

Demers, John

From: Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov]
Sent: Wednesday, January 23, 2008 8:59 PM
To: Demers, John
Subject: RE: POCs for FISA floor action

(b)(7)

Thanks for all your help. Keep your fingers crossed.

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

From: Demers, John [mailto:[REDACTED]@usdoj.gov]
Sent: Wednesday, January 23, 2008 8:37 PM
To: Livingston, J (Intelligence)
Cc: Rice, K (Intelligence); Jaffer, Jamil N. (NSD)
Subject: Re: POCs for FISA floor action

Exemption 6

He is cc'ed here.

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

From: Livingston, J (Intelligence) <[REDACTED]@ssci.senate.gov>
To: Demers, John
Cc: Rice, K (Intelligence) <[REDACTED]@ssci.senate.gov>
Sent: Wed Jan 23 20:34:19 2008
Subject: RE: POCs for FISA floor action

What's his email address or could you have him send me a test e-mail? Thanks.

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

From: Demers, John [mailto:[REDACTED]@usdoj.gov]
Sent: Wednesday, January 23, 2008 7:57 PM
To: Livingston, J (Intelligence)
Cc: Rice, K (Intelligence)
Subject: Re: POCs for FISA floor action

Jack and Kathleen,

Jamil Jaffer will be in the VP suite. I will also be reachable at DOJ.

Thanks.

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

From: Livingston, J (Intelligence) <[REDACTED]@ssci.senate.gov>
To: [REDACTED] <[REDACTED]>; Ben Powell <[REDACTED]>; Demers, John; Vito Potenza (work) <[REDACTED]>
Cc: Rice, K (Intelligence) <[REDACTED]@ssci.senate.gov>
Sent: Tue Jan 22 22:35:16 2008
Subject: POCs for FISA floor action

Could you please identify the persons that you believe will act as primary and secondary points of contacts during the FISA amendments debate for the White House, ODNI, DOJ, and NSA. If they're not going to be in the Vice President's suite, could you please identify their location, phone number, and e-mail address. We want to prepare a list for Senator Bond's floor binder. Thanks.

Jack

NSD

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Demers, John

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From: Kim, Harold H. [REDACTED]@who.eop.gov
Sent: Saturday, February 09, 2008 8:44 AM
To: [REDACTED]@ssci.senate.gov; [REDACTED]@ssci.senate.gov; [REDACTED]@SSCI.senate.gov
Cc: Demers, John; Eisenberg, John; [REDACTED]; Burck, William A.; Stewart, Margaret B.; Emling, John G.; Meyer, Daniel P.; [REDACTED]@mcconnell.senate.gov
Subject: Whitehouse Assessment Compliance Modification (Revised)

Exemption 6

Louis, Jack and Kathleen: Please find below a revised version of the Whitehouse Assessment Compliance modification that incorporates comments from DNI and DOJ. Sorry that I can't send changes in redline since I'm on my blackberry.

Also, it is our understanding that acceptance of this language is predicated on Whitehouse's agreement to be with us on cloture and final passage. Please confirm. As always, don't hesitate to contact us with questions.

["Nothing in this Act shall be considered to reduce or contravene the inherent authority of the FISA Court to determine, or enforce, compliance with its orders, rules and court-approved procedures."

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Demers, John

From: Tucker, L (Intelligence) [REDACTED]@SSCI.Senate.Gov]
Sent: Saturday, February 09, 2008 10:45 AM
To: [Harold_H._Kim@who.eop.gov] Livingston, J (Intelligence); Rice, K (Intelligence)
Cc: Demers, John; Eisenberg, John; [REDACTED] William_A._Burck@who.eop.gov;
Margaret_B._Stewart@ovp.eop.gov; John_G._Emling@who.eop.gov;
Daniel_P._Meyer@who.eop.gov; Abegg, John (McConnell)
Subject: Re: Whitehouse Assessment Compliance Modification (Revised)

EXEMPTION 6

[That's correct, the deal was to take the language on the court with compliance for support of the overall bill.

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418

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Demers, John

From: Tucker, L (Intelligence) [REDACTED]@SSCI.Senate.Gov]
Sent: Saturday, February 09, 2008 10:54 AM
To: Harold_H._Kim@who.eop.gov; Livingston, J (Intelligence); Rice, K (Intelligence)
Cc: Demers, John; Eisenberg, John; [REDACTED]; William_A._Burck@who.eop.gov; Margaret_B._Stewart@ovp.eop.gov; John_G._Emling@who.eop.gov; Daniel_P._Meyer@who.eop.gov; Abegg, John (McConnell)
Subject: Re: Whitehouse Assessment Compliance Modification (Revised)

Exemption 6

So on language in comparing the two we're looking at a slight tweak at the end, correct? [REDACTED] I believe DOJ never got back officially to Pelofsky on this, correct? [REDACTED] if that's right, give us the reasons for the change and the concerns you have, we'll work with his staff on Monday and if need be later in the day we'll ask DOJ to get back to Pelofsky directly with the concerns.]

HP

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Demers, John

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From: Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov]
Sent: Saturday, February 09, 2008 11:09 AM
To: Tucker, L (Intelligence); [REDACTED] Harold_H._Kim@who.eop.gov; Rice, K (Intelligence)
Cc: Demers, John; Eisenberg, John; [REDACTED] William_A._Burck@who.eop.gov;
Margaret_B._Stewart@ovp.eop.gov; John_G._Emling@who.eop.gov;
Daniel_P._Meyer@who.eop.gov; Abegg, John (McConnell)
Subject: Re: Whitehouse Assessment Compliance Modification (Revised)

Exemption 6

Minor suggestions. [We should strike "FISA" and insert Foreign Intelligence Surveillance" to make it consistent with the way that term is used in the bill and in the FISA statute. Also, there should be a comma after the word "rules" since it's in a list.

The change to "court-approved" procedures makes sense, because it's more understandable than the proposed "approved procedures by agencies acting pursuant thereto." That makes it clear that we are only talking about targeting and minimization procedures submitted by the government to the the court for approval and not any other agency procedures that have applicability to FISA or collection, but no FISC involvement, e.g., the AG National Security Investigative Guidelines.

Sent from my BlackBerry Wireless Device

DW
[Handwritten mark]

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Demers, John

From: Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov]
Sent: Saturday, February 09, 2008 12:43 PM
To: [Harold_H_Kim@who.eop.gov]; Tucker, L (Intelligence); Rice, K (Intelligence)
Cc: Demers, John; Eisenberg, John; [REDACTED]; William_A_Burck@who.eop.gov;
Margaret_B_Stewart@ovp.eop.gov; John_G_Emling@who.eop.gov;
Daniel_P_Meyer@who.eop.gov; Abegg, John (McConnell)
Subject: Re: Whitehouse Assessment Compliance Modification (Revised)

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Exemption 6

Is there any concern that the new language might have an adverse impact on the carriers since we've deleted the reference to "agencies"?

Sent from my BlackBerry Wireless Device

DJE

9/25/2008

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Demers, John

1 page

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From: Demers, John
Sent: Saturday, February 09, 2008 3:57 PM
To: [redacted]@ssci.senate.gov; Harold_H._Kim@who.eop.gov; [redacted]@ssci.senate.gov;
 [redacted]@ssci.senate.gov
Cc: Eisenberg, John; [redacted]; William_A._Burck@who.eop.gov; Margaret_B.
 Stewart@ovp.eop.gov; John_G._Emling@who.eop.gov; Daniel_P._Meyer@who.eop.gov;
 [redacted]@mcconnell.senate.gov
Subject: Re: Whitehouse Assessment Compliance Modification (Revised)

Exemption 6

[Not on my end anyway.]

The idea of deleting the language is that it's understood that court orders are directing someone to do something. So, to the the extent that there's inherent authority to enforce them, the courts can enforce them against whomever the order was directed. If the purpose of the language is just to restate existing inherent authority, it's not clear why the language would specify a class of people this inherent authority applies against.

DM

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Demers, John

From: Rice, K (Intelligence) [REDACTED]@SSCI.senate.gov
Sent: Monday, February 11, 2008 1:54 PM **Exemption 6**
To: [Kim, Harold H] Demers, John; [REDACTED] Ben Powell; [John_G._Emling@who.eop.gov;
Margaret_B._Stewart@ovp.eop.gov]
Cc: Livingston, J (Intelligence); Tucker, L (Intelligence)
Subject: exclusive means
Attachments: Feinstein 3910.pdf

FYI: [It's our understanding that Senator Feinstein is going back to her original exclusive means (3910, attached), not the modified version with expanded declaration of war/AUMF/national emergency authority.] Will you be giving us an official position on this?] Thanks. Kathleen

Demers, John

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From: Tucker, L (Intelligence) [REDACTED]@SSCI.Senate.Gov]
Sent: Monday, February 11, 2008 6:57 PM
To: [Harold_H._Kim@who.eop.gov] Livingston, J (Intelligence); Rice, K (Intelligence)
Cc: Demers, John; Eisenberg, John; [REDACTED] William_A._Burck@who.eop.gov; **Exemption 6**
Margaret_B._Stewart@ovp.eop.gov; John_G._Emling@who.eop.gov;
Daniel_P._Meyer@who.eop.gov; Abegg, John (McConnell)
Subject: Re: Whitehouse Assessment Compliance Modification (Revised)

Here is new language [agreed to by Senator Whitehouse. Please give us official Admin position asap.] Thanks.

[Nothing in this Act shall be considered to reduce or contravene the inherent authority of the Foreign Intelligence Surveillance Court to determine, or enforce, compliance with an order or a rule of the Court or with a procedure approved by the Court.

Demers, John

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From: Tucker, L (Intelligence) [REDACTED]@SSCI.Senate.Gov]
Sent: Tuesday, February 12, 2008 8:47 AM
To: [Harold_H._Kim@who.eop.gov]; Livingston, J (Intelligence); Rice, K (Intelligence)
Cc: Demers, John; Eisenberg, John; [REDACTED]; William_A._Burck@who.eop.gov; Margaret_B._Stewart@ovp.eop.gov; John_G._Erling@who.eop.gov; Daniel_P._Meyer@who.eop.gov; Abegg, John (McConnell)
Subject: Re: Whitehouse Assessment Compliance Modification (Revised)

Exemption 6

[Margaret] John, need to hear back from you with Admin position on this now.] It's first amdt up at 10am.

De

Demers, John

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From: [Kim, Harold H. [Harold_H_Kim@who.eop.gov]] **Exemption 6**
Sent: Tuesday, February 12, 2008 8:54 AM
To: [redacted]@ssci.senate.gov; [redacted]@ssci.senate.gov; [redacted]@SSCI.senate.gov;
[redacted]@mcconnell.senate.gov; [redacted]@mcconnell.senate.gov
Cc: Demers, John; Eisenberg, John; [redacted] Burck, William A.; Stewart, Margaret B.;
Erling, John G.; Meyer, Daniel P.
Subject: Re: Whitehouse Assessment Compliance Modification (Revised)

Assuming this is the language we are looking at below, [we can live with it provided that Whitehouse is voting cloture and final passage. We would also recommend that the "the" before "Court" is replaced with "such" or "that" to clarify that we are talking about the FISA court.

Nothing in this Act shall be considered to reduce or contravene the inherent authority of the Foreign Intelligence Surveillance Court to determine, or enforce, compliance with an order or a rule of the Court or with a procedure approved by the Court.]

D

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USD (page)

Demers, John

From: Livingston, J (Intelligence) [redacted]@ssci.senate.gov]
Sent: Friday, February 15, 2008 5:12 PM
To: Demers, John; Ben Powell; Kim, Harold H.
Subject: FW: FISA

Exemption 6

FYI. A "successful resolution" is in the eye of the beholder I guess.

From: Davidson, M (Intelligence)
Sent: Friday, February 15, 2008 5:07 PM
To: Livingston, J (Intelligence)
Cc: Healey, C (Intelligence); Rice, K (Intelligence); Starzak, Alissa (Intelligence); Tucker, L (Intelligence)
Subject: RE: FISA

Jack,

Let me urge that the direction of higher authority be sought.

The interest in, and benefit from, a discussion does not presume that there will be a conference. There is a good chance that what will occur is a House message back to the Senate with an amendment, followed by a decision of the Senate whether to agree to the House amendment or to return the bill to the House with a further amendment. Understanding the respective positions, and discussing (even without necessarily agreeing) whether solutions exist to any items in disagreement, could lead to more informed actions. All of us, of course, will be reporting back to Members concerning decisions that they might make after the recess.

The interest of HPSCI and House Judiciary Democrats to engage in this process is, I believe, a real plus that portends well for a successful resolution. I truly hope that we all find ourselves in the same room next Thursday and Friday.

Mike

DP

✓

DUP

Demers, John

From: Livingston, J (Intelligence) [REDACTED]@ssci.senate.gov]
Sent: Friday, February 15, 2008 3:40 PM
To: Demers, John; Ben Powell; Kim, Harold H.
Subject: FW: FISA

FYI. [We'd appreciate it if you declined to participate as well.]

Exemption 6

From: Livingston, J (Intelligence)
Sent: Friday, February 15, 2008 3:38 PM
To: Davidson, M (Intelligence)
Cc: Healey, C (Intelligence); Rice, K (Intelligence); Starzak, Alissa (Intelligence); Tucker, L (Intelligence)
Subject: RE: FISA

Mike,

The Senate did not ask for a conference on the FISA bill and the House hasn't even taken it up for consideration. It seems inappropriate and premature for staff to engage in pseudo conference-style negotiations during recess when this has so clearly been elevated to a Member/Leadership issue. This is well above our pay grade at this point. It's too bad that the House never engaged in a bipartisan process like the one you led over here. If they had, they probably would have been more inclined to act on the bill that the Senate sent over. If the FISA bill ever becomes subject to conference, my guess is that any conference discussions will be member directed, not staff directed. Therefore, we won't be participating in staff "discussions" next week unless directed to do so by higher authority.

Jack

From: Davidson, M (Intelligence)
Sent: Friday, February 15, 2008 1:13 PM
To: Livingston, J (Intelligence)
Cc: Healey, C (Intelligence); Rice, K (Intelligence); Starzak, Alissa (Intelligence)
Subject: FISA

Jack,

To launch the discussions mentioned yesterday, there is an interest in beginning with a congressional discussion – bipartisan, bicameral (Intelligence and Judiciary, and leadership staff, both Houses), as an opportunity for both Houses to spend a couple of hours identifying questions and exploring issues – next Thursday, February 21, 1 pm, Senate Judiciary to host in their hearing room. We can have our hearing room available if we need to have a classified component.

To be followed the following morning, ODNI/NSA/DOJ invited – next Friday, February 22, 10 am, House Judiciary to host, with HPSCI to provide space if we need to have a classified component. I previewed with Ben yesterday the idea of bicameral, bipartisan plus ODNI/DNI/DOJ discussions next week. I'll send Ben, et al., a note with this specific time proposal.

Could you invite Senator McConnell's staff? I'll do the same with Senator Reid's staff. I've given Nick a heads

9/25/2008

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up.

Mike

Demers, John

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From: Tucker, L (Intelligence) [redacted]@SSCI.Senate.Gov
 Sent: Tuesday, March 11, 2008 12:56 PM
 To: Kim, Harold H.; [redacted]@mail.house.gov; Hawkins, Tom (McConnell); Abegg, John (McConnell); Soderstrom, Sharon (McConnell); [redacted]@mail.house.gov; Rossi, Nick (Judiciary-Rep); Emling, John G.; [redacted] Demers, John
 Cc: Livingston, J (Intelligence); Rice, K (Intelligence); Russell, J (Intelligence)
 Subject: RE: FISA

Attachments: Side by Side with 2nd House Version.doc

Exemption 6



Side by Side with 2nd House Ve...

Noting Donesa's wise word of caution to wait until what was disseminated is in fact what they come out with, attached is a corrected side by side you could use (we only checked what it says about the Senate bill, can't verify what it says about the new House bill). Some examples of their mistakes on the Senate bill descriptions were: no WMD provision, 'full immunity', 'general' vice 'explicit' prohibition on reverse targeting, etc.

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

From: Tucker, L (Intelligence)
 Sent: Tuesday, March 11, 2008 12:34 PM
 To: Kim, Harold H.; [redacted]@mail.house.gov; Hawkins, Tom (McConnell); Abegg, John (McConnell); Soderstrom, Sharon (McConnell); [redacted]@mail.house.gov; Rossi, Nick (Judiciary-Rep); Emling, John G.; [redacted]@usdoj.gov
 Subject: RE: FISA

Regarding the two docs attached that are being circulated around right now. [Be advised that the side by side has inaccuracies and misrepresents what is in the Senate bill. DO NOT accept it as accurate and forward it around. We are making corrections and will disseminate a corrected version shortly.]

Louis Tucker
 Republican Staff Director
 Senate Select Committee on Intelligence
 [redacted]

Demers, John

From: Tucker, L (Intelligence); [REDACTED]@SSCI.Senate.Gov

Sent: Tuesday, March 11, 2008 1:32 PM

Exemption 6

To: Tucker, L (Intelligence); Harold_H_Kim@who.eop.gov; [REDACTED]@mail.house.gov Hawkins, Tom (McConnell); Abegg, John (McConnell); Soderstrom, Sharon (McConnell); [REDACTED]@mail.house.gov Rossi, Nick (Judiciary-Rep); John_G_Emling@who.eop.gov; [REDACTED] Demers, John

Cc: Livingston, J (Intelligence); Rice, K (Intelligence); Russell, J (Intelligence)

Subject: Re: FISA

I am told by rockefeller staff that they haven't seen House language yet (hard to believe) but that he will most likely NOT be supporting as DNI support is crucial and he committed to immunity provision as is

De

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Demers, John

From: Rice, K (Intelligence) [redacted@SSCI.senate.gov] **Exemption 6**
Sent: Tuesday, March 11, 2008 4:15 PM
To: Kim, Harold H; Demers, John [redacted@mail.house.gov];
[redacted@mail.house.gov]; [redacted] Hawkins, Tom (McConnell); Abegg, John
(McConnell); Rossi, Nick (Judiciary-Rep); John_G._Emling@who.eop.gov
Cc: Tucker, L (Intelligence); Livingston, J (Intelligence); Russell, J (Intelligence)
Subject: FW: House draft, etc.
Attachments: H3773AMD_002_xml.pdf; bill summary 11Mar08.doc; side by side 10Mar08.doc

FYI: House bill attached—still in draft

From: Davidson, M (Intelligence)
Sent: Tuesday, March 11, 2008 4:12 PM
To: Livingston, J (Intelligence); Rice, K (Intelligence)
Subject: House draft, etc.

The caveat that we've been asked to convey is that it is still in draft.

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Demers, John

From: Tucker, L (Intelligence) [REDACTED]@SSCI.Senate.Gov] **Exemption 6**

Sent: Saturday, April 19, 2008 1:16 PM

To: Livingston, J (Intelligence); Davidson, M (Intelligence); Ben Powell; Demers, John; [REDACTED] Rice, K (Intelligence); Eisenberg, John; Nichols, Carl (CIV); Potenza, Vito; [REDACTED] Rice, K (Intelligence); DeRosa, Mary (Judiciary-Dem); Rossi, Nick (Judiciary-Rep); Espinel, Zulima (Judiciary-Dem); Solomon, Matthew (Judiciary-Dem); [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; Johnson, A (Intelligence); [REDACTED]@mail.house.gov; Abegg, John (McConnell); Hawkins, Tom (McConnell); [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; Lettre, Marcel (Reid); daniel.p.meyers@who.eop.gov; harold_h.kim@who.eop.gov; joel_d.kaplan@who.eop.gov; [REDACTED]@mail.house.gov; Healey, C (Intelligence); Starzak, Alissa (Intelligence); [REDACTED]@mail.house.gov; Weich, Ron (Reid); Wolfe, J (Intelligence)

Subject: FISA

Staff: Congressman Hoyer and Senator Bond have been in contact regarding a possible way forward with respect to FISA. Senator Bond expressed to Congressman Hoyer that because the Senate bill has bipartisan support with a supermajority in the Senate and an apparent simple majority in the House and is supported by the DNI/DOJ/Administration, he believed the most helpful way forward would be to hear from the House Democratic Leadership what specific modifications to the Senate bill the House Democrats require to allow a version of that bill a vote on the House floor, while retaining bipartisan Senate/House and DNI/DOJ/Administration support. Congressman Hoyer conveyed to Senator Bond that he will respond with such specifics to Senator Bond this week, and with that understanding he asked him to send staff to (and to ask his respective colleagues to send staff to, and to encourage the Administration to participate in) a bicameral, bipartisan and Administration staff meeting on Monday to hear from House Democrat staff the primary concerns of their principals and their ideas on possible ways forward. Senator Bond agreed and has asked me to convey that Republican staff from the following offices (House/Senate Leadership, House/Senate Intelligence and Judiciary Committees, as well as representatives from the DNI/DOJ/White House) are planning to attend a meeting with Democrat staff from those respective offices. The meeting will be held in the Senate Intelligence Committee space, Senate Hart Building Room 219 at 10am on Monday morning. I would ask that offices send only necessary staff (preferably 2-3) as the room will fill up rather quickly. If we are to hear/discuss classified matters (as I imagine we will) then staff will need to send their clearances to [REDACTED]@ssci.senate.gov (the SSCI's security manager) first thing Monday morning. If staff without clearances are necessary then we can hold an unclassified portion first and then a classified discussion thereafter. I look forward to seeing you all Monday morning.

Louis Tucker
 Republican Staff Director
 Senate Select Committee on Intelligence

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Demers, John

3.

From: Livingston, J (Intelligence) [redacted]@ssci.senate.gov]
Sent: Thursday, May 08, 2008 4:41 PM
To: Tucker, L (Intelligence); Demers, John; Meyer, Daniel P.; Kim, Harold H.; [redacted]
Cc: Rice, K (Intelligence)
Subject: RE: FISA Draft
Attachments: H3773_EAS_XML(Protected).doc

Exemption 6

You can use the above file to make your changes. It will automatically show all changes made to the Senate bill.

From: Tucker, L (Intelligence)
Sent: Thursday, May 08, 2008 4:40 PM
To: 'Demers, John'; Meyer, Daniel P.; Kim, Harold H.; [redacted]
Cc: Livingston, J (Intelligence); Rice, K (Intelligence)
Subject: RE: FISA Draft

[Needs to be the Senate language tweaked to include those items.] Another item too, wherever you guys are who's drafting this, call me in my office [redacted]

From: Demers, John [mailto:[redacted]@usdoj.gov]
Sent: Thursday, May 08, 2008 4:01 PM
To: Meyer, Daniel P.; Tucker, L (Intelligence); Kim, Harold H.; [redacted]
Cc: Livingston, J (Intelligence); Rice, K (Intelligence)
Subject: RE: FISA Draft

We've got it. Ben will send us language on the IG piece.

What we've done is, with respect to those three provisions only, started with Congressman Hoyer/Senator Rockefeller text and made our changes to that. The benefit of this approach is that it allows them to see how we have taken their structure and to identify quickly the changes off their text. We think that they will appreciate then the benefit to our tightening of the language and see quickly where we have conceptual differences (e.g., going to the FISA court for Title II). If we start with the Senate text for these provisions, it will be a comparison nightmare.

Or, if everyone prefers, we can plunk these sections then into the Senate text. They will show up as entirely changed though as opposed to showing the differences between the Democrats' approach and ours. Instead, we would suggest not recirculating the entire Senate bill with these provisions in it, but rather sending back only these sections and saying that this is our complete counterproposal. This will avoid the strike-out problem.

From: Meyer, Daniel P. [mailto:Daniel_P._Meyer@who.eop.gov]
Sent: Thursday, May 08, 2008 3:08 PM
To: Tucker, L (Intelligence); Kaplan, Joel; Kim, Harold H.; Demers, John; [redacted]
Cc: Livingston, J (Intelligence); Rice, K (Intelligence)
Subject: RE: FISA Draft

John and Ben have the pen. [We agree on using the Senate bill as base text.] that is the plan. Thanks.

From: Tucker, L (Intelligence) [mailto:[redacted]@SSCI.Senate.Gov]
Sent: Thursday, May 08, 2008 3:07 PM

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To: Kaplan, Joel; Kim, Harold H.; Meyer, Daniel P.; [REDACTED]@usdoj.gov; [REDACTED]
Cc: Livingston, J (Intelligence); Rice, K (Intelligence)
Subject: FISA Draft

Gents,

Who is actually putting the pen to paper on this? [We believe anything sent back should be with the Senate bill as base text (adding in the 3 items), not the latest Rockefeller snowflake with strike-outs.]

Louis Tucker
Republican Staff Director
Senate Select Committee on Intelligence
[REDACTED]

9/25/2008

Demers, John

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From: Demers, John
Sent: Friday, May 09, 2008 11:45 AM
To: Tucker, L (Intelligence); Livingston, J (Intelligence)
Cc: Gerry, Brett ; 'Kaplan, Joel'; [redacted] Burck, William A.; Meyer, Daniel P.; Frech, Christopher W.; [redacted]
Subject: FISA

Exemption 6

Louis and Jack,

I already talk this through with Jack, but now our email seems to be working so here it is in writing.

We started with the Senate bill. In section 703, the court approval is effectuated by adding the clause in (a), and then the exception language in (f)(B). The exigent circumstances language is taken from Congressman Hoyer but the phrase "will be lost" was changed to "may be lost." The timing section makes clear that the DNI and AG can make this determination even while court review is pending. If you jump back to the transition procedures (page 21 in the version I sent you), you will see a new section on timing that says that once we file a certification to replace the authorizations in effect, those authorizations and directives will remain in effect until the court has ruled. Once the court rules, the stay and fix-or-go-down provisions kick in as they do under the Senate bill.

Time limits for court action. We have tried to strike a middle ground between "good cause" and "due process" on page 9, lines 15-18. With respect to court review of the procedures and certification, it doesn't matter if it gets invoked (in fact if the matter is getting complicated, it may be a good thing if it is) because we can go up pretty easily, but this same standard applied to challenges as well so I think we want to keep the language stronger than "good cause."

Liability Protection. We adopted the Davidson approach of merging the prospective and retrospective immunity sections, but we sent the retrospective part to the FISC and used the language that you've seen before. We also beefed up the role of the parties section so that it was clear that they could not get classified material. Finally, we did keep Davidson's reporting provision to Congress but cut the language about telling the Court why we had to begin immediately. It was clear to me why the Court needs to know this if they will not be reviewing that determination.

Please call if you have any questions.

John

Tracking:

Recipient	Read
Tucker, L (Intelligence)	
Livingston, J (Intelligence)	
Gerry, Brett	Read: 5/9/2008 11:55 AM
'Kaplan, Joel'	
[redacted]	
Burck, William A.	
Meyer, Daniel P.	
Frech, Christopher W.	
[redacted]	Read: 5/9/2008 11:59 AM

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Demers, John

From: Demers, John
Sent: Sunday, May 11, 2008 7:47 PM
To: [REDACTED]@SSCI.senate.gov
Cc: [REDACTED]@SSCI.senate.gov
Subject: Re: FISA Call

Exemption 6

Thanks. Let me know if you want to chat tomorrow.

By the way, I will be out of town Wed-Tues. I'll be on bb and cell most of the time (headed to Denver). George will be leading NSD effort, and Brett may make a come-back appearance for those days depending on what's happening.

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

From: Rice, K (Intelligence) <[REDACTED]@SSCI.senate.gov>
To: Demers, John
Cc: Livingston, J (Intelligence) <[REDACTED]@SSCI.senate.gov>
Sent: Sun May 11 19:41:33 2008
Subject: Re: FISA Call

Yup. I think we may be looking at another way to get around that.

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

From: Demers, John <[REDACTED]@usdoj.gov>
To: Demers, John <[REDACTED]@usdoj.gov>
Cc: Rice, K (Intelligence); Livingston, J (Intelligence)
Sent: Sun May 11 18:33:04 2008
Subject: Re: FISA Call

Who was the staffer with the email question on exigent circumstances? Was it Caroline Lynch?

Thanks.

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

From: Frech, Christopher W. <Christopher_W._Frech@who.eop.gov>
To: Kim, Harold H. <Harold_H._Kim@who.eop.gov>; [REDACTED]@mail.house.gov
[REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov <[REDACTED]@mail.house.gov>;
[REDACTED]@mail.house.gov <[REDACTED]@mail.house.gov>; [REDACTED]@mail.house.gov
<[REDACTED]@mail.house.gov>; [REDACTED] <[REDACTED]>; [REDACTED]
<[REDACTED]> Demers, John
Cc: Meyer, Daniel P. <Daniel_P._Meyer@who.eop.gov>; [REDACTED]@ssci.senate.gov
<[REDACTED]@ssci.senate.gov>; [REDACTED]@mccconnell.senate.gov
<[REDACTED]@mccconnell.senate.gov>; [REDACTED]@mccconnell.senate.gov
<[REDACTED]@mccconnell.senate.gov>; [REDACTED]@SSCI.senate.gov <[REDACTED]@SSCI.senate.gov>;
[REDACTED]@ssci.senate.gov <[REDACTED]@ssci.senate.gov>; [REDACTED]@judiciary-
rep.senate.gov <[REDACTED]@judiciary-rep.senate.gov>; Kaplan, Joel <Joel_D.
_Kaplan@who.eop.gov>; Burck, William A. <William_A._Burck@who.eop.gov>; Emling, John G.
<John_G._Emling@who.eop.gov>
Sent: Sat May 10 10:33:49 2008
Subject: Re: FISA Call

Here is the call-in info for the 2 pm call today. I believe everyone is included in this email but let us know if someone is missing.

(b)(2) Conf call [REDACTED]
Passcode: [REDACTED]

465

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

From: Frech, Christopher W.
To: Kim, Harold H.; [redacted]@mail.house.gov' <[redacted]@mail.house.gov>;
[redacted]@mail.house.gov' <[redacted]@mail.house.gov>; [redacted]@mail.house.gov'
[redacted]@mail.house.gov>; [redacted]@mail.house.gov'
Cc: Meyer, Daniel P.; [redacted]@ssci.senate.gov' <[redacted]@ssci.senate.gov>;
[redacted]@mcconnell.senate.gov' <[redacted]@mcconnell.senate.gov>;
[redacted]@mcconnell.senate.gov' <[redacted]@mcconnell.senate.gov>;
[redacted]@SSCI.senate.gov' <[redacted]@SSCI.senate.gov>; [redacted]@ssci.senate.gov'
[redacted]@ssci.senate.gov>; [redacted]@judiciary-rep.senate.gov'
<[redacted]@judiciary-rep.senate.gov>
Sent: Sat May 10 07:23:39 2008
Subject: Re: FISA Call

Yes this call should be the entire group House and Senate. Looping in everyone into this thread.

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

From: Kim, Harold H.
To: [redacted]@mail.house.gov' <[redacted]@mail.house.gov>;
[redacted]@mail.house.gov' <[redacted]@mail.house.gov>; Frech, Christopher W.
Cc: Meyer, Daniel P.; [redacted]@ssci.senate.gov' <[redacted]@ssci.senate.gov>;
[redacted]@mcconnell.senate.gov' <[redacted]@mcconnell.senate.gov>;
[redacted]@mcconnell.senate.gov' <[redacted]@mcconnell.senate.gov>;
[redacted]@SSCI.senate.gov' <[redacted]@SSCI.senate.gov>; [redacted]@ssci.senate.gov'
<[redacted]@ssci.senate.gov>; [redacted]@judiciary-rep.senate.gov'
<[redacted]@judiciary-rep.senate.gov>
Sent: Sat May 10 00:02:15 2008
Subject: FISA Call

Looping in the Senate folks. Can you all do a FISA call at 2 on Saturday to discuss with Ben and Demers any issues or questions you may have regarding the recent DNI/DOJ draft?

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

From: Diffell, Brian <[redacted]@mail.house.gov>
To: Donesa, Chris <[redacted]@mail.house.gov>; Frech, Christopher W.
Cc: Meyer, Daniel P.; Kim, Harold H.
Sent: Fri May 09 22:41:09 2008
Subject: Re: FISA Call

Donesa - are you able to do this 2pm?

Frech - Is it your intention that this call needs only to be House staff? We need to reach out to Jen and Caroline. If 2pm works for Donesa I'd appreciate you composing the msg inviting the two of them.

Obviously if you want to expand to Senate, the grp grows a lot larger.

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

From: Donesa, Chris
To: Diffell, Brian; 'Christopher_W._Frech@who.eop.gov' <Christopher_W._Frech@who.eop.gov>
Cc: Daniel_P._Meyer@who.eop.gov' <Daniel_P._Meyer@who.eop.gov>; 'Harold_H._Kim@who.eop.gov' <Harold_H._Kim@who.eop.gov>
Sent: Fri May 09 22:35:25 2008
Subject: Re: FISA Call

I'm happy to do it. My own questions, however, are fairly limited and straightforward and may be better presented as part of a broader discussion of issues raised on today's Republican staff call.

Jack Livingston has taken the lead in reviewing and compiling suggestions on those issues and should probably be part of the call. Broadly stated, I think there were concerns by

several folks that elements of the judicial review provisions weren't tight enough, as well as other more discrete items.

I have some concern that 30 days is too long of a deadline to give the FISA court, and too short of a minimum duration for a certification, but that's fairly clearcut. There's also a classified issue I'll need to discuss at some point on a secure call re: "will/may be lost", but I can reserve that so long as that stays "may".

Let me know how you want to proceed - thanks.

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

From: Diffell, Brian
To: 'Christopher W. Frech@who.eop.gov' <Christopher_W._Frech@who.eop.gov>, Donesa, Chris
Cc: 'Daniel P. Meyer@who.eop.gov' <Daniel_P._Meyer@who.eop.gov>; 'Harold H. Kim@who.eop.gov' <Harold_H._Kim@who.eop.gov>
Sent: Fri May 09 21:37:26 2008
Subject: Re: FISA Call

Can do any time. Up to Chris. You are right we will need to reach out more broadly. Let's do afternoon to make sure we have time to get buy-in from everyone. 2pm.

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

From: Frech, Christopher W. <Christopher_W._Frech@who.eop.gov>
To: Donesa, Chris; Diffell, Brian
Cc: Meyer, Daniel P. <Daniel_P._Meyer@who.eop.gov>; Kim, Harold H. <Harold_H._Kim@who.eop.gov>
Sent: Fri May 09 21:07:50 2008
Subject: FISA Call

Hey guys sorry for the late night Friday email. I know Dan has talked to both Pete and Roy this evening. While we want to expedite this process and review of the language we also want to make sure everyone is on the same page and has the same understanding of the operational impact. Along those lines, we wanted to offer and setup a call with DNI-DOJ tomorrow to walk through the current language and answer questions. Realize we need a broader group to participate, including both House and Senate Rs but wanted to start with you all and build from there.

Let me know what may work and look to you all on who should be included.

Frech.

Demers, John**From:** Davidson, M (Intelligence) [REDACTED]@ssci.senate.gov]**Sent:** Saturday, June 14, 2008 2:16 PM**Exemption 6****To:** Demers, John; Starzak, Alissa (Intelligence); [REDACTED]@mail.house.gov; [REDACTED]@mail.house.gov; Tucker, L (Intelligence); Livingston, J (Intelligence); Johnson, A (Intelligence); [REDACTED]@mail.house.gov; Healey, C (Intelligence)**Cc:** Christopher W. Frech@who.eop.gov; Daniel_P_Meyer@who.eop.gov; [REDACTED]; [REDACTED]; Joel_D_Kaplan@who.eop.gov; [REDACTED]**Subject:** Re: Follow up

(1) First, a question/thought about the proposed construction paragraph (section 703(g) – page 46 of yesterday morning's draft, page 47 of the evening draft).

Perhaps there is an additional reason why "Nothing in this Act" section 703 does not raise the concern I had about the use of that phrase elsewhere, and particularly in section 702 (which, per John's note can now remain as it is – with a reference to Title I only).

Section 703 is an individual "warrant"/order section – for acquisition inside the US against US persons outside the US, under which the AG is required to show, and the FISC is required to find, probable cause.

Thus, even if an AG/DNI wanted to use section 703 to obtain electronic (Title IV) or business record (Title V) metadata (and I recognize there is no intent to supplant those titles), by its own terms section 703 would require individual probable cause determinations by the FISC.

So (together with the point that John makes about the jurisdictional limit in section 703(a)(1)), "Nothing in this Act" in 703(g) doesn't present the concern that was on my mind yesterday. As always, the thoughts of others would be appreciated.

I do have one question about the proposed language in John's note for 703(g). We don't want the "Nothing in this Act shall be construed to require an application for a court order" phrase to negate the court order requirement in section 703 itself (which is, of course, part of the Act). I imagine that the phrase "targeted in accordance with this section" is what prevents that from happening. Is everyone satisfied with that, or should section 703(g) begin with something like – "Nothing in this Act other than this section shall be construed"?

(2) A couple of miscellaneous items.

(a) Page 27 (yesterday evening's draft, line 1, insert "reauthorize or" before "replace" to be parallel with language in (B) – page 26, line 14.

(b) Page 27, lines 7-9, beginning with "at which" through "apply." I understand why that phrase is in the transition provision. But with respect to reauthorization under the FISA amendments, paragraphs (3) and (4) have already kicked in. The point of the "shall remain in effect" provision is fully made by ending on line 7 after "paragraph (3)". If there is a reason why the additional language on lines 7-9 is necessary, help in understanding would be appreciated.

(c) Page 98 (also yesterday evening draft), line 15, conforming amendment – add "Department of Defense."

(d) Our intention is that "covered civil action" is a subset of "civil action" under Title II, so that everything applies generally to "civil actions" would apply to "covered civil actions," beginning with "a civil action may not lie....". On re-reading the title this morning, I wonder whether we should be explicit about that, rather than leaving it to inference, by inserting in the definition section (801), immediately ahead of (4), which defines a covered civil action: "(4) The term 'civil action' includes a covered civil action."