcel (Reid); Hoy, Serena (Reid)

**Cc:** Starzak, Alissa (Intelligence)

**Subject:** RE: Feinstein - Bond agreement on exclusivity amendment

For those who care, here's text. Not necessarily final.

**From:** Grannis, D (Intelligence)

**Sent:** Wednesday, January 30, 2008 4:54 PM

**To:** Johnson, A (Intelligence); Dubee, M (Intelligence); Davidson, M (Intelligence); Healey, C (Intelligence); Tucker, L (Intelligence); Livingston, J (Intelligence); Rice, K (Intelligence); Weich, Ron (Reid); Lettre, Marcel (Reid); Hoy, Serena (Reid)

**Cc:** Duck, Jennifer (Judiciary-Dem); Gerber, Scott (Feinstein); LaVelle, Phil (Feinstein); Cleveland, Peter (Feinstein)

**Subject:** Feinstein - Bond agreement on exclusivity amendment

Good news -

Senator Feinstein has agreed to accept Vice Chairman Bond's modification to her exclusivity amendment and re-file as a new first degree amendment (Feinstein-Bond-Rockefeller-other co-sponsors already on exclusivity). Her agreement is conditioned on getting a roll call vote on this new amendment (she'd like to speak on it, but is fine with a short time agreement).

In exchange, she will accede to a 60 vote threshold on her amendment to Title II on FISA Court review. She similarly will want time to speak (again) on that amendment and a roll call vote.

For those not fully up-to-speed on this, the Bond modification is to add to the existing exclusivity language new changes to sections 111, 309, and 404 of FISA. These changes expand the existing 15 day period of warrantless surveillance following a declaration of war to a 45-day period, renewable once, following a declaration of war, and AUMF, or a national emergency created by attack upon the United States, its territories or possessions, or the Armed Forces. There will be a notification to the intelligence committees up front and a report on the activities after the time period expires. The language does not include warrantless surveillance prior to an attack.

We are getting the language back from leg counsel shortly. If there are any problems/objections with this agreement that I'm unaware of, please let me know ASAP.

NSD,

399

9/25/2008



USD, PMS

**Demers, John**

**From:** Davidson, M (Intelligence) [REDACTED]@ssci.senate.gov  
**Sent:** Tuesday, February 05, 2008 3:28 PM  
**To:** Eisenberg, John  
**Cc:** Demers, John; Livingston, J (Intelligence)  
**Subject:** RE: Challenges/Enforcement – Directives

**Exemption 6**

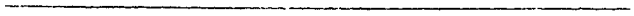
Even if the due process standard remained, should the court at least also be authorized to grant an extension with the consent of the parties?

For example, in setting a briefing schedule both the Government and the provider, in a particular case, might agree that because of the complexity of a particular case additional time is needed. Or, they may be negotiating a resolution. Or they may agree that another case, pending decision, will resolve their dispute.

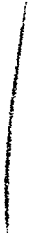
**From:** Eisenberg, John [mailto:[REDACTED]@usdoj.gov]  
**Sent:** Tuesday, February 05, 2008 3:09 PM  
**To:** Davidson, M (Intelligence)  
**Cc:** Demers, John; Livingston, J (Intelligence)  
**Subject:** RE: Challenges/Enforcement -- Directives

In general, we (or perhaps I should say I) think that the time limit should be rigid. I acknowledge that there may be circumstances where due process may require an extension. While I don't know that the statute has to have that exception written in it (a court I think would read it into the statute), I can understand why one might think that the statute itself should recognize this possibility. But given what is at issue, I don't think less than this standard--mandated by the Constitution--ought to justify additional time. I also do not want to constitutionalize things, but I think of that as a circumstance in which a court says that the Constitution requires X, Y, or Z. That stops Congress from acting. I don't think that covers Congress saying that an extension is permissible when the Constitution requires it. But I am happy to drop that part too as unnecessary!

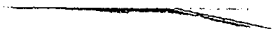
DP.



DR



9/25/2008



**Demers, John**

**From:** Livingston, J (Intelligence) [redacted]@ssci.senate.gov] (b)(3)  
**Sent:** Tuesday, February 05, 2008 5:47 PM  
**To:** Demers, John  
**Subject:** Re: May I see the text of the [Whitehouse proposed] mod to assess compliance

**Exemption 6**

[Whitehouse approached Ben and Director Mueller with some sort of agreement to withdraw assesment of compliance in exchange for some new language. Both Ben and Mueller were nodding their heads like it may be a problem.

Sent from my BlackBerry Wireless Device

dup }

**From:** Livingston, J (Intelligence) [mailto:[redacted]@ssci.senate.gov]  
**Sent:** Tuesday, February 05, 2008 5:42 PM  
**To:** [redacted] Demers, John  
**Subject:** May I see the text of the Whitehouse proposed mod to assess compliance

We should not agree to anything until we've had a chance to consult. Thanks.

Sent from my BlackBerry Wireless Device

NSD  
1/11/08

**Demers, John**

**From:** Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov

**Sent:** Monday, February 11, 2008 9:02 PM

**To:** Demers, John

**Subject:** Re: FISA - Judicial Conference states opposition to provision

**Exemption 6**

I agree with you. The compromise was 30 days, I wanted 5. They've always got due process as an escape valve.

Sent from my BlackBerry Wireless Device

Due

DUP

Demers, John

NSD 1 page

From: Livingston, J (Intelligence) [redacted]@ssci.senate.gov  
Sent: Monday, March 03, 2008 3:56 PM  
To: Demers, John  
Subject: RE: FISA Meeting Tuesday at 1 in Room H-326

[I'm not going. No comment on the Kennedy state secrets bill?] *supra*

Exemption 6

*DP*

2019  
1

**Demers, John**

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*1 page*

**From:** Demers, John  
**Sent:** Tuesday, March 04, 2008 10:14 AM  
**To:** 'Livingston, J (Intelligence)'  
**Subject:** RE: FISA Meeting Tuesday at 1 in Room H-326

**Exemption 6**

[ We are not either <sup>JE</sup> We will comment on the legislation, but don't have anything yet. Did you see the Civil Division's testimony on this from a couple of weeks ago. ]

*scope*

*DUP*

Handwritten scribble or signature on the left margin.

**Demers, John**

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**From:** Livingston, J (Intelligence) [redacted]@ssci.senate.gov]  
**Sent:** Friday, April 04, 2008 10:07 AM  
**To:** [redacted]  
**Cc:** Demers, John  
**Subject:** RE: FISA Mod - Technical Fix

*Exemption 6*

Thanks.

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**From:** [redacted] [mailto:[redacted]@usdoj.gov]  
**Sent:** Friday, April 04, 2008 8:33 AM  
**To:** Livingston, J (Intelligence)  
**Cc:** Demers, John  
**Subject:** FISA Mod - Technical Fix

Jack,

We noticed a drafting omission in the Senate's FISA modernization bill and we wanted to pass it along to you. Section 107(b), which pertains to orders for physical searches, needs a conforming amendment to account for the authority granted in new 107(a)(1)(D) to apply for physical searches of property "about to be" owned or used by a foreign power or agent of a foreign power. The relevant sections are on pages 65-66 in the version I have. Although the bill amends section 1823 of FISA to allow applications to be made to the FISC when property is about to be owned or used, it does not amend the corresponding provisions regarding necessary findings by the FISC in section 1824 of FISA. We recommend the following technical edit:

Page 66, line 11 (section 107(b)(1)(B) of the bill): strike "and"  
 Insert after line 11: "(C) in paragraph (2)(b), as redesignated by subparagraph (B), by inserting "or is about to be" before owned; and"

Please let me know if you have any questions.

Thanks,

[redacted]  
 DOJ/NSD  
 [redacted]

441

**Demers, John**

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**From:** Demers, John  
**Sent:** Tuesday, April 29, 2008 2:25 PM  
**To:** Livingston, J (Intelligence); 'Tucker, L (Intelligence)'  
**Cc:** Gerry, Brett; Benczkowski, Brian A (OLA); Eisenberg, John  
**Subject:** FISA immunity alternative

**Attachments:** FISA immunity alternative 4 24 08.doc



FISA immunity  
alternative 4 24...

Louis and Jack,

Attached is our alternative immunity language, which we are sharing on the understanding that you will not share it outside Senator Bond's office without coming back to us first.

Let me know if you have any questions,  
John

**Tracking:**

Recipient
Livingston, J (Intelligence)
'Tucker, L (Intelligence)'
Gerry, Brett
Benczkowski, Brian A (OLA)
Eisenberg, John

~~Livingston  
April 2008~~

**Demers, John**

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**From:** Demers, John  
**Sent:** Tuesday, May 06, 2008 10:23 AM  
**To:** 'Livingston, J (Intelligence)'  
**Subject:** FISA immunity alternative 5 1 08 (2).doc

**Attachments:** FISA immunity alternative 5 1 08 (2).doc

Tweaks are highlighted. See you in a bit.

John



FISA immunity  
alternative 5 1 ...

**Demers, John**

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**From:** Donesa, Chris [REDACTED]@mail.house.gov  
**Sent:** Monday, May 12, 2008 4:55 PM  
**To:** Demers, John  
**Subject:** RE: FISA

**Exemption 6**

If that doesn't work, something close to it should. Let us take a close look and we'll let you know. Thanks, John.

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**From:** Demers, John [mailto:REDACTED@usdoj.gov]  
**Sent:** Monday, May 12, 2008 4:43 PM  
**To:** Donesa, Chris  
**Subject:** FISA

Chris,

Per our telephone call Saturday, what would you think of the following tweak?

"If the AG and the DNI determine that exigent circumstances exist because, without immediate implementation of the authorization, intelligence important to the national security may be lost or not timely acquired ..."

Feel free to call to discuss: [REDACTED]  
John

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**Demers, John**

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**From:** Demers, John  
**Sent:** Wednesday, May 21, 2008 5:25 PM  
**To:** 'Livingston, J (Intelligence)'  
**Subject:** FISA

Section 202 (b): "JURISDICTION.--[Upon receiving the certification of the Attorney General for any covered civil action under this section,] The Foreign Intelligence Surveillance Court shall have EXCLUSIVE jurisdiction .... Application of this section. OTHER THAN THE FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW AND THE SUPREME COURT OF THE UNITED STATES IN AN APPEAL UNDER SUBSECTION (E), NO OTHER COURT SHALL HAVE SUCH JURISDICTION."

Section 202(c): "... And such courts IMMEDIATELY shall stay all proceedings ... under section for such covered civil action and pending FINAL RESOLUTION OF any appeal OR REVIEW taken in such action ..."

Section 202(f): "... pending prior to the Attorney General's certification shall PROMPTLY dismiss the case ... any appeals taken pursuant to subsection (e)":

Extra language:

New section 202(m) : "If, in a covered civil action, the Attorney General certifies the existence of a circumstance described section 202, he or she may join with the [redacted] a certification under section 203, and the Foreign Intelligence Surveillance Court shall review the sect [redacted] together under section 202, except that the standard of review in section 802 (a)(2)

*Livingston*  
*May 2008*

**Demers, John**

**From:** Demers, John  
**Sent:** Monday, June 16, 2008 7:58 PM  
**To:** [REDACTED]@SSCI.senate.gov'  
**Cc:** [REDACTED]@SSCI.senate.gov'  
**Subject:** Re: Comments on June 13 (5:24pm) draft

**Exemption 6**

Kathleen,

Sorry I'm just getting to this now. Basically, there are a lot of complications on how this works depending on what the outcome would be, e.g., dismissal of certain allegations or with respect to certain defendants. At the end of the day, the Civ folks were fine with working this out with the court in the specific context that arises. We have successfully been able to protect classified information in this way in other litigation. Happy to talk further tomorrow.

John

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

**From:** Rice, K (Intelligence) <[REDACTED]@SSCI.senate.gov>  
**To:** Demers, John  
**Cc:** Livingston, J (Intelligence) <[REDACTED]@SSCI.senate.gov>  
**Sent:** Mon Jun 16 16:32:48 2008  
**Subject:** FW: Comments on June 13 (5:24pm) draft

John--can you explain why you are fine with deleting "following an appeal, if any." I don't know why we would allow any risk of disclosure in this area. Thanks. Kathleen

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

**From:** Demers, John [mailto:[REDACTED]@usdoj.gov]  
**Sent:** Monday, June 16, 2008 3:42 PM  
**To:** [REDACTED]; Jeremy Bash; Christopher W. Frech; Daniel P Meyer; [REDACTED]; [REDACTED]; Vito Potenza; Joel D Kaplan; [REDACTED]; Jeremy Bash; Mariah Sixkiller; Tucker, L (Intelligence); Livingston, J (Intelligence); Davidson, M (Intelligence); Johnson, A (Intelligence); Mike Sheehy; Joe Onek; Lou DeBaca; Chris Dones; Jen Stewart; Caroline Lynch; Brian Diffell; Wyndee Parker; Starzak, Alissa (Intelligence); Eric Greenwald; Mike Delaney  
**Subject:** RE: Comments on June 13 (5:24pm) draft

We have reviewed the question about the order of the district court in the immunity provision and are fine with deleting the words, "following an appeal, if any."

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

**From:** [REDACTED] [mailto:[REDACTED]]  
**Sent:** Sunday, June 15, 2008 7:54 PM  
**To:** Jeremy Bash; Christopher W. Frech; Daniel P Meyer; Demers, John; [REDACTED]; [REDACTED]; Vito Potenza; Joel D Kaplan; [REDACTED]; Jeremy Bash; Mariah Sixkiller; L Tucker (Intelligence); J Livingston (Intelligence); M Davidson (Intelligence); A Johnson (Intelligence); Mike Sheehy; Joe Onek; Lou DeBaca; Chris Dones; Jen Stewart; Caroline Lynch; Brian Diffell; Wyndee Parker; Alissa Starzak (Intelligence); Eric Greenwald; Mike Delaney  
**Subject:** Comments on June 13 (5:24pm) draft

All -

Our comments to the draft circulated on Friday are attached (in track changes). The document includes the changes to the various "construction" paragraphs that John circulated on Friday with some modifications. We will be prepared to discuss tomorrow.

Thanks,  
Chris

*ODN*

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

From: "Jeremy Bash" <[REDACTED]@mail.house.gov>  
To: "Jeremy Bash" <[REDACTED]@mail.house.gov>, "Mariah Sixkiller" <[REDACTED]@mail.house.gov>, "L Tucker (Intelligence)" <[REDACTED]@SSCI.Senate.Gov>, "J Livingston (Intelligence)" <[REDACTED]@SSCI.Senate.Gov>, "M Davidson (Intelligence)" <[REDACTED]@SSCI.Senate.Gov>, "A Johnson (Intelligence)" <[REDACTED]@SSCI.Senate.Gov>, "Mike Sheehy" <[REDACTED]@mail.house.gov>, "Joe Onek" <[REDACTED]@mail.house.gov>, "Lou DeBaca" <[REDACTED]@mail.house.gov>, "Chris Dones" <[REDACTED]@mail.house.gov>, "Jen Stewart" <[REDACTED]@mail.house.gov>, "Caroline Lynch" <[REDACTED]@mail.house.gov>, "Brian Diffell" <[REDACTED]@mail.house.gov>, "Wyndee Parker" <[REDACTED]@mail.house.gov>, "Alissa Starzak (Intelligence)" <[REDACTED]@SSCI.Senate.Gov>, "Eric Greenwald" <[REDACTED]@mail.house.gov>, "Mike Delaney" <[REDACTED]@mail.house.gov>  
Cc: "Christopher W. Frech" <[REDACTED]@who.eop.gov>, "Daniel P Meyer" <[REDACTED]@who.eop.gov>, "John Demers" <[REDACTED]@usdoj.gov>, [REDACTED] <[REDACTED]@who.eop.gov>, [REDACTED] <[REDACTED]@who.eop.gov>, "Vito Potenza" <[REDACTED]@who.eop.gov>, "Joel D Kaplan" <[REDACTED]@who.eop.gov>  
Sent: Friday, June 13, 2008 5:41:44 PM GMT -05:00 US/Canada Eastern  
Subject: RE: Follow up

Gang,

On behalf of Mariah, I'm circulating a further draft (5:24 pm version) based on today's meeting. Please review this draft.

A couple of quick notes:

- 1) We have proposed a construct for 702(c) (item #4 on the list, dealing with certification and the exigent circumstances). Please review this carefully and we can discuss Monday morning.
- 2) We will be incorporating the WMD cross-references in the next draft (item #7 on the list).
- 3) Track changes/Word version to come, once we locate Senate leg counsel.
- 4) I know we are waiting to hear from some folks (Ben, John, et al) on some items, per our discussion.

Have a nice weekend.

- Jeremy

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██████████  
Associate General Counsel  
Office of the Director of National Intelligence  
██████████

**Demers, John**

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**From:** Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov]

**Sent:** Tuesday, July 08, 2008 4:43 PM

**To:** Demers, John

**Subject:** Favor

**Exemption 6**

Specter is asking for any cases that have been cut off by congress like we do in title II. Didn't the atomic energy act strip courts of jurisdiction and provide some alternate mechanism? Aren't there othe example in the area of torts? Senator Bond would like to repond to Specter soon.

-----  
Sent from my BlackBerry Wireless Device

~~Search: Livingston  
July 2008~~