

Demers, John

NSL
page 2

From: Demers, John (NSD)
Sent: Monday, September 10, 2007 9:43 PM
To: Gerry, Brett (OLP); @ssci.senate.gov
Subject: Re: Vice Chairman White Paper and TP Sheet on FISA

(b)(3)

Exemption 6

Brett,

Jack (cc'ed) believes that the DNI made a prior court approval proposal and remembers discussing it with Ben. Do you remember anything about this? This is the last outstanding question.

Thanks,
John

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

From: Gerry, Brett (OLP) <@usdoj.gov>
To: Livingston, J (Intelligence) <@ssci.senate.gov>
Cc: Demers, John (NSD)
Sent: Mon Sep 10 18:02:12 2007
Subject: RE: Vice Chairman White Paper and TP Sheet on FISA

Jack-

We'll get back to you this evening, probably in the personage of John Demers (copied here). Is there a number where we can reach you?

Thanks,
Brett

From: Livingston, J (Intelligence) [mailto: @ssci.senate.gov]
Sent: Sunday, September 09, 2007 7:51 PM
To: Gerry, Brett (OLP)
Subject: Re: Vice Chairman White Paper and TP Sheet on FISA

Are you available to chat this evening? What's a good number to reach you?

Sent from my BlackBerry Wireless Device

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

From: Gerry, Brett (OLP) <@usdoj.gov>
To: Livingston, J (Intelligence)
Sent: Sat Sep 08 17:49:09 2007
Subject: Re: Vice Chairman White Paper and TP Sheet on FISA

I've reviewed per your request and can chat whenever you'd like.

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

From: Livingston, J (Intelligence) <@ssci.senate.gov>
To: Gerry, Brett (OLP)
Sent: Fri Sep 07 20:13:45 2007
Subject: Re: Vice Chairman White Paper and TP Sheet on FISA

Thanks.

Sent from my BlackBerry Wireless Device

NSD/

316

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

From: Gerry, Brett (OLP) <[redacted]@usdoj.gov>
To: Livingston, J (Intelligence) <[redacted]>

Sent: Fri Sep 07 20:09:24 2007

Subject: Re: Vice Chairman White Paper and TP Sheet on FISA

Jack-

We will review here as well, and will get back to you tomorrow.

Brett

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

From: Livingston, J (Intelligence) <[redacted]@ssci.senate.gov>
To: <[redacted]>; Gerry, Brett (OLP); <[redacted]>

Sent: Fri Sep 07 18:33:21 2007

Subject: FW: Vice Chairman White Paper and TP Sheet on FISA

Based on my conversations with Brett and Chris this morning, I'm now concerned that there may be issues with these documents as well. Could you please scrub these again. Is there any chance we're going to receive your suggested modifications today? It would be nice to have these done before David Kris's FISA conference. If there is some inadvertent sensitive material, we may have a containment issue as these documents have already been released publicly. Thanks.

I thought the presentation went very well this morning, although I heard that things heated up a bit after I left.

Demers, John

From: Livingston, J (Intelligence) [mailto:]@ssci.senate.gov] (b)(3)
Sent: Tuesday, October 09, 2007 11:01 AM
To: Ben Powell; Gerry, Brett ; Eisenberg, John; Demers, John (NSD); Potenza, Vito; Caproni, Valerie E.; Greer, John
Subject: FW: Draft of the RESTORE ACT
Attachments: FISAMOD_002_xml.pdf

Exemption 6

Have you seen this yet? I just got it and am starting to study it now. So far it looks pretty bad. It seems like they spent more time thinking about the title of the bill, instead of the problems we're trying to solve.

From: Donesa, Chris [mailto:]@mail.house.gov]
Sent: Tuesday, October 09, 2007 10:21 AM
To: Livingston, J (Intelligence)
Subject: FW: Draft of the RESTORE ACT

Yesterday's draft -

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

From: wyndee p [mailto:]
Sent: Monday, October 08, 2007 9:59 AM
To: Apelbaum, Perry; DeBaca, Lou; Donesa, Chris; Lewis, Jim
Cc: Parker, Wyndee; Delaney, Mike; Bash, Jeremy; Greenwald, Eric; Vieira, Donald; Eoyang, Mieke
Subject: Draft of the RESTORE ACT

Jim, Chris, Perry and Lou,

Attached, please find a copy of the draft of the RESTORE Act which Chairmen Reyes and Conyers intend to introduce tomorrow.

Perry/Lou, please pass along to your Minority counterparts.

Please let us know if you have any questions or comments.

Thanks, Wyndee

NSDI

317

10/1/2008

Demers, John

From: Livingston, J (Intelligence) @ssci.senate.gov (b)(3)
Sent: Monday, October 15, 2007 1:09 PM
To: Gerry, Brett ; Ben Powell; Vito Potenza (work); Demers, John (NSD); Eisenberg, John
Cc: Davidson, M (Intelligence); Healey, C (Intelligence); Starzak, Alissa (Intelligence); Rice, K (Intelligence)
Subject: FW: revisions

Are we sure we don't want to modify 701 to read "Nothing in the definition of electronic surveillance under section 101(f) shall be construed to encompass [any acquisition] that is [targeted] in accordance with this title at a person reasonably believed to be located outside the United States."?

Exemption 6

Doesn't this make more sense than the current language of "Nothing in the definition of electronic surveillance under section 101(f) shall be construed to encompass [surveillance] that is [directed] in accordance with this title at a person reasonably believed to be located outside the United States."?

Demers, John

SEGREGATE

From: Livingston, J (Intelligence) [@ssci.senate.gov]
Sent: Tuesday, October 16, 2007 9:35 PM
To: Gerry, Brett ; Ben Powell; Eisenberg, John; Demers, John (NSD); Vito Potenza (work); Greer, John; Caproni, Valerie E.
Cc: Wainstein, Kenneth (NSD)
Subject: Amendments

Exemption 6

Senator Bond and Senator Rockefeller have not yet reached a deal on the Chairman/Vice Chairman mark. The deadline for amendments is tomorrow at 12:00 noon.

We are presently putting together amendments on the following issues in the event that a deal to protect the mark is not reached.

- 1) Define electronic surveillance (technology neutral DNI April definition)
- 2) Define contents consistent with Title III
- 3) Add WMD to agent of a foreign power, with conforming amendments
- 4) Strike second element of probable cause physical search applications to make it consistent with the Court's finding
- 5) Add to exception for emergency authorizations not approved by the FISC to allow retention of "critical foreign intelligence" in addition to current "threat of death or serious bodily harm"
- 6) Add beefed up immunity language for carriers in the foreign targeting procedures.
- 7) Add back in the requirement that the FISC act on the any challenge of a directive within 72 hours and put the frivolous wording back in.

You all had mentioned that you had changes to 106, so maybe some of those could form the basis of amendments. Please don't provide technical assistance or do any substantive work. Ideas are fine, we'll make our leg counsel do the work. I'm just willing to entertain your ideas, if you have any FISA fixes that you've been dying to have. Don't spend much time on this, because this entire exercise could be a waste of time if we reach an agreement.

One caveat, no need to suggest the redefinition of agent of a foreign power to include non-us persons with foreign intelligence information. Thanks.

NSD

320

Demers, John

SEGREGATE

From: Davidson, M (Intelligence) @ssci.senate.gov
Sent: Monday, October 22, 2007 2:04 PM
To: Gerry, Brett ; Demers, John (NSD) b)(3)
Cc: Livingston, J (Intelligence); Healey, C (Intelligence); Rice, K (Intelligence); Starzak, Alissa (Intelligence)
Subject: Technical assistance – Transition procedures **Exemption 6**

Ben and Brett,

Looking at the bill's transition procedures, in the course of preparing our section-by-section analysis, it strikes me that they need a careful scrub.

We'll do that here, but I was wondering, in the spirit of technical assistance, if you might do the same.

We've got three kinds of actions that need to be continued – authorizations, directives (both of those are AG/DNI action) and orders (a FISC action). I'm not sure that the present language provides systematically for each of them. For example, while authorizations and orders in effect on December 31, 2013, shall continue in effect the only directives referred to are those in effect on the date of the enactment of this Act.

Different subject – what does "(5) Extant Authorizations" apply to? Is it just a truism?

The string cites, sections 102 through 108, should be expanded to 102 through 109 as a result of a markup amendment adding the Feingold FISC orders amendment (section 103).

We're presently looking to file on Wednesday. Additional views are due end of tomorrow. We'd like to settle on technical changes some time tomorrow morning. Anything that you and colleagues can spot or suggest would be appreciated. (John Demers is looking at technical items regarding the en banc provision, that is, whether there need to be references to the en banc possibility in various parts of FISA or other parts of the bill.)

Mike

NSD

322

9/25/2008

Demers, John

SEGREGATE

From: Davidson, M (Intelligence) @ssci.senate.gov
Sent: Tuesday, November 13, 2007 6:37 PM (b)(3)
To: Ben Powell; Gerry, Brett ; Eisenberg, John; Potenza, Vito; Nichols, Carl (CIV); Olsen, Matthew; Demers, John (NSD)
Cc: Livingston, J (Intelligence); Healey, C (Intelligence); Rice, K (Intelligence); Starzak, Alissa (Intelligence)
Subject: FISA

Exemption 6

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

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

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

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

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

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

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

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

And a most happy Thanksgiving.

Mike

NSD

324

9/25/2008

Demers, John

From: Davidson, M (Intelligence) @SSCI.senate.gov
Sent: Friday, November 30, 2007 9:48 AM
To: Ben Powell; Eisenberg, John; Demers, John (NSD); Potenza Vito; Gerry, Brett ;
Cc: Livingston, J (Intelligence); Healey, C (Intelligence); Rice, K (Intelligence); Starzak, Alissa (Intelligence); DeRosa, Mary (Judiciary-Dem); Rossi, Nick (Judiciary-Rep)
Subject: Way Forward – Monday and Tuesday

(b)(3)

Exemption 6

Colleagues (with a copy to Brett as an alumnus of this process):

We've been advised that we should be ready to begin FISA floor proceedings next Thursday, December 6. The Senate being the Senate – Thursday could become the following Monday, but our responsibility is to be ready.

To do that, I believe we need to do the following, building, of course, on the discussion we had on Tuesday and will have today.

Meet for a slimmed down, long, pencil and pad, session on Monday. On the Senate side of this, we should have representatives of the Chairmen/Vice Chairman/Ranking of our two committees. There may be times during the course of the session when it would be wise to consult with staff who attend to the interests of other members, but basically this needs to be a session at which DNI/DOJ/NSA/Rockefeller/Bond/Leahy/Specter representatives make the progress that they can.

I've reserved space here from 1-6. Let me know if that time works.

After that meeting, all of us will need to consult with other colleagues and principals. On Tuesday, I propose that we get back together in the afternoon and review whatever text emerges from the Monday discussion, so that we can then advise our principals, including the Majority and Minority Leaders, that X issues have been resolved, and can be dealt with in a Managers Amendment, and Y issues will need to be resolved otherwise, if there remains a desire to pursue them.

Wednesday could then be devoted to the Legislative Counsel preparation of the necessary documents.

For myself, I'm hopeful that we can find ways for support of the bill to grow.

Let's take the last half hour of this afternoon's meeting, 2:30-3, to share ideas, on process and perhaps topics, for productive work next week.

Mike

Demers, John

From: Starzak, Alissa (Intelligence) [ssci.senate.gov] (b)(3)
Sent: Monday, December 03, 2007 6:26 PM
To: Ben Powell; Demers, John (NSD); Eisenberg, John; Olsen, Matthew
Cc: Davidson, M (Intelligence); Livingston, J (Intelligence); Healey, C (Intelligence); Rice, K (Intelligence); DeRosa, Mary (Judiciary-Dem); Rossi, Nick (Judiciary-Rep)
Subject: Redlined exclusivity provision
Attachments: Exclusivity language -- redline 12-3-07.doc **Exemption 6**



Exclusivity
language -- redlin...

Attached is the draft exclusivity provision that was circulated this afternoon, with the changes we discussed today in redline.

NSD/

332

Demers, John

2

From: Davidson, M (Intelligence) [mailto:dssci.senate.gov]
Sent: Monday, December 03, 2007 11:37 AM
To: Ben Powell; Livingston, J (Intelligence); Demers, John (NSD);
 Eisenberg, John;
Cc: Healey, C (Intelligence); Rice, K (Intelligence); Starzak, Alissa (Intelligence)
Subject: RE: today's meeting **Exemption 6**

Ben:

Yes, we want very much to proceed today at 1.

And I do think it would be useful to slim down. On our end, I'd like to begin with Rockefeller/Bond/Leahy/Specter representatives. That, not surprisingly, causes some angst here. There are people who attend to the interests of individual members of the two committees who have devoted a great deal of effort to these matters, and to whom those members will look for advice in assessing in what comes out of this process. But after several larger sessions, we need to give a smaller one a try.

At points in the discussion, I know there will be a strong interest, particularly from the Judiciary Committee, for one or several people to join us -- who may in fact be designees on our staff, for particular matters, but let's start with a smaller group than last week.

That said, when I went into our system on Friday to make a room reservation, the available room today was our hearing room, which is not exactly a sitting-around-a-conference-table environment. I may try to switch with people who had reserved our conference rooms, although with the addition of Leahy/Specter participants either of our SH-211 conference rooms would result in a tight fit.

On your end, I leave it entirely to your judgment. We have benefited throughout this process from the participation of DNI/DOJ/NSA colleagues. If meeting in SH-219 helps to give you additional latitude in that regard, that alone would be a good reason to meet there.

Mike

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

From: Ben Powell [mailto:dni.gov]
Sent: Monday, December 03, 2007 9:23 AM
To: Davidson, M (Intelligence); Livingston, J (Intelligence);
 ; Demers, John (NSD); [mailto:usdoj.gov];

Subject: today's meeting

Mike -- Just wanted to check that you want to go ahead with a meeting today at 1pm. We will bring a smaller group if you want to hold a slimmed down meeting today. Assume we will do it in SSCI spaces?

Ben

NSD

333

SEGREGATE

NSD
1/2/08**Demers, John**

From: Starzak, Alissa (Intelligence) @ssci.senate.gov (b)(3)
Sent: Friday, December 14, 2007 4:24 PM
To: Livingston, J (Intelligence); Ben Powell; Rice, K (Intelligence); Eisenberg, John; Demers, John (NSD); Gerry, Brett
Cc: Healey, C (Intelligence); Davidson, M (Intelligence)
Subject: RE: FISA **Exemption 6**
Attachments: Amendment Options.doc; EAS07D29_xml.pdf; EAS07D46_xml.pdf

To speed things up a bit (we're still waiting to get drafts back from legislative counsel), I thought it might be helpful to forward some of the ideas we've had for particular Rockefeller amendments. The word document that is attached does not distinguish between items we will be including in the discussion draft and those that will be prepared as separate amendments – it's just possible amendment ideas that deal with things other than the 2.5 issue. The leg counsel drafts include the exclusivity amendment that was circulated previously, and an amendment on an IG review.

Thanks –
Alissa

From: Livingston, J (Intelligence)
Sent: Friday, December 14, 2007 11:39 AM
To: Davidson, M (Intelligence); 'Ben Powell'; ; 'John Eisenberg'; @usdoj.gov';
'; 'Gerry, Brett (OLP)'
Cc: Healey, C (Intelligence); Rice, K (Intelligence); Starzak, Alissa (Intelligence)
Subject: RE: FISA

I just want to emphasize Mike's comment that Senator Bond has not agreed to a managers' amendment that would include anything beyond the deletion approach to the NSA reporting issue and a 2.5 fix that is acceptable to the IC, Democrats and Republicans. Specifically, Senator Bond has *not* agreed to any change in the current exclusive means language, a reduction in the sunset from 6 to 4 years, or the other provisions referenced by Mike in the below e-mail.

We've also asked Legislative Counsel to put together a discussion draft of a possible managers' amendment (that significantly beefs up the 2.5 application and order process for acquisitions conducted in the U.S. and reorganizes Title VII). Our draft, as earlier drafts, includes the names of Senators Rockefeller and Bond, but that is merely aspirational. Senator Rockefeller has *not* agreed to the version I've been sending around, nor has he agreed to the version that I'll send out when Legislative Counsel sends it to me.

I share Mike's hope that we can make the overall managers' amendment an attractive vehicle, but the issues of exclusive means and sunset are still very heavy lifts. Frankly, it's my understanding that our approach to 2.5 is still a heavy lift for the IC.

Also, I would like to second Mike's thanks on everyone's help, past, present, and future.

Jack

NSD

353

9/25/2008

From: Davidson, M (Intelligence)

Sent: Friday, December 14, 2007 10:30 AM

To: 'Ben Powell'; John Eisenberg; @usdoj.gov'; ; Gerry, Brett (OLP)

Cc: Livingston, J (Intelligence); Healey, C (Intelligence); Rice, K (Intelligence); Starzak, Alissa (Intelligence)

Subject: FISA

dp

Demers, John

From: Livingston, J (Intelligence) @ssci.senate.gov]
Sent: Monday, December 17, 2007 2:58 PM
To: Demers, John (NSD);
Subject: Fw: Amendments to D69
Attachments: EAS07D85_xml.pdf

(b)(3)

FYI

Sent from my BlackBerry Wireless Device

Exemption 6

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

From: Starzak, Alissa (Intelligence)
To: Livingston, J (Intelligence); Rice, K (Intelligence)
Cc: Healey, C (Intelligence); Davidson, M (Intelligence)
Sent: Mon Dec 17 14:46:06 2007
Subject: FW: Amendments to D69

Current managers' amendment. This should include everything, so if you catch something, please let me know ASAP.

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

From: Easley, Stephanie (Legis Counsel) [mailto: @slc.senate.gov]
Sent: Monday, December 17, 2007 2:45 PM
To: Starzak, Alissa (Intelligence)
Cc: Healey, C (Intelligence); Davidson, M (Intelligence)
Subject: RE: Amendments to D69

A new manager's amendment is attached (EAS0785.xml). I am working on the complete substitute now. Please let me know if you have any other edits.

NSD

363

9/25/2008

Demers, John

NSD
2 pages

From: Demers, John (NSD)
Sent: Sunday, December 16, 2007 5:30 PM
To: @ssci.senate.gov'
Subject: Fw: FISA

b(3)

FYI

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

From: Demers, John (NSD)
To: @ssci.senate.gov' <@ssci.senate.gov>
Sent: Sun Dec 16 17:29:39 2007
Subject: Re: FISA

Exemption 6

Alissa,

Just a few things in addition those that apply from my comments to Jack:

P. 25, l. 19. Replace "authorization" with "order". We've tried to be very careful in this section not to say that the Court is authorizing the acquisition for the reasons we've expressed having to do with the authorization of acquisitions abroad.

Sec 707. I'm not sure why you would treat the 705 info as subject to all the 106 restrictions. You are applying to this information restrictions that have never applied before. I thought the point was just to get the Ct to find pc. These restrictions can be quite burdensome re: dissemination and tracking terrorists in the US. For instance, we have to put the FISA caveat when we distribute info for law enforcement purposes. But this tells the recipient we have a FISA on a person--a classified and closely held fact. Thus this requirement effectively means that, at times, we have not been able to distribute info to, e.g. state and local police to try to track terrorists here. I'm not sure why we would import this problem to a new set of information where we've not had this issue.

P. 35, l. 20. No comma between "domestic" and "wire"

P. 37 in the conforming changes to 2511, please add the language from Senator Bond's version re: section 2511(2)(a)(ii)(A). This is important if we're going to be able to issue 2511 cert to persons who help us under section 705. And please make the change from 704 in Jack's language to 705. We would of course also like the remaining conforming amendments in Jack's draft and I'm not sure why you would be opposed.

All this said, I'm sure you know that in every way this draft differs from Senator Bond's, we prefer his.

And that said, we appreciate all the effort you have made to coordinate with us and narrow differences.

John

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

From: Starzak, Alissa (Intelligence) <@ssci.senate.gov>
To: Starzak, Alissa (Intelligence) <@ssci.senate.gov>; Livingston, J (Intelligence) <@ssci.senate.gov>; Rice, K (Intelligence) <K_Rice@ssci.senate.gov>; chrisdt@dni.gov <chrisdt@dni.gov>; @SMOJMD.USDOJ.gov <@SMOJMD.USDOJ.gov>; Demers, John (NSD); @SMOJMD.USDOJ.gov <@SMOJMD.USDOJ.gov>

Cc: Healey, C (Intelligence) <@ssci.senate.gov>; Davidson, M (Intelligence) <@ssci.senate.gov>
Sent: Sun Dec 16 12:31:08 2007

Subject: RE: FISA

Apparently, my blackberry didn't attach the draft. It's actually attached this time.

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

From: Starzak, Alissa (Intelligence)
Sent: Sunday, December 16, 2007 11:44 AM
To: Starzak, Alissa (Intelligence); Livingston, J (Intelligence);
K (Intelligence); ; Rice,
; usdoj.gov'; @usdoj.gov';
; @usdoj.gov'
Cc: Healey, C (Intelligence); Davidson, M (Intelligence)
Subject: Re: FISA

[2 Attachments]

John, we just got your emails on the changes to Jack's draft. We'd appreciate your comments on the sections of the attached amendment that are different than Jack's version. (We can incorporate any of the formatting changes from your earlier emails.)

Thanks --
Alissa

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

From: Starzak, Alissa (Intelligence)
To: Livingston, J (Intelligence); 'Ben Powell' <
'@dni.gov>; 'John Eisenberg' ; Rice, K (Intelligence);
'@usdoj.gov'; '@usdoj.gov'; '@usdoj.gov';
' < ; 'Gerry,
Brett (OLP)' < @usdoj.gov>
Cc: Healey, C (Intelligence); Davidson, M (Intelligence)
Sent: Fri Dec 14 16:24:29 2007
Subject: RE: FISA

To speed things up a bit (we're still waiting to get drafts back from legislative counsel), I thought it might be helpful to forward some of the ideas we've had for particular Rockefeller amendments. The word document that is attached does not distinguish between items we will be including in the discussion draft and those that will be prepared as separate amendments - it's just possible amendment ideas that deal with things other than the 2.5 issue. The leg counsel drafts include the exclusivity amendment that was circulated previously, and an amendment on an IG review.

Thanks -

Alissa

1

2

3

4

1/2
D

Demers, John

From: Demers, John
Sent: Wednesday, January 23, 2008 5:00 PM
To: 'Starzak Alissa (Intelligence)'; Ben Powell; Potenza, Vito;
 Patrick Reynolds; patrickjreynolds; Eisenberg, John;
Cc: Healey, C (Intelligence); Davidson, M (Intelligence); Livingston, J (Intelligence); Rice, K (Intelligence)
Subject: RE: FISA Meeting

(b)(3)

Tracking: Recipient Read
 'Starzak, Alissa (Intelligence)'

Ben Powell
 Potenza, Vito

Exemption 6

Eisenberg, John Read: 1/23/2008 5:00 PM
 Read: 1/23/2008 5:55 PM

Healey, C (Intelligence)
 Davidson, M (Intelligence)
 Livingston, J (Intelligence)
 Rice, K (Intelligence)

Here are a few nits and typos. We are assuming that the changes we agreed upon yesterday will be reflected in the document and so have not repeated them here. Let me know if you have any questions. Thanks, John

P. 4, l. 14, delete "704 or 705" and insert "704, 705, or 706"

P. 13, l. 33, delete "(b)(3)" and insert "(b)"

P. 14, l. 20, delete "(b)(1)(F)(v)" and insert "(b)(1)(F)"

P. 14, l. 21, delete "(b)(3)" and insert "(b)"

P. 17, l. 15, insert "is to be conducted inside the United States and" after "acquisition". This addition describes what we are actually doing under section 704 and avoids a potential ambiguity over the meaning of "acquisition." That is, it is possible to read the phrase to mean that if we could get the same information here or abroad, we need to get it here. This is not the intent of the provision, which is to require us to go under 704 rather than 705 if the activity is covered by 704.

P. 23, l. 37, delete "(a)(2) and (b)" and insert "(a)(2), (b), and (c)"

P. 23, l. 38, delete "703(h)(3)" and insert "703(g)(3)"

P. 24, l. 2, delete "703(h)" and insert "703(g)"

NSD/

368

9/25/2008

P. 24, l. 8, delete "704" and insert "707"

From: Starzak, Alissa (Intelligence) [mailto: @ssci.senate.gov]
Sent: Tuesday, January 22, 2008 9:35 PM
To: Ben Powell; Potenza, Vito; Patrick Reynolds;
 Demers, John; Eisenberg, John;
Cc: Healey, C (Intelligence); Davidson, M (Intelligence); Livingston, J (Intelligence); Rice, K (Intelligence)
Subject: RE: FISA Meeting

To follow up on our meeting today, the following is my list of topics on which we are waiting for more DOJ/DNI/NSA input. (Unlike Ben, I need to write down my lists.)

Managers' amendment issues (We are hoping to have answers to these by tomorrow morning, so that we can finalize the managers' amendment.)

- In 703(a), you were going to confirm that it is not a problem to use the phrase "when the acquisition is conducted within the United States from or with the assistance of an electronic communication service provider".
- In 703(b)(2), you were planning on addressing whether "of such acquisition" poses operational problems.
- In the certification in 705(b)(4), you were planning on getting back to us on the use of the term "foreign intelligence information."
- In 703, you were going to take back the question of whether there needs to be a reference to stored electronic "data" like there is in 704.

Other issues

- We asked if you would provide a description of what can be said on an unclassified basis about the concerns raised by Senator Feingold's bulk collection language.
- We will explain why the 704 application does not include information on particular facilities to John Dickas, but if you want to reach out to him to explain the operational concerns in more detail, it might help things along.
- We asked if you would be willing to look at whether provisions from any existing amendments – like the language in the Kennedy amendment – might be workable.
- We asked if you would take a hard look at the language that is based on the Feinstein immunity amendment. Although we know you oppose changes of this sort, we would like to make sure that if it becomes an issue, we have the right standard, etc.

Let me know if there's anything I missed.

Thanks –
 Alissa

From: [mailto:]
Sent: Friday, January 18, 2008 11:46 AM
To: Starzak, Alissa (Intelligence)
Cc: Ben Powell; Potenza, Vito; ; John Demers;
 Eisenberg, John;

9/25/2008

Subject: Re: FISA Meeting

Alissa,

To follow up on our previous conversation, I have discussed with NSA and DOJ and we should be able to assemble the group for a meeting on Tuesday at 3:30pm. Please let us know which room it will be in.

Starzak, Alissa (Intelligence) wrote:

Hi all –

Attached is a draft of the managers' amendment in substitute form with some proposed Rockefeller edits in redline. (Some of the edits are just corrections that we missed the last time around.) Although we haven't had the opportunity to speak with Jack or Kathleen about any of these changes yet, we thought it made a lot of sense to send them out to everyone at once to give everyone as much time as possible to review. If everyone is available, it might make sense to meet on Tuesday morning as well, to have some last discussions in person.

A few comments and questions about this draft:

We added language on the section 703 authorization (p. 4 of this redline) to try to be upfront as possible about what this provision actually does. Given how clear we are in section 704 that we are talking about collection inside the US, it seemed to make sense to do the same thing here.

Although we have a reference to stored electronic "data" in section 704 (p. 11), there is no similar mention in 703. Does that difference cause any problems?

Should the agency assessment be prepared on a particular timetable? I added in a blank on page 10 line 5 with a bracketed question mark on this one.

To address some of our colleagues' concerns that there could be collection under 705 on an employee of a foreign power that doesn't involve foreign intelligence, we added in a certification by the AG that the information is FI and a significant purpose of the acquisition is to obtain FI. Review on this certification is limited to whether the certification contains all required elements.

Given the limited review on this certification, this provision also might present an opportunity to address one of Mike's longstanding concerns. He has noted in the past that courts will want to know that 705 acquisitions are being conducted in accordance with EO 12333, even if we expressly give them have no ability to review that determination. Because this FI piece is just a certification, which involves no substantive court review, this topic could potentially be added here without granting the court any review over the issue. In other words, on p. 17 line 40, we could potentially add "(C) the acquisition will be conducted under guidelines approved by the Attorney General pursuant to Executive Order 12333 or any successor order."

We added in the proposed section of 2511 from Senator Feinstein's exclusivity amendment that notes that the certification "shall identify the specific statutory provision." (p. 23, lines 8-12) Although there will obviously be more discussion about exclusivity, it seemed like this one might be able to stand on its own. We would be interested to hear your thoughts on this.

9/25/2008

It's probably worth doing a careful scrub of the transition procedures in Title III to make sure that they fit with the changes in the managers' amendment.

We're also interested to hear thoughts on a number of other proposals that seek to address various Senators' concerns:

Given the amount of judiciary committee concern on the stay pending appeal provision, we had proposed a compromise position that would strike lines 14-15 on p. 9 and insert the following:
“(ii) if the Government appeals an order under this section, until the Court of Review enters an order under subsection (C).

(C) IMPLEMENTATION PENDING APPEAL.—No later than 30 days after an appeal to it of an order under paragraph (5)(B) directing the correction of a deficiency, the Court of Review shall determine, and enter a corresponding order, whether all or any part of the correction order, as issued or modified, shall be implemented during the pendency of the appeal.”

Senator Feingold had proposed a bulk collection amendment in judiciary that had some operational problems. To address some of those concerns about bulk collection, however, would it be possible to change the targeting procedures requirement (p. 4 lines 25-29) to read:

“The Attorney General, in consultation with the DNI, shall adopt targeting procedures that are reasonably designed to ensure that any acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States, and that at least one party to a communication acquired is a specific individual target reasonably believed to be outside the United States.”

Senator Kennedy has proposed a 2.5 related amendment, part of which includes the destruction of any collection obtained when all parties to the communication are known to be located in the United States. This idea seems to be generally consistent with NSA's practices in other kinds of collection, and requiring destruction of communications collected when targets were later determined to be in the US might help address some of the judiciary committee's concern about ensuring that there are consequences when collection is not conducted appropriately. What are your thoughts on adding this type of clause? To give you a sense of the language (and without considering exactly where in the bill it would go), the Kennedy provision reads as follows:

“Persons in the United States. – The minimization procedures required by this subsection shall require the destruction, upon recognition, of any communication as to which the sender and all intended recipients are known to be located in the United States, a person has a reasonable expectation of privacy, and a warrant would be required for law enforcement purposes, unless the Attorney General determines that the communication indicates a threat of death or serious bodily harm to any person.”

We look forward to your comments.

Thanks –
Alissa

9/25/2008

Demers, John

From: Demers, John
Sent: Thursday, January 24, 2008 8:17 AM
To: @SSCI.senate.gov'
Cc: @SSCI.senate.gov'
Subject: Re: Rockefeller-Bond managers' amendment

(b)(3)

Exemption 6

We didn't thanks. I will talk to Dickas this morning to see if I can convince him about facilities but it looks like I may not succeed.

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

From: Rice, K (Intelligence) <@SSCI.senate.gov>
To: Demers, John;
Cc: Livingston, J (Intelligence) <SSCI.senate.gov>
Sent: Thu Jan 24 08:07:58 2008
Subject: Fw: Rockefeller-Bond managers' amendment

Final attached for your review. I wasn't sure if you had this or not. Thanks. Kathleen

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

From: Starzak, Alissa (Intelligence)
To: Intel-GDG
Sent: Wed Jan 23 19:27:49 2008
Subject: Rockefeller-Bond managers' amendment

Attached is the Rockefeller-Bond managers' amendment to the FISA bill, as well as a redline that shows the changes from the Committee's original bill. The amendment is in the form of a complete substitute. We're still proofing it, but we wanted to circulate it to give folks an opportunity to take a look at it.

NSDI

374

Demers, John

From: Livingston, J (Intelligence) [@ssci.senate.gov]
Sent: Thursday, January 24, 2008 1:51 PM
To: Demers, John;
Subject: Managers' Amendment

(b)(3)

Exemption 6

Are you guys okay. I've gone through it and it looks all the agreed upon changes were made. Thanks.

Sent from my BlackBerry Wireless Device

NSDI

376

9/25/2008

Demers, John

From: Davidson, M (Intelligence) @ssci.senate.gov
Sent: Thursday, January 24, 2008 7:42 PM
To: Demers, John
Cc: Ben Powell; Livingston, J (Intelligence); Dickas, J (Intelligence); Healey, C (Intelligence); Rice, K (Intelligence); Starzak, Alissa (Intelligence);
Subject: Sen. Wyden – facilities

(b)(3)

John:

Exemption 6

I know you've been talking with John Dickas, and possibly also with Jack regarding Sen. Wyden's concern about the absence of a facilities provision in section 705.

The future path of the bill is, of course, uncertain now, but, who knows, maybe discussions between now and the Monday cloture vote, or following it if cloture is not invoked, will seek a way forward on outstanding issues.

If that occurs, we should see whether there is an answer to Senator Wyden's concern. If there is, I believe that we will have resolved all outstanding matters on Americans abroad.

So, just at the level of technical assistance, could you or colleagues suggest legislative language that would couple the language that Senator Wyden seeks with language that would provide sufficient operational flexibility? That is, if an amendment were to be offered, what might it look like?

Many thanks.

Mike

NSDI

377

9/25/2008

Demers, John

From: Demers, John
Sent: Monday, January 28, 2008 1:02 PM
To: 'Rice, K (Intelligence)'
Cc: Livingston, J (Intelligence)
Subject: RE: FISC

(b)(3)

Exemption 6

I can't find anywhere where we have publicly stated when we filed the procedures with the Court. So I think the answer is no.

John

From: Rice, K (Intelligence) [mailto: @SSCI.senate.gov]
Sent: Monday, January 28, 2008 11:10 AM
To: Demers, John
Cc: Livingston, J (Intelligence)
Subject: FISC

John—Can we say anything publicly about the length of time that was taken to review the PAA targeting procedures? Thanks. Kathleen

NSD/

379

9/25/2008

Demers, John

From: Demers, John
Sent: Tuesday, January 29, 2008 3:46 PM
To: Livingston, J (Intelligence)
Subject: FW: [Fwd: Fw: 180 day warrantless surveillance amendment]

(b)(3)

If you do agent of a foreign power or foreign power maybe drop the "armed."

Exemption 6

From: Demers, John
Sent: Sunday, January 27, 2008 4:48 PM
To: Eisenberg, John; Ben Powell;
Subject: RE: [Fwd: Fw: 180 day warrantless surveillance amendment]

Two thoughts.

To increase the likelihood to getting support we should probably insert "territorial" before "United States" and "armed" before "attack."

For the same reason, you may also want to add a notice requirement where there has been an attack and a declaration of war. The purpose here would be so that Congress knew that the President was exercising this authority, even though it will of course know that the attack or declaration occurred.

One other thought, should we tie to the surveillance to the need for it? FISA does not and no draft has but if we think it will help chances of passage might be a good idea.

Thanks.

From: [mailto: @dni.gov]
Sent: Sunday, January 27, 2008 1:24 PM
To: Eisenberg, John; Demers, John; Ben Powell;
Subject: [Fwd: Fw: 180 day warrantless surveillance amendment]

FYI - the attached is being considered as a second degree amendment.

NSD/

381

9/25/2008