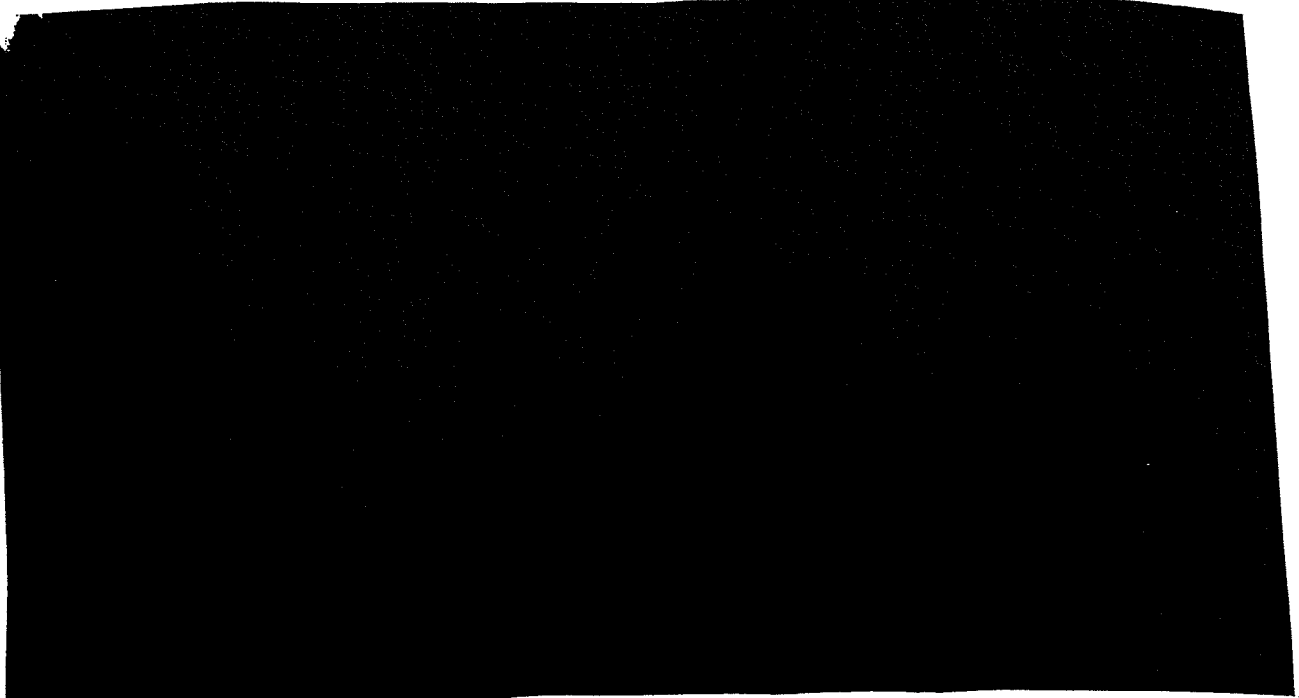


Out of Scope

bx/bp



To: "Jim Smythers" [redacted]@ssci.senate.gov>  
From: [redacted]  
Date: 03/13/2008 03:40PM  
Subject: RE: Need Some Heavy Lifting on FISA

Done--just talked to Jen.

Kathleen Turner  
Director of Legislative Affairs  
Office of the Director of National Intelligence



-----"Smythers, James (Intelligence)" [redacted]@SSCI.Senate.Gov> wrote: -----

To: [redacted]  
From: "Smythers, James (Intelligence)" [redacted]@SSCI.Senate.Gov>  
Date: 03/13/2008 03:33PM  
Subject: RE: Need Some Heavy Lifting on FISA

Got it. Thanks.

Also, I mentioned to Jen Wagner that you might contact her for Chambliss' help.

From: [redacted]  
Sent: Thursday, March 13, 2008 3:25 PM

To: Smythers, James (Intelligence)  
Subject: Re: Need Some Heavy Lifting on FISA

Sorry I forgot to note: The below are all Blue Dogs who are wavering..and not certain if they will vote against Pelosi--anything the Seantor can do to impress on them how critical this vote is as if this Bill passes we are looking at months of delay and intell capability erosion.

Thank you Jim!

b2/b6  
Kathleen Turner  
Director of Legislative Affairs  
Office of the Director of National Intelligence

-----  
[REDACTED] wrote: -----

To: "Jim Smythers" <[REDACTED]@ssci.senate.gov>  
From: [REDACTED]  
Date: 03/13/2008 03:12PM  
Subject: Re: Need Some Heavy Lifting on FISA

More Names:

Rep. Leonard Boswell, D-IA (Blue Dog);

Joe Baca (CA-43)

Marion Berry (AR-01)

Allen Boyd (FL-02)

Jim Cooper (TN-05)

Jim Costa (CA-20)

Lincoln Davis (TN-04)

Bart Gordon (TN-06)

Stephanie Herseth (SD-AL)

7/1/2008

Nick Lampson (TX-22)  
Jim Marshall (GA-08)  
Jim Matheson (UT-02)  
Charlie Melancon (LA-03)  
Mike McIntyre (NC-07)  
Dennis Moore (KA-03)  
Mike Ross (AR-04)  
Zack Space (OH-18)  
John Tanner (TN-08)  
Gene Taylor (MS-04)

b2/b6

Kathleen Turner  
Director of Legislative Affairs  
Office of the Director of National Intelligence

[REDACTED]

----- [REDACTED] wrote: -----

To: "Jim Smythers" <[REDACTED]@ssci.senate.gov>  
From: [REDACTED]  
Date: 03/13/2008 11:21AM  
Subject: Need Some Heavy Lifting on FISA

Jim: Can you have Sen. Burr reach out to the following North Carolina Reps to vote against the HOUSE FISA Bill--on the floor today: He needs to tell them the House Bill is very bad and does not advance the process at all and to vote against it. I have attached the DNI-AG letter:

Rep. Walter Jones (R-3rd-NC)--he is one of only two Rs who voted against the PAA on August 4, 2007--we want to ensure we have him for today's vote against the House Bill;

7/1/2008

Rep. Heath Shuler, (D-NC-11th); he is a Blue Dog who signed the letter to Pelosi asking for the Senate Bill to be taken up by the House for a vote--we need to lock in his NO vote on the House Bill;

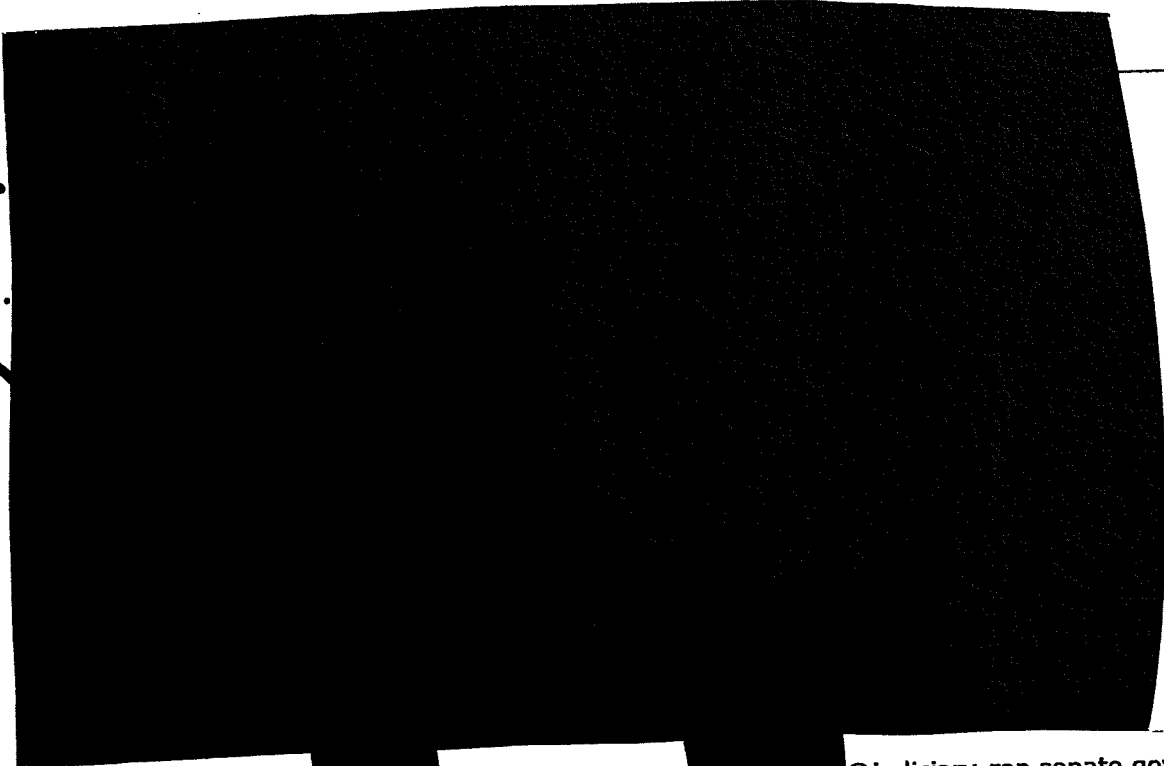
Rep. Mike McIntyre (D-7th-NC); Blue Dog who did not sign the letter to Pelosi and is wavering. Thanks for anything Sen. Burr can do.

Kathleen Turner  
Director of Legislative Affairs  
Office of the Director of National Intelligence



b2/b6

*Out of Scope*  
*6/2/08*

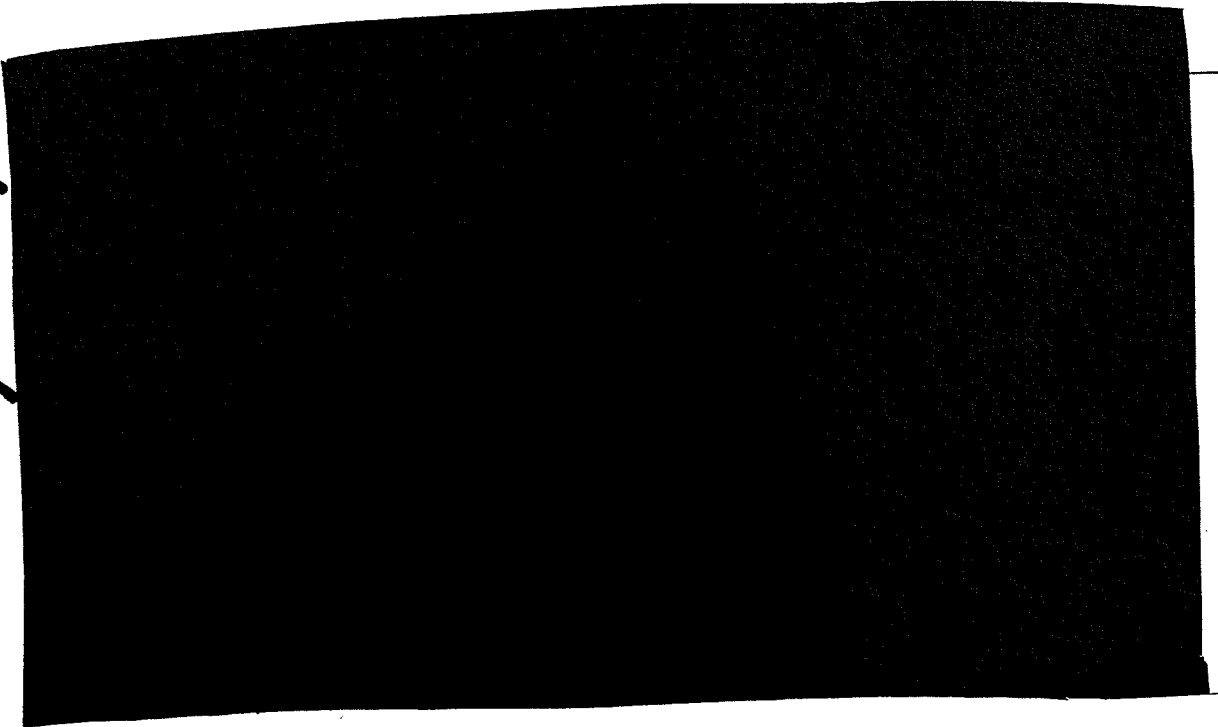


To: "Paul Matulic" <[redacted]@ssci.senate.gov>, [redacted]@judiciary-rep.senate.gov  
From: [redacted]  
Date: 03/12/2008 07:29PM  
Subject: More Heavy Lifting on FISA

Paul: Pls see the attached letter from the DNI and the AG to the House ref their latest FISA Bill. Could Senator Hatch engage with Rep. Jim Matheson (UT-02) who, as a Blue Dog, may be wavering. We would certainly hope he would oppose the House Bill. Thanks much.

Kathleen Turner  
Director of Legislative Affairs  
Office of the Director of National Intelligence

Out of Scope



To: "Jim Smythers" [redacted]@ssci.senate.gov>  
From: [redacted]  
Date: 03/13/2008 04:22PM  
cc: [redacted]@ssci.senate.gov, [redacted]@ssci.senate.gov  
Subject: Re: FW:

Great!  
Kathleen Turner  
Director of Legislative Affairs  
Office of the Director of National Intelligence

[redacted]  
-----"Smythers, James (Intelligence)" <[redacted]@SSCI.Senate.Gov> wrote: -----

To: "Rice, K (Intelligence)" <[redacted]@SSCI.Senate.Gov>, [redacted], "Livingston, J (Intelligence)" <[redacted]@SSCI.Senate.Gov>  
From: "Smythers, James (Intelligence)" <[redacted]@SSCI.Senate.Gov>  
Date: 03/13/2008 03:56PM  
Subject: FW:

Heads up... some good news from my boss.

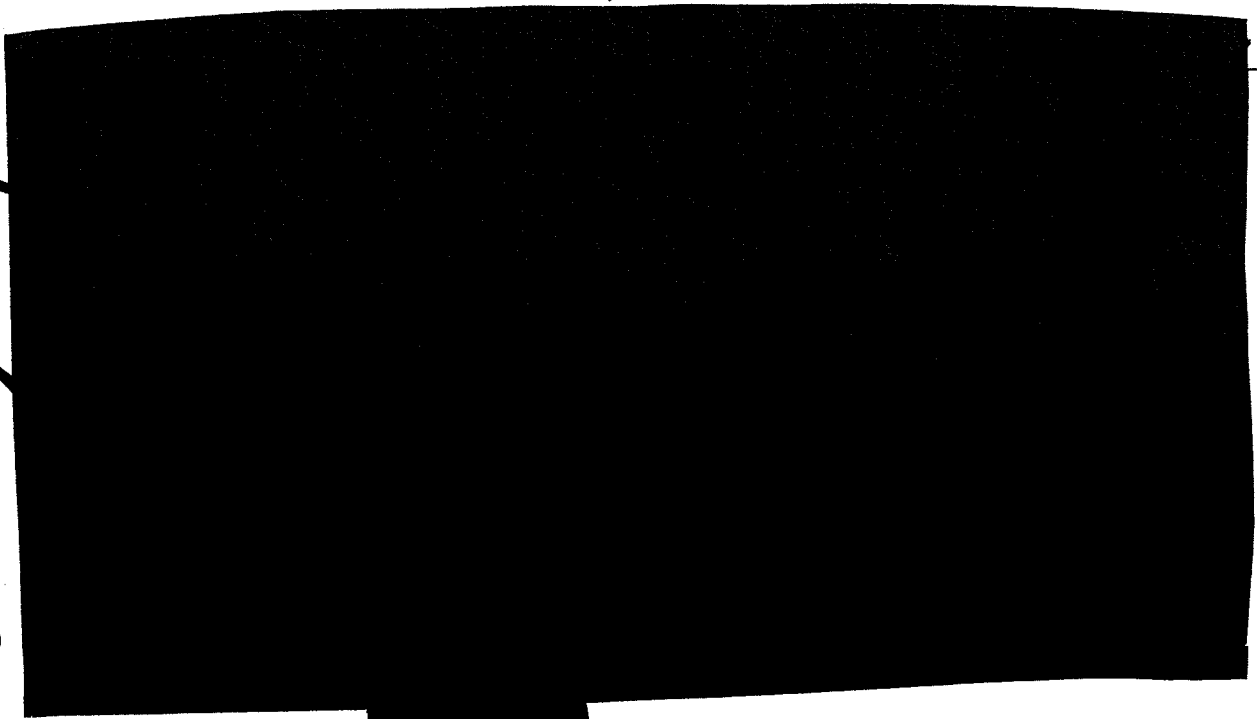
-----Original Message-----  
From: Burr, Richard (Burr)  
Sent: Thursday, March 13, 2008 3:55 PM  
To: Smythers, James (Intelligence)  
Subject:

Jones will vote against the dem FISA bill today. Pls pass on

b2/b6



Out of Scope



b2/b6

To: "Russ Thomasson" <[redacted]@cornyn.senate.gov>  
From: [redacted]  
Date: 03/13/2008 06:55PM  
Subject: RE: Need Some Heavy Lifting on FISA

Got it--thanks Russ; I understand.

Kathleen Turner  
Director of Legislative Affairs  
Office of the Director of National Intelligence  
[redacted]

-----"Thomasson, Russ (Cornyn)" <[redacted]@cornyn.senate.gov> wrote: -----

To: <[redacted]>  
From: "Thomasson, Russ (Cornyn)" <[redacted]@cornyn.senate.gov>  
Date: 03/13/2008 06:52PM  
Subject: RE: Need Some Heavy Lifting on FISA

Sorry, it wouldn't help hearing from Cornyn...in fact, it would probably do more harm....

---

Russell J. Thomasson  
Legislative Director



U.S. Senator John Cornyn (Texas)



<http://www.cornyn.senate.gov>

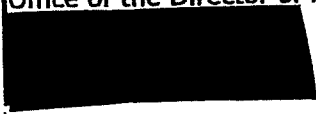
b2/b6

**From:** [Redacted]  
**Sent:** Thursday, March 13, 2008 12:32 PM  
**To:** Thomasson, Russ (Cornyn)  
**Subject:** Need Some Heavy Lifting on FISA  
**Importance:** High

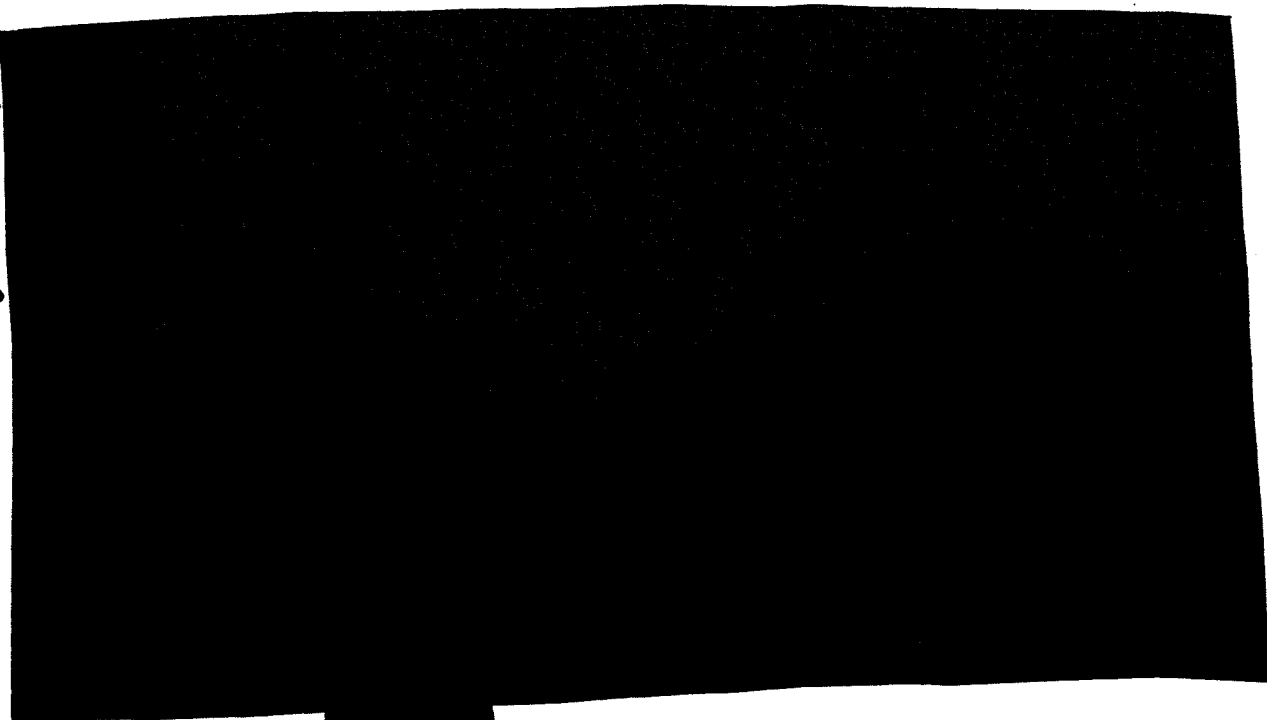
Russ: Can you have Sen. Cornyn reach out to Rep. Nick Lampson, (D-TX-22nd), who is a Blue Dog Democrat and ask if he will be voting against the HOUSE FISA Bill--on the floor today: He needs to tell them the House Bill is very bad and does not advance the process at all and to vote against it. I have attached the DNI-AG views letter on this Bill.

Thanks for anything Sen. Cornyn can do.

Kathleen Turner  
Director of Legislative Affairs  
Office of the Director of National Intelligence



Out of Score



To: "Jack Livingston" [redacted]@ssci.senate.gov>  
From: [redacted]  
Date: 03/13/2008 09:02PM  
Subject: Re: Need Some Heavy Lifting on FISA

Yes we are-Hatch and Chambliss also. Can you think of others?  
Kathleen Turner  
Director of Legislative Affairs  
Office of the Director of National Intelligence  
[redacted]

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

From: "Livingston, J (Intelligence)" [redacted]@ssci.senate.gov]  
Sent: 03/13/2008 03:08 PM AST .  
To: kathlpt  
Subject: FW: Need Some Heavy Lifting on FISA

This is a great tactic. I hope you've sent similar e-mails to about 20 other Senators with similar situations.

From: Smythers, James (Intelligence)  
Sent: Thursday, March 13, 2008 2:57 PM  
To: Rice, K (Intelligence); Livingston, J (Intelligence)  
Subject: FW: Need Some Heavy Lifting on FISA  
Importance: High

7/1/2008

5/2/66

Senator Burr is working on these House members...

**From:** [REDACTED]  
**Sent:** Thursday, March 13, 2008 11:22 AM  
**To:** Smythers, James (Intelligence)  
**Subject:** Need Some Heavy Lifting on FISA  
**Importance:** High

Jim: Can you have Sen. Burr reach out to the following North Carolina Reps to vote against the HOUSE FISA Bill--on the floor today: He needs to tell them the House Bill is very bad and does not advance the process at all and to vote against it. I have attached the DNI-AG letter:

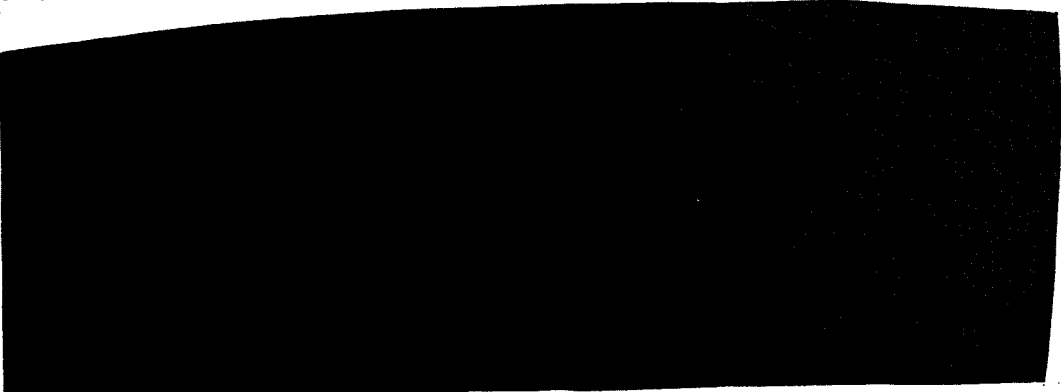
Rep. Walter Jones (R-3rd-NC)--he is one of only two Rs who voted against the PAA on August 4, 2007--we want to ensure we have him for today's vote against the House Bill;

Rep. Heath Shuler, (D-NC-11th); he is a Blue Dog who signed the letter to Pelosi asking for the Senate Bill to be taken up by the House for a vote--we need to lock in his NO vote on the House Bill;

Rep. Mike McIntyre (D-7th-NC); Blue Dog who did not sign the letter to Pelosi and is wavering. Thanks for anything Sen. Burr can do.

Kathleen Turner  
Director of Legislative Affairs  
Office of the Director of National Intelligence  
[REDACTED]

Out of sync



To: "Jeremy Bash" [redacted]@mail.house.gov  
From: [redacted]  
Date: 05/19/2008 12:38PM  
cc: "Brett Gerry" <Brett.Gerry@usdoj.gov>, "Greenwald, Eric" [redacted]@mail.house.gov,  
Subject: RE: Technical issues

trying to work through coordination issues on the tech team. think it would have to happen early on tuesday. will discuss on call.

-----"Bash, Jeremy" <[redacted]@mail.house.gov> wrote: -----

To: "Gerry, Brett " <Brett.Gerry@usdoj.gov>  
From: "Bash, Jeremy" [redacted]@mail.house.gov  
Date: 05/19/2008 11:47AM  
cc: <[redacted] "Greenwald, Eric" <[redacted]@mail.house.gov>  
Subject: RE: Technical Issues

Hi Brett.

Happy to talk at any point. [redacted] is my direct line. Give me a time when you'll be calling, b/c I'll want to include Eric Greenwald, who knows the technical issues better than I do.

Ben, I never heard back from you about our suggestion to convene a Tech team.

Jeremy Bash, HPSCI  
[redacted]

From: Gerry, Brett [mailto:Brett.Gerry@usdoj.gov]  
Sent: Monday, May 19, 2008 9:31 AM  
To: Bash, Jeremy

5/2/08

b2/36

Cc: [REDACTED]  
Subject: Technical issues

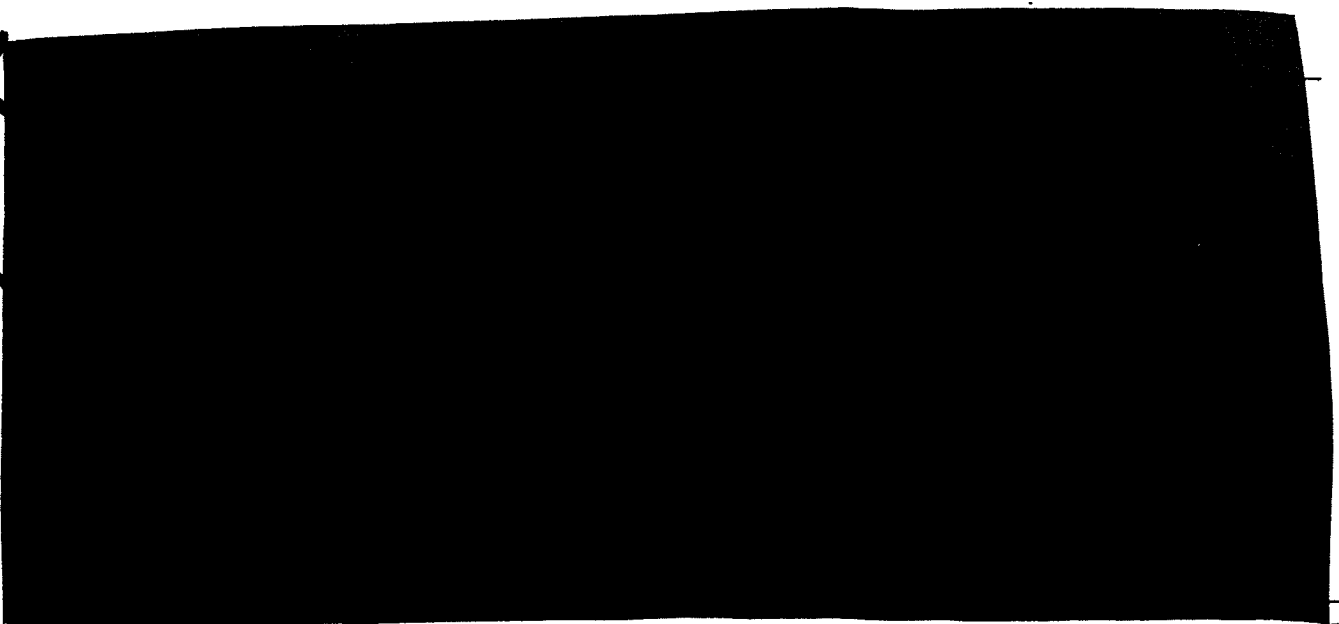
Jeremy-

Was wondering if Ben and I could talk with you today to walk through a few technical issues raised by the draft circulated late last week, preferably with Carl Nichols. We can be available for a call basically any time today.

Best,  
Brett

10/17/2008

Out of Scope

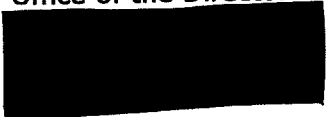


**From:** [Redacted]  
**Sent:** Thursday, December 13, 2007 5:54 PM  
**To:** "David Grannis"  
**Cc:** "Benjamin Powell"; John.Demers@usdoj.gov; "John Eisenberg"; "Brett Gerry"  
**Subject:** Re: Immunity alternative

Thanks David; I will get it to the right folks and we will be in touch re a mtg with the Senators soonest.

2/2/06

Kathleen Turner  
Director of Legislative Affairs  
Office of the Director of National Intelligence



-----"Grannis, D (Intelligence)" [Redacted]@ssci.senate.gov> wrote: -----

To: [Redacted]  
From: "Grannis, D (Intelligence)" [Redacted]@ssci.senate.gov>  
Date: 12/13/2007 04:54PM  
cc: "Benjamin Powell" [Redacted] <john.demers@usdoj.gov>, "John Eisenberg" <John.Eisenberg@usdoj.gov>, <Brett.Gerry@usdoj.gov>  
Subject: Immunity alternative

Kathleen -

As discussed, Sen. Feinstein filed an alternative proposal at today's Judiciary Committee mark-up that combines immunity with a piece of the Whitehouse substitution proposal. Her language is attached, keyed to a Hatch amendment that incorporated the Intel Committee's immunity provision.

The basic idea is that after the AG makes a certification under the SSCI immunity provision, the FISA Court would then conduct a review to see whether any assistance provided was done either in compliance with a certification under 18 USC 2511, or the company acted in good faith in making a reasonably objective judgment that the assistance was legal. (This part is the same as Sen. Whitehouse's

approach.)

In Feinstein's proposal, a favorable ruling from the FISA Court would then lead to immunity – per the SSCI position – and not to substitution as in the Specter/Whitehouse approach. In her view, this preserves the goal that many Members have of maintaining some form of judicial review of the legality, preserves the common law principle that companies should provide assistance if it can be done in good faith, and protects sources and methods by moving the decision to the FISA Court. We'd hope that this would be a middle of the road alternative that could bring together both sides, and pave the way for an agreement with the House.

We would be happy to discuss this further; let's be in touch on timing once ODNI, DOJ have had a chance to review the language.

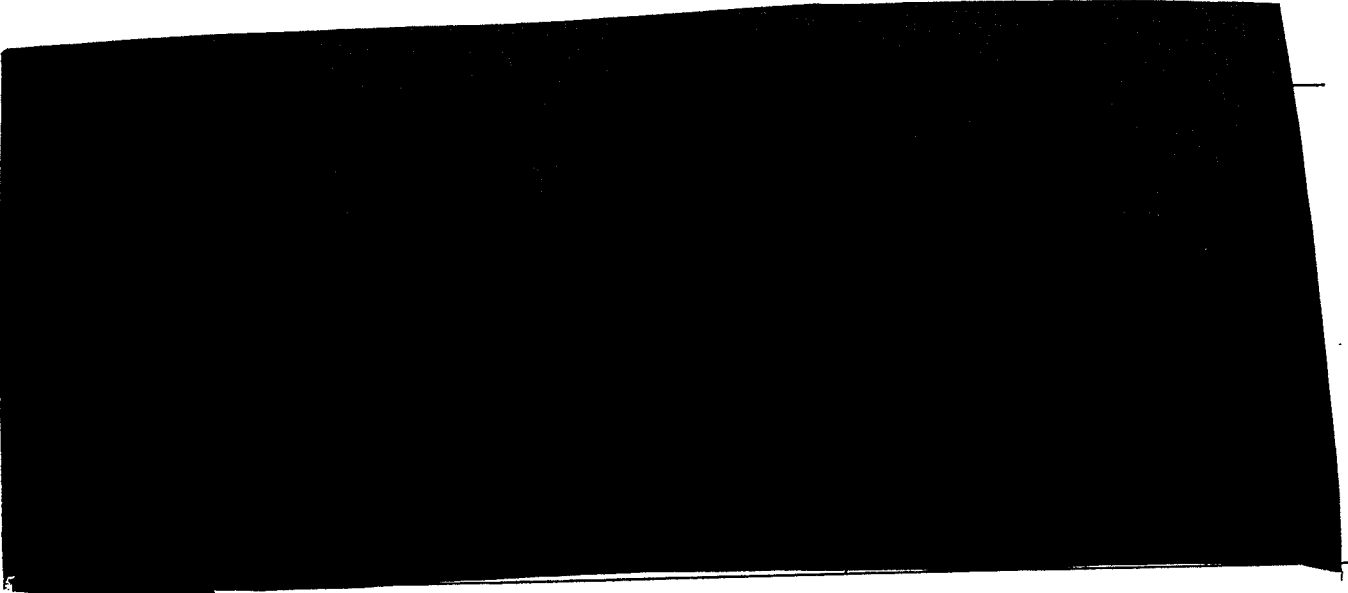
Best,  
David

David Grannis  
Professional Staff Member  
Senate Select Committee on Intelligence

[REDACTED]  
@ssci.senate.gov

b2/b6

Out of Scope



bd/bc

**From:** [Redacted]  
**Sent:** Wednesday, November 21, 2007 3:50 PM  
**To:** "Marcel Lettre"  
**Subject:** Re: Leader Reid-DNI McConnell Call Not Possible Before Week of Dec 10

I will do that Marcel. Thanks.

Kathleen Turner  
Director of Legislative Affairs  
Office of the Director of National Intelligence



-----"Lettre, Marcel (Reid)" <[Redacted]@reid.senate.gov> wrote: -----

To: <[Redacted]>  
From: "Lettre, Marcel (Reid)" <[Redacted]@reid.senate.gov>  
Date: 11/21/2007 03:37PM  
Subject: Re: Leader Reid-DNI McConnell Call Not Possible Before Week of Dec 10

Kathy - thanks. I will be back with leader reid sunday morning for start of codel so will try to ascertain a time when he might place a call while traveling but in any event will convey this info to him. Keep in touch with Ron (and pls keep me in the loop) re: developments om fisa negotiations throughout the course of next week.

-----  
Sent from my BlackBerry

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

From: [Redacted]  
To: Lettre, Marcel (Reid)  
Sent: Wed Nov 21 15:16:15 2007  
Subject: Leader Reid-DNI McConnell Call Not Possible Before Week of Dec 10



Hi Marcel: Thanks for meeting with us yesterday and giving us your views on the state of play. Unfortunately, we were unable to do a phone call between Senator Reid and the DNI prior to your Nov 25 travel; Darcel suggested I send you a note. The DNI is currently scheduled to be on overseas travel from Nov 29-Dec 7. So, if you could please convey to the Senator the following things the DNI wanted to relay to him:

- The bipartisan SSCI Bill (S. 2248) is a good product; the DNI compromised in many many areas to reach what we feel is a good Bill (still a few areas need work, but they are relatively few); the Administration and the full SSCI worked together for months to ensure the language is technically correct and that concepts are clearly worded;
- The SJC amendment is very problematic for us; in some areas it would severely undercut our foreign intelligence collection. We will continue to meet with the Congress to try and forge the best Bill to meet our intelligence needs while protecting US person's privacy and civil liberties, but, the SSCI Bill is the result of give and take and weeks of hard work;
- The DNI would be happy to come to S-407 and talk with Senators, perhaps with AG Mukasey's, if Leader Reid thinks that is a good idea.

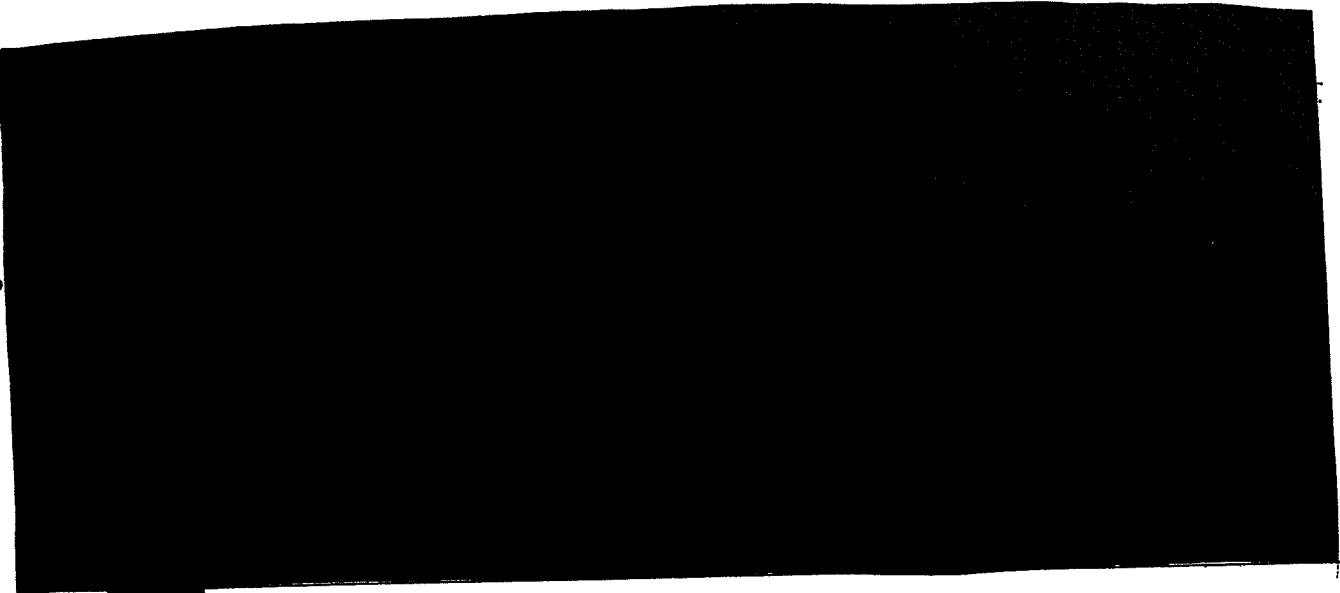
Marcel: Keep me posted as the DNI is happy to make himself available to talk with Senator Reid at any time. Have a great trip and a nice holiday!

Kathleen Turner  
Director of Legislative Affairs  
Office of the Director of National Intelligence



b2/56

Out of scope



**From:** [redacted]  
**Sent:** Wednesday, November 07, 2007 2:49 PM  
**To:** "Andy Johnson"; [redacted]@ssci.senate.gov  
**Subject:** DNI Calling the Chairman

Andy/Melvin; The DNI is trying to talk with the Chairman today on the FISA Bill that is slated for SJC mark up tomorrow. Worried about what we are hearing is bring considered in terms of amendments, especially regarding striking immunity, but other harmful amendments also. Would hope the SSCI bi-partisan, pretty darn good bill, will be supported by SJC cross-over Members such as Sens Feinstein and Whitehouse. Just asking the Chairman to work his magic and try and prevent this Bill from getting derailed. Thanks.

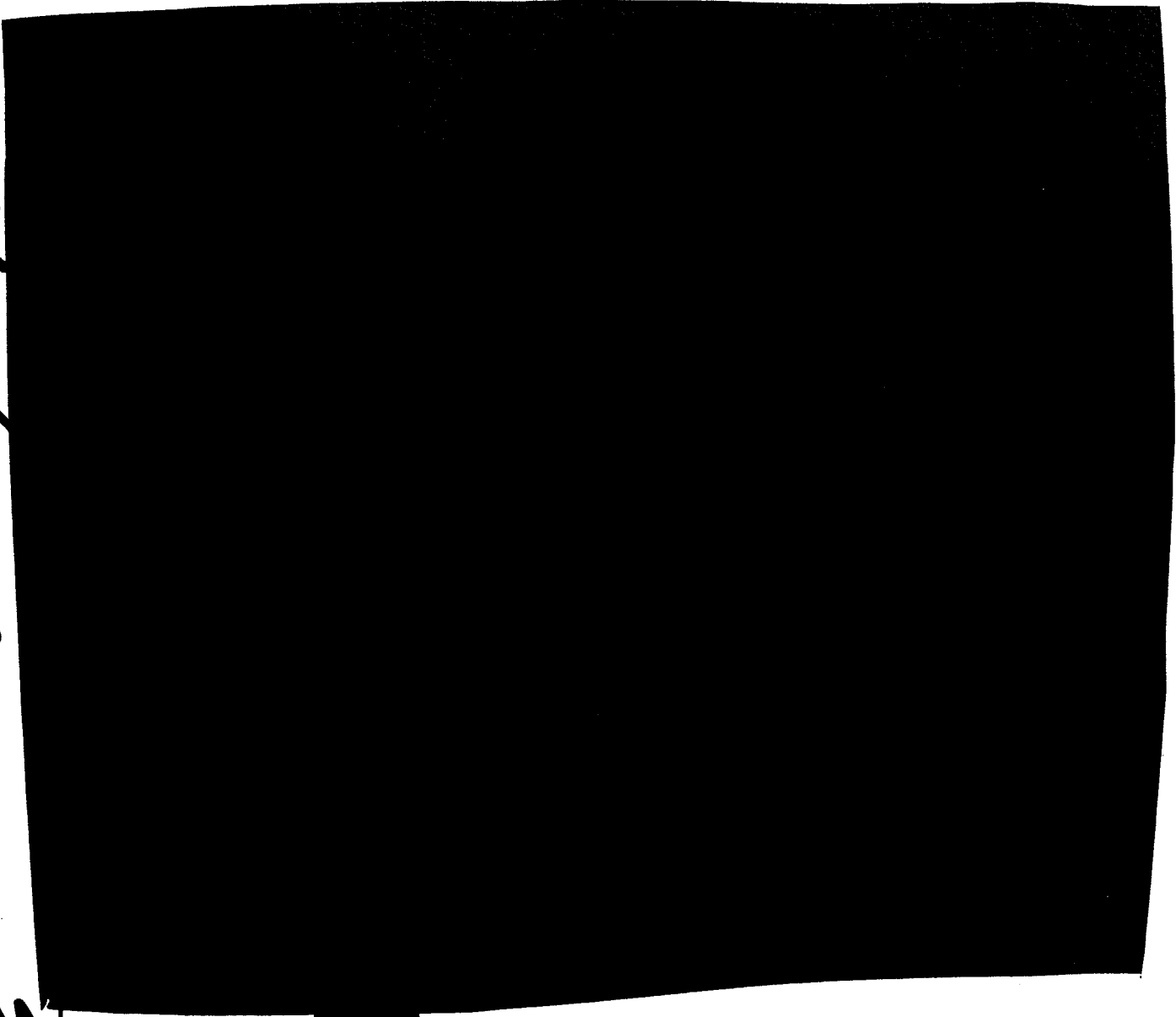
Kathleen Turner  
Director of Legislative Affairs  
Office of the Director of National Intelligence



62/56

Out of scope

6/2/06



To: "Louis Tucker" <[redacted]@ssci.senate.gov>  
From: [redacted]  
Date: 04/04/2008 09:51AM  
Subject: Option

Court Approval :

House: Court must approve surveillance procedures prior to the start of surveillance.

Senate: DNI and AG authorize acquisition and submit procedures to the FISA Court within 5 days after surveillance begins. Expeditious review by the Court is required.

Compromise: Look at taking some of the concepts from House bill, but we can't end up in a place where our foreign targeting activities are dependent on prior court review. One option could be to allow existing foreign surveillance to continue while new procedures for future foreign surveillance are submitted to the FISA court to review. This would allow the FISA court to "pre-approve" future foreign surveillance procedures without

interrupting current activities. Must also have a mechanism to allow new foreign surveillance prior to court approval where DNI determines that foreign intelligence would otherwise be missed and so notifies Congress.

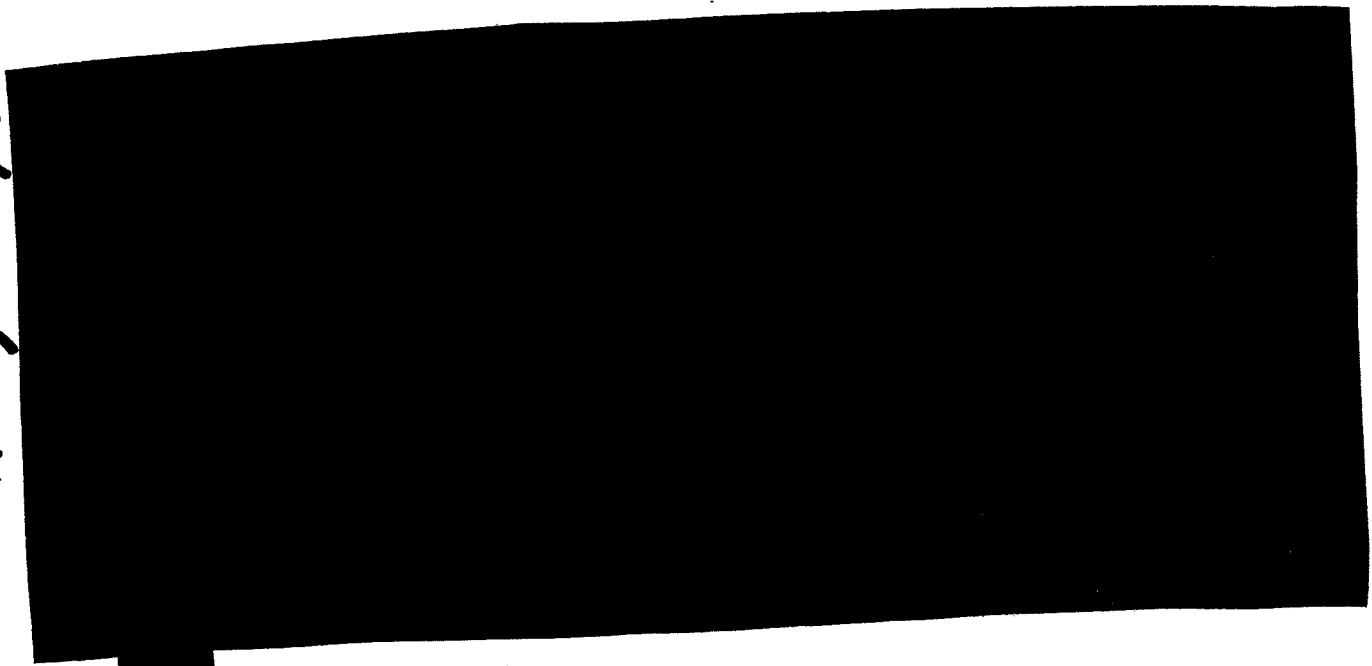
b2/b6

Kathleen Turner  
Director of Legislative Affairs  
Office of the Director of National Intelligence



Out of Scope

5/2/08



**From:** [Redacted]  
**Sent:** Friday, May 23, 2008 1:00 PM  
**To:** [Redacted]@mail.house.gov; [Redacted]@mail.house.gov; [Redacted]@mail.house.gov  
**Cc:** "Benjamin Powell"  
**Subject:** Letter We Mentioned at Mtg Yesterday

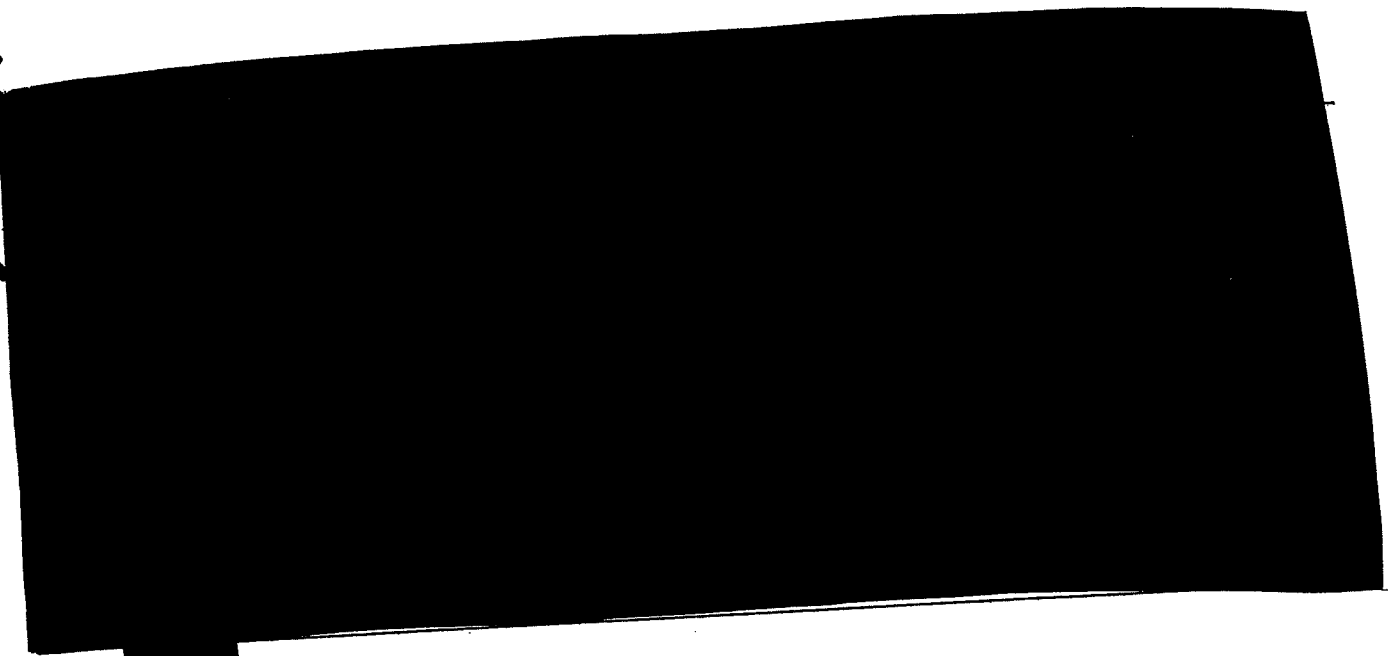
Caroline, Kevin, Scott: Your Members asked about what could be said unclassified regarding lost intelligence as a result of: the expiration of PAA and the lengthy delay in new FISA Modernization legislation, with liability protection, affecting our commercial partners. Pls see the attached Feb 22, 2008 letter from the DNI and the AG responding to a HPSCI Chairman letter; the DNI-AG letter makes explicit the consequences of the 6 six days in February and the overall uncertainty created with PAA expiration and lack of retroactive liability protection for the carriers. I have also attached the joint DNI-AG Public Statement issued a day later when pvt sector cooperation resumed. Hope this is helpful and let me know if you/your Members need anything else.

Kathleen Turner  
 Director of Legislative Affairs  
 Office of the Director of National Intelligence



Out of scope

b2/s4



From: [redacted]  
Sent: Thursday, March 13, 2008 3:40 PM  
To: [redacted]@mail.house.gov  
Subject: FISA Info on Court Time Lines etc

1) Prior Court Approval:

Question: I am told that there will be no delay in surveillance because prior court approval is not required? What is correct?

Answer: Prior court approval is required unless the DNI and Attorney General find that:

- 1) "an emergency situation exists"; and
- 2) "immediate action by the Government is required"; and
- 3) "time does not permit the completion of judicial review pursuant to [the bill] prior to the initiation of an acquisition".

If the argument is that prior court approval is not required because the DNI and AG can declare everything an emergency, that seems to defeat the intent of the bill. The standards above are highly subjective, but would at a minimum require DNI and AG to act based on a known emergency requiring immediate action.

There are a number of basic problems. First, we know from experience with the Protect America Act that any delay will cause us to lose intelligence that can never be recaptured. We would be happy to provide a classified example. Second, we may not know we have an emergency until it is too late. We want to prevent emergencies requiring immediate action, not wait until something is an emergency to start gather intelligence.

Finally, the delay that is a part of prior court approval is unacceptable. Under the Protect America Act, we submitted a set of targeting procedures to the Court in August 2007. The Court approved those procedures in January 2008. If we had to wait for court approval, we would have lost the ability to collect the timely intelligence we gathered under the Act. We have provided Congress with unclassified and classified examples of that intelligence, including the disruption of

planned terrorist attacks. Although the bill appears to set a 30 day timeframe for the Court to rule, that timeframe is basically advisory and permits the Court to extend the timeframe at its discretion for "good cause." Given the complexity and amount of material the Court is asked to rule on under the House bill, it is highly likely the Court would have a number of questions in any particular situation and want to explore the details of the submissions in this highly technical area. This could easily extend the timeframe for many months to permit the Court to complete its review.

Bottom Line: Unless you claim that all of our valuable intelligence activities all constitute emergencies, prior court approval is required.

## 2) Significant Purpose:

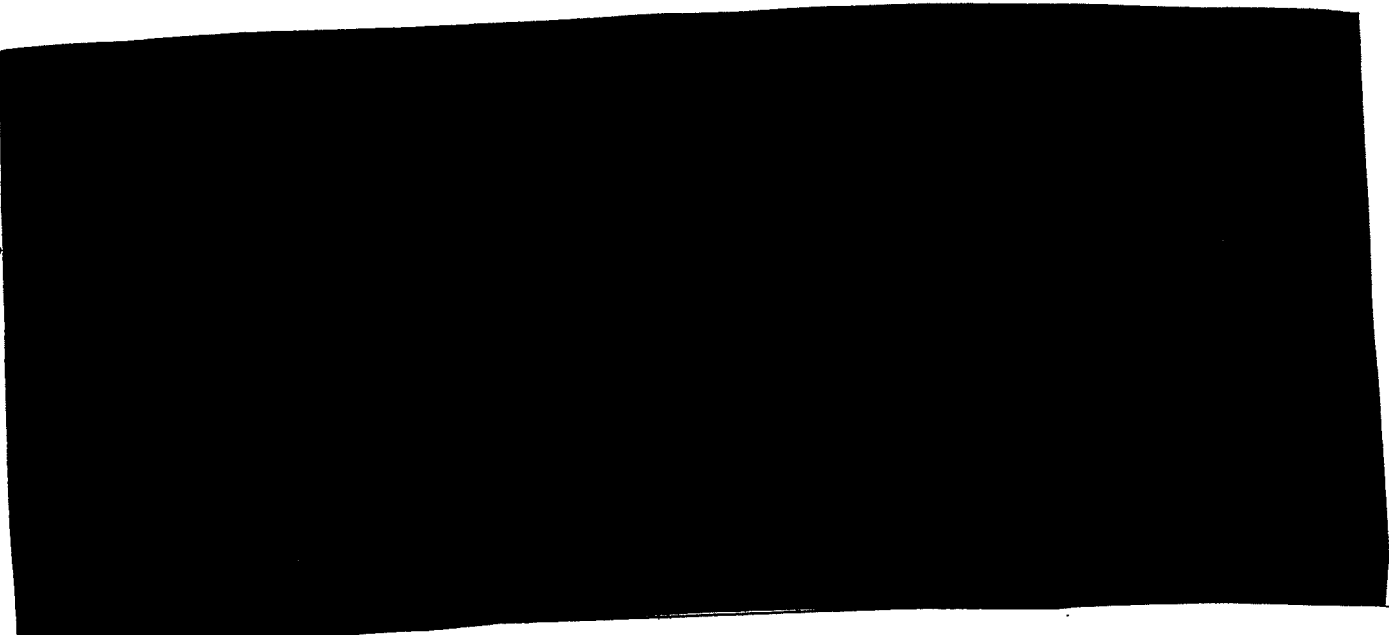
Question: What about the "significant purpose" test? I understand that this just ensures that surveillance of a foreigner is not a pretext for targeting an American.

Answer: Incorrect. We carry out our intelligence activities for a number of significant purposes. One of the significant purposes includes determining if a terrorist operative contacts someone in the United States to discuss an operation. Other significant purposes for doing surveillance on the same operative may be determine if they are planning to attack our troops in Iraq or attack an embassy overseas. These are all significant purposes of the surveillance. Under the House bill, we cannot undertake the activity if "a significant purpose" is to acquire a communication to a US person. Although it is highly likely that communications will generally go to other foreigners, the most important communication may be one that detects a contact with operatives in the United States. Under the "significant purpose" test, we would essentially be prevented from doing some of the most important surveillance activities.

Once we detect significant information concerning someone in the United States, the FBI is alerted and they can pursue an investigation under their guidelines. They may then choose to target the US person's communications by filing a FISA application to intercept the US person's communications upon issuance of a court order.

While much discussed, this concept of "reverse targeting" is already prohibited under law and regulation. The Senate bill codifies this understanding by prohibiting the targeting of a person outside the US if "the purpose" is to target a person in the US.

Out of scope

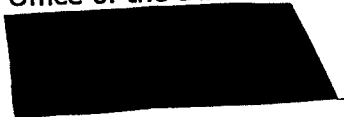


From: [redacted]  
Sent: Thursday, March 13, 2008 3:09 PM  
To: [redacted]@mail.house.gov  
Subject: Follow-up from DNI Mike McConnell Call with Rep. Marshall

b2/b6

John: Please see below information in response to the questions and the attached letter from the DNI and the Attorney General.

Kathleen Turner  
Director of Legislative Affairs  
Office of the Director of National Intelligence



1) Prior Court Approval:

Question: I am told that there will be no delay in surveillance because prior court approval is not required? What is correct?

Answer: Prior court approval is required unless the DNI and Attorney General find that:

- 1) "an emergency situation exists"; and
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If the argument is that prior court approval is not required because the DNI and AG can declare everything an emergency, that seems to defeat the intent of the bill. The standards above are highly subjective, but would at a minimum require DNI and AG to act based on a known emergency requiring immediate action.

There are a number of basic problems. First, we know from experience with the Protect America Act that any delay will cause us to lose intelligence that can never be recaptured. We would be happy to



provide a classified example. Second, we may not know we have an emergency until it is too late. We want to prevent emergencies requiring immediate action, not wait until something is an emergency to start gather intelligence.

Finally, the delay that is a part of prior court approval is unacceptable. Under the Protect America Act, we submitted a set of targeting procedures to the Court. The Court approved those procedures, submitted many months before, in January 2008. If we had to wait for court approval, we would have lost the ability to collect the timely intelligence we gathered under the Act. We have provided Congress with unclassified and classified examples of that intelligence, including the disruption of planned terrorist attacks. Although the bill appears to set a 30 day timeframe for the Court to rule, that timeframe is basically advisory and permits the Court to extend the timeframe at its discretion for "good cause." Given the complexity and amount of material the Court is asked to rule on under the House bill, it is highly likely the Court would have a number of questions in any particular situation and want to explore the details of the submissions in this highly technical area. This could easily extend the timeframe for many months to permit the Court to complete its review.

Bottom Line: Unless you claim that all of our valuable intelligence activities all constitute emergencies, prior court approval is required.

## 2) Significant Purpose:

Question: What about the "significant purpose" test? I understand that this just ensures that surveillance of a foreigner is not a pretext for targeting an American.

Answer: Incorrect. We carry out our intelligence activities for a number of significant purposes. One of the significant purposes includes determining if a terrorist operative contacts someone in the United States to discuss an operation. Other significant purposes for doing surveillance on the same operative may be determine if they are planning to attack our troops in Iraq or attack an embassy overseas. These are all significant purposes of the surveillance. Under the House bill, we cannot undertake the activity if "a significant purpose" is to acquire a communication to a US person. Although it is highly likely that communications will generally go to other foreigners, the most important communication may be one that detects a contact with operatives in the United States. Under the "significant purpose" test, we would essentially be prevented from doing some of the most important surveillance activities.

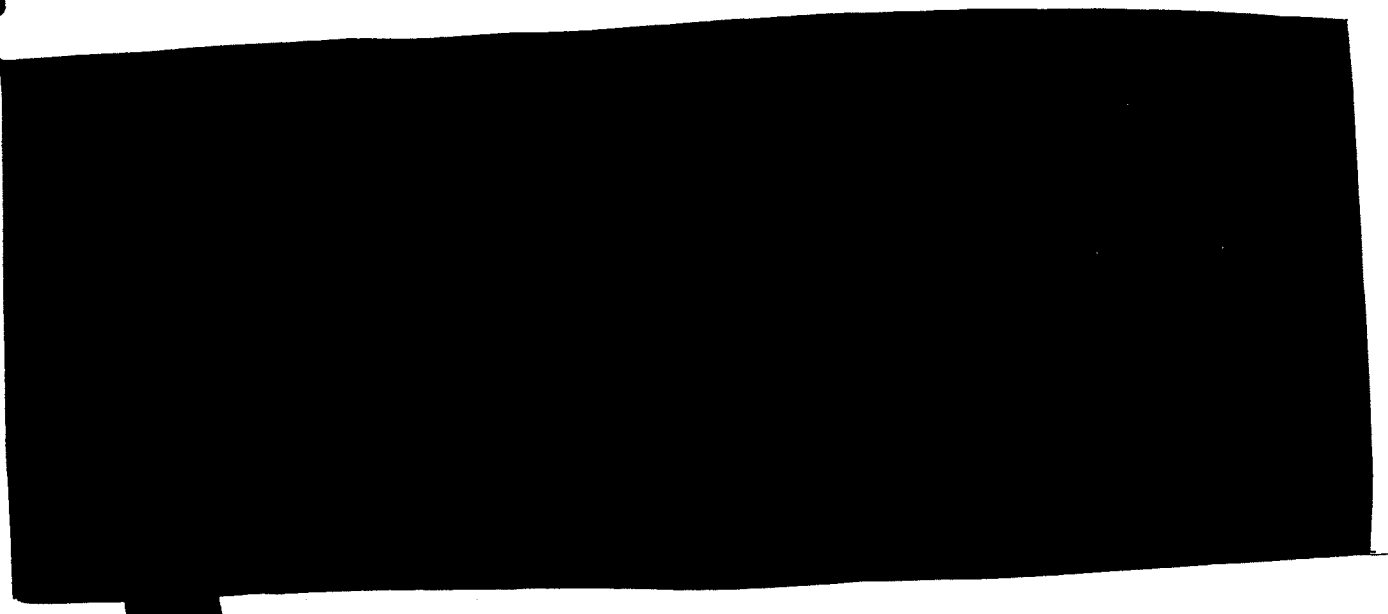
Once we detect significant information concerning someone in the United States, the FBI is alerted and they can pursue an investigation under their guidelines. They may then choose to target the US person's communications by filing a FISA application to intercept the US person's communications upon issuance of a court order.

While much discussed, this concept of "reverse targeting" is already prohibited under law and regulation. The Senate bill codifies this understanding by prohibiting the targeting of a person outside the US if "the purpose" is to target a person in the US.



Out of Scope

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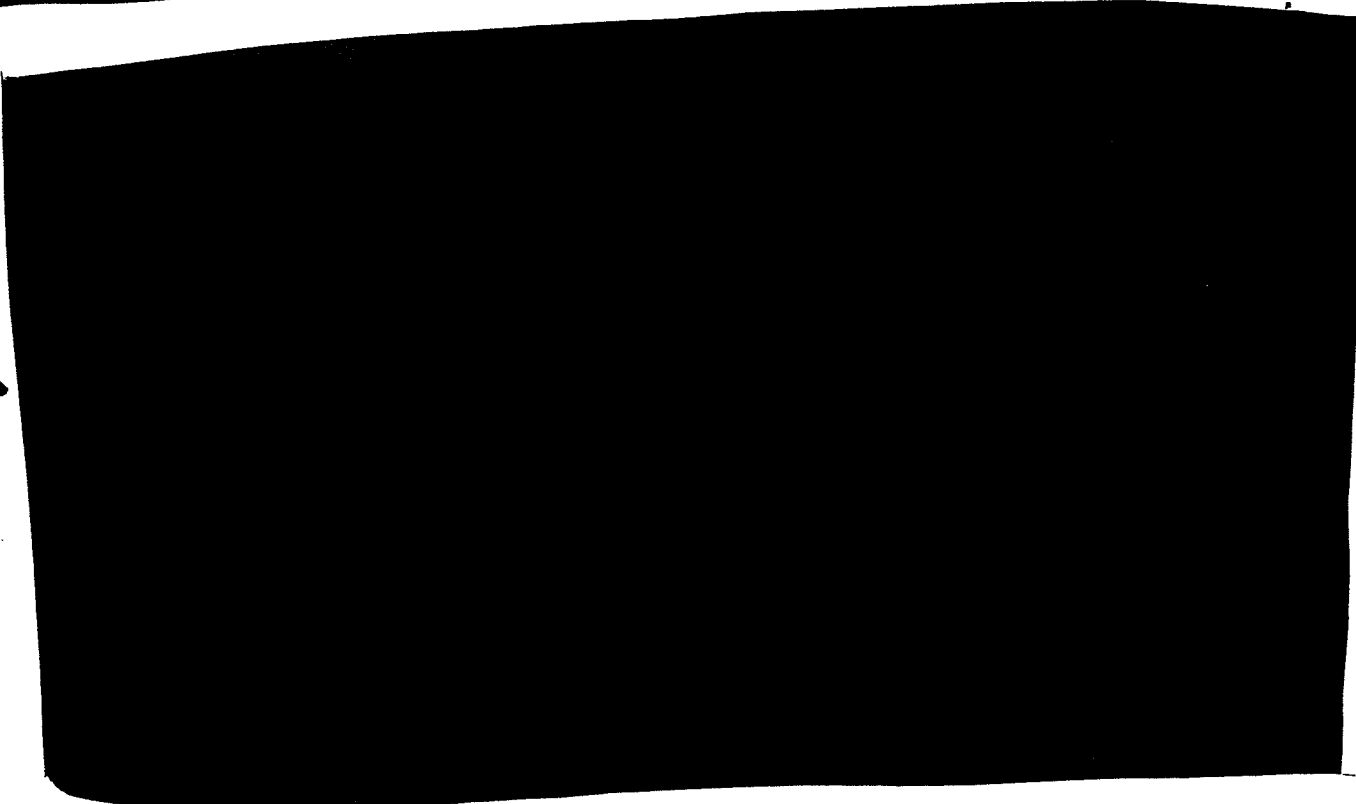
**From:** [Redacted]  
**Sent:** Tuesday, February 12, 2008 11:05 PM  
**To:** "Louis Tucker"; "Andy Johnson"; "Melvin Dubee"; "Ken Johnson"; "Mike Davidson"; "Jack Livingston"; "Kathleen Reilly"; "Chris Healey"  
**Subject:** Thank You!

The DNI and the ODNI thank you for securing final passage of a very good FISA Bill! You guys made it happen with your persistence, focus and understanding of what was needed and why. We really appreciate your very hard work. Now we move to the House and will work to get your Bill passed quickly. Thank you again!

Kathleen Turner  
Director of Legislative Affairs  
Office of the Director of National Intelligence  
[Redacted]

Out of scope

b2/b6



To: [redacted]@mail.house.gov, [redacted]@mail.house.gov, "Johnnie Kaberle"  
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From: [redacted]  
 Date: 02/26/2008 07:12PM  
 Subject: Background Briefing by Senior Administration Officials on FISA

Helpful info to educate Members below.

Kathleen Turner  
 Director of Legislative Affairs  
 Office of the Director of National Intelligence



**BACKGROUND BRIEFING BY SENIOR ADMINISTRATION OFFICIALS ON FISA**

James S. Brady Press Briefing Room - The White House

FEB. 26, 2008 - 2:40 P.M. EST

SENIOR ADMINISTRATION OFFICIAL: I appreciate you taking the time to discuss this issue with you. I just want to give a very brief overview. I know this is a very

6/13/08  
complex subject and a lot of discussion out there, and it's hard sometimes to follow it.

Let me start. Foreign Intelligence Surveillance Act of 1978 passed because of the abuses of the 1960s, 1970s, and frankly, prior to even that time frame. There was a balance struck in the 1978 act for the intelligence community, and it said, if you're doing your foreign intelligence mission overseas, you do not need a court order to do that mission. It specifically exempted the international signals intelligence activities that our community does.

Q You mean it said you could break the law?

SENIOR ADMINISTRATION OFFICIAL: No. What the law said was that if you are doing your foreign intelligence mission, looking at communications abroad, you do not need a court order. That is what the law said. Okay? And --

Q -- by Congress?

SENIOR ADMINISTRATION OFFICIAL: Okay, that's what the Foreign Intelligence Surveillance Act of 1978 did, and that is what the legislative history specifically says, and that's what the Foreign Intelligence Surveillance Act says. I can get you the actual text. We can furnish that to you. I mean, it's plain as day. I could pull up the quote right now that says this law specifically exempts the international signals intelligence activities conducted by the National Security Agency.

What it said, though, is if you're doing your mission here in the United States you need a court order. So if you're targeting a U.S. person here in the United States, to intercept their communications you need to get a court order. That was the balance that was struck in 1978.

In 1978 -- let me divide the worlds of communications into wire and wireless -- 1978, wireless communication; radio and satellite, primarily for our international communications system. Fast-forward to today -- 90 percent I think, or so of the international communications systems carried in a glass pipe; a wire, for purposes of FISA. So we've had a huge shift from what was radio and satellite in 1978 now to wire, to fiber optics -- a huge, massive shift. The international communications system is also routed through the United States in many cases. Extraordinarily cheap to use this fiber optic system, a large price advantage over other types of wireless communication.

What caught us -- what got us caught up was, in 1978, when they did the law, when they thought of wire, they thought of privacy, and if you're on the wire that is what they use to define when we would need to get a court order, exempting this international activity by exempting out the radio and satellite communications mission that we do.

So we had this shift. I think in this debate, I think everyone has agreed now that FISA needs to be modernized to reflect the technologies of today; that they wrote FISA in 1978 to reflect the way the technology was then. I think everyone is basically on board with the fact that we need to have FISA modernized.

That brings us to the Protect America Act and the passage of the Protect America