

b2/b4



From: "Rice, K (Intelligence)" [redacted]@SSCI.senate.gov>

To: [redacted]

Date: Thursday, May 08, 2008 10:09AM

Subject: FW: press - Chris Strom piece on FISA

Note the comment toward the end in reference to Bond.

From: Russell, J (Intelligence)
Sent: Thursday, May 08, 2008 10:08 AM
To: Tucker, L (Intelligence); Rice, K (Intelligence); Livingston, J (Intelligence); Johnson, K (Intelligence)
Subject: press - Chris Strom piece on FISA

Rockefeller Floats Proposal To Break Impasse Over FISA

Thu. May 8, 2008

Lawmakers and aides described significant developments Wednesday in negotiations on revisions to the Foreign Intelligence Surveillance Act, but some congressional sources cautioned that a final deal could remain elusive.

Behind-the-scenes negotiations appeared to take on urgency after Senate Intelligence Chairman **John (Jay) Rockefeller** floated a proposal Tuesday that his spokeswoman described as "the best area of compromise" after weeks of talks with Democrats and Republicans from both chambers, the White House, Justice Department and Director of National Intelligence **Mike McConnell**.

"He took the input from all of the stakeholders and put forward a compromise that reflected all of their input," the spokeswoman said of Rockefeller. She would not discuss any details.

Other aides said Rockefeller met with McConnell Wednesday to discuss the proposal.

Across Capitol Hill, House Intelligence Chairman **Silvestre Reyes** said he believed a final deal could be reached by the Memorial Day recess.

"I think we've got 90 percent of it done," he said. "I think there's a compromise position."

Reyes said the telecom firms have been given proposed legislative language to review. "The key is the telecoms," he said.

He said the language would require a court to determine whether telecommunications companies should be granted immunity from lawsuits arising from their cooperation with the Bush administration's warrantless electronic surveillance activities since the Sept. 11, 2001, terrorist attacks.

It has not been determined whether the cases would be heard in federal district court or before the secret FISA

Out of Scope

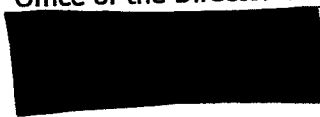


From: [Redacted]
Sent: Monday, November 26, 2007 7:06 PM
To: [Redacted]@ssci.senate.gov; [Redacted] John.Demers@usdoj.gov; "Benjamin Powell"; [Redacted] "John Eisenberg"; "Matthew Olsen"; [Redacted]@ssci.senate.gov;
CC: [Redacted] "Brian Benczkowski"; [Redacted]@ssci.senate.gov; [Redacted]@ssci.senate.gov; [Redacted]@ssci.senate.gov
Subject: RE: Confirming Meeting on Tues, Nov 27, 1-4 pm ref FISA S.2248-Update ref Attendance and Clearances

ba/bc

Mike: I will ensure the ODNI, NSA, and DoJ folks are aware. Thanks.

Pls see below for update for tomorrow's meeting.
 Kathleen Turner
 Director of Legislative Affairs
 Office of the Director of National Intelligence



-----"Davidson, M (Intelligence)" <[Redacted]@ssci.senate.gov> wrote: -----

To: [Redacted]
From: "Davidson, M (Intelligence)" <[Redacted]@ssci.senate.gov>
Date: 11/26/2007 07:02PM
cc: <[Redacted] "Brian Benczkowski" <[Redacted]@ssci.senate.gov>, [Redacted] "Healey, C <[Redacted]@ssci.senate.gov>, "Livingston, J (Intelligence)" <[Redacted]@ssci.senate.gov>, "Rice, K (Intelligence)" <[Redacted]@ssci.senate.gov>, "Starzak, Alissa (Intelligence)" <[Redacted]@ssci.senate.gov>
Subject: RE: Confirming Meeting on Tues, Nov 27, 1-4 pm ref FISA S.2248

Kathleen:

At tomorrow's meeting, Ron Weich, the Majority Leader's Chief Counsel, and John Abegg, the Minority Leader's Legal Counsel, will be joining us. I don't know what John's clearances are, but Ron has not yet gone through that process.

The participation of Ron and John is important in providing the Leaders with insights into the issues that will be

b2/bb



court, Reyes said.

Some Democrats, such as Rep. **Jane Harman**, D-Calif., want to ensure that the final deal empowers the court to conduct a thorough review of the cases. "There is certainly some forward motion, which is better than no motion or backward motion," she said.

"I think if we can find a way forward on a bipartisan basis to modernize FISA and to find a process for the court to review telecom conduct then we can get to a deal," Harman added. "In order for this to fly we have to have either a veto proof margin in both chambers or presidential buy in."

Other sources cautioned that problems remain.

"There is a feeling that there could be a problem with some of the members in our Caucus," said one House Democratic aide, referring to Rockefeller's proposal.

Rep. **Rush Holt**, D-N.J., a member of the House Intelligence Committee, added, "I'm told that there's a compromise taking shape [but] from what I've heard, there may be movement in the wrong direction."

In addition, several Senate Republicans, such as Senate Intelligence ranking member **Christopher (Kit) Bond** do not support the Rockefeller proposal, a Senate GOP aide said. "We don't think there is 90 percent, or even 50 percent agreement; there is zero agreement from us," the aide said in an e-mail response.

Meanwhile, Senate Republicans are still waiting for **House Majority Leader Hoyer** to present his own offer of a compromise.

Lawmakers have been stymied for weeks trying to reach a deal on FISA legislation that can overcome the deep split over the immunity issue and demands, mainly from Democrats, that the rights of U.S. citizens be protected. About 40 lawsuits have been filed against the companies and President Bush has insisted he will veto any bill that fails to shield the companies from civil liability.

And pressure on Hoyer from the Blue Dog Coalition appears to be growing.

Sources said the Blue Dogs are threatening to use obstructionist tactics to force a Senate-passed FISA bill to the House floor for a vote if Hoyer does not strike a satisfactory agreement by the Memorial Day recess.

This would align the Blue Dogs with House Republicans, who prefer the Senate bill because it includes legal immunity for the telecom firms. A Republican-backed discharge petition was filed last month in the House, and GOP leaders have been working hard to persuade Blue Dogs to help bring the bill to a vote.

by **Chris Strohm** and **Christian Bourge**

b2/b6

From: [REDACTED]
To: [REDACTED]


Date: Monday, September 17, 2007 04:08PM
Subject: Fw: (no subject)

Pls fwd to kevin asap

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

From: Ben Powell [REDACTED]
Sent: 09/17/2007 04:06 PM
To: [REDACTED]
Subject: (no subject)

latest Levin response. cleared by FBI, CLPO, and DOJ/OLC. Gettign to NSA and DOJ/NSD to clear. not final to go yet.

 <u>Revised Ltr to Levin with FISA</u> <u>Unclassified DRAFT [9-17-07] (v2, with CLPOand OLC cmts).doc</u>	Type: application/msword Name: Revised Ltr to Levin with FISA Unclassified DRAFT [9-17-07] (v2, with CLPOand OLC cmts).doc
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Attachments:

Revised Ltr to Levin with FISA Unclassified DRAFT [9-17-07] (v2, with CLPOand OLC cmts).doc

[REDACTED]

2/2/04

the subject of floor consideration. It will be good, therefore, to have an initial part of the meeting on an unclassified basis, and then move to a classified discussion as needed, or move in and out of an unclassified discussion as makes sense according to the topic.

Please share this with the ODNI/NSA/DOJ participants. Of course, the main objective is to have a meeting in which everyone feels that he/she has a full opportunity to offer the necessary comments. I'm sure that we'll be able to put together the right mix of classified and unclassified discussion.

Mike

From: [REDACTED]
Sent: Monday, November 19, 2007 4:42 PM
To: Davidson, M (Intelligence); Healey, C (Intelligence); Livingston, J (Intelligence); Rice, K (Intelligence); Starzak, Alissa (Intelligence)
Cc: [REDACTED] Brian Benczkowski; [REDACTED]
Subject: Confirming Meeting on Tues, Nov 27, 1-4 pm ref FISA S.2248

Mike and Jack: I wanted to confirm with you the meeting for next Tuesday, Nov 27, in your spaces, for the afternoon, 1-4 pm works for our team, to address outstanding issues on S.2248 that we have and that the Congress has. We have the lawyers from ODNI, DoJ, and NSA locked in to participate. Let me know this is confirmed for you; I think we'll need the Hearing room as we have about 10-11 folks on our side slated to attend. Thanks and have a great holiday!

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

[REDACTED]

From: [REDACTED]

To: "Mike Davidson" [REDACTED]@ssci.senate.gov>

cc: "Jack Livingston" [REDACTED]@ssci.senate.gov>, "Christine Healey"
[REDACTED]@ssci.senate.gov>, "Alissa Starzak" [REDACTED]@ssci.senate.gov>, "K
Rice" [REDACTED]@ssci.senate.gov>, [REDACTED]

Date: Sunday, February 24, 2008 12:43PM

Subject: Re: Update

Mike -- We can meet at 10am tomorrow (monday) if that works for folks. Someone from doj will probably join me, but that is it, so it will be small. Everyone is aware of all the positions and issues on the bill, need/no need for conference, negotiation, etc., so won't repeat them here.

Will try to get something arranged on the post-expiration events.

As for the olc/nsd opinion question, I will defer to doj on what they have expressed formal views on. But a few things to note--docs done last weekend for outside folks of course represent the AG's formal view. And we have noted in public that we think we have strong claim in some areas (new targets), far less strong in other areas (new directive?).

But whatever those views, something is clear to us: the view of the AG on expiration issues is necessary, but not sufficient. What does that mean? That means that private execs and their counsel are concerned about their company and the whole set of concerns that goes along with that (suits, brand impact, stock price, etc.). And of course, litigation between us to get a final answer is not a very good option for many reasons. Last week shows that however confident we are in the best reading of the law and how clear it is, the views of the critical players (who are going to be very risk averse at this point) may not match our assessment.

Let me know if tomorrow morn works.

Ben

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

From: "Davidson, M (Intelligence)" [REDACTED]@ssci.senate.gov]

Sent: 02/23/2008 11:04 AM EST

To: [REDACTED]

Cc: "Livingston, J (Intelligence)" <[REDACTED]@ssci.senate.gov>; "Healey, C (Intelligence)" <[REDACTED]@ssci.senate.gov>; "Starzak, Alissa (Intelligence)" <[REDACTED]@ssci.senate.gov>; "Rice, K (Intelligence)" <[REDACTED]@ssci.senate.gov>; [REDACTED]

Subject: Re: Update

h2/b6



From: [Redacted]
To: "K Rice" [Redacted] @ssci.senate.gov>

Date: Saturday, February 23, 2008 06:24PM
Subject: Fw: Update

Fyi

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

From: [Redacted]
Sent: 02/23/2008 05:18 PM EST
To: "Jack Livingston" <[Redacted]@ssci.senate.gov>
Subject: Fw: Update

I don't think it is appropriate for me to decline this but wanted to give you a heads up before responding.

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

From: "Davidson, M (Intelligence)" [Redacted]@ssci.senate.gov]
Sent: 02/23/2008 11:04 AM EST
To: [Redacted]
Cc: "Livingston, J (Intelligence)" <[Redacted]@ssci.senate.gov>; "Healey, C (Intelligence)" <[Redacted]@ssci.senate.gov>; "Starzak, Alissa (Intelligence)" <[Redacted]@ssci.senate.gov>; "Rice, K (Intelligence)" <[Redacted]@ssci.senate.gov>; [Redacted]
Subject: Re: Update

Ben,

Thanks for the morning update.

I hope we can find a time, in the early part of the week, that you might be able to come by to talk about the next several weeks, a conversation that I hope Jack will join.

I won't bet the ranch, but I suspect, given how the Congress tends to work, that there's a good chance that a bill is presented to the President by the end of the three weeks before the next recess.

The sooner we can make last week a bygone and engage in a bicameral process that is bipartisan, with active ODNI/NSA/DOJ participation, the better.

Separately, following up on your exchange with Chris yesterday, we should arrange for an early-in-the-week briefing for interested staff here on PAA events that preceded and

bd/bv



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Separately, following up on your exchange with Chris yesterday, we should arrange for an early-in-the-week briefing for interested staff here on PAA events that preceded and followed the letter.

In connection with that, has OLC (or NSD) opined, by memorandum or letter, on the various post sunset issues concerning the PAA (liability, enforceability, new targets)?

And looking ahead -- not that I imagine that anyone of us will actually be worrying about any of this then -- to the 2013 (or 2011, or 2009) sunset of the FISA Amendments, has there been anything in this sunset experience that points to a need to review any transition details in Title III (e.g., on new targets, enforcement)?

Mike

Sent from my BlackBerry Wireless Handheld

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

From: [Redacted]
To: Davidson, M (Intelligence); Livingston, J (Intelligence); Jeremy Bash
[Redacted]@mail.house.gov>; Chris Donesa <[Redacted]@mail.house.gov>; Healey,
C (Intelligence)
Cc: [Redacted]
[Redacted] John Demers <John.Demers@usdoj.gov>
Sent: Sat Feb 23 09:31:34 2008
Subject: Re: Update

Yes, process started last night, hope something out today.

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

From: "Davidson, M (Intelligence)" [Redacted]@ssci.senate.gov]
Sent: 02/22/2008 11:41 PM EST
To: [Redacted] "Livingston, J (Intelligence)" <[Redacted]@ssci.senate.gov>;
[Redacted]@mail.house.gov>; [Redacted]@mail.house.gov>; "Healey, C
(Intelligence)" <[Redacted]@ssci.senate.gov>

b2/b6

Cc: [REDACTED] <John.Demers@usdoj.gov>
Subject: Re: Update

Ben,

Thanks for the update.

Given the sending of the letter to Chairman Reyes (copies to Chairman Rockefeller, Ranking Member Hoekstra, and Vice Chairman Bond), which I assume the press has, I think it is imperative that there now will be a prompt public assurance.

Hope that the ODNI will do that as quickly as possible.

Mike

Sent from my BlackBerry Wireless Handheld

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

From: [REDACTED]
To: Davidson, M (Intelligence); Livingston, J (Intelligence); Jeremy Bash
[REDACTED]@mail.house.gov>; Chris Doneso <[REDACTED]@mail.house.gov>; Healey,
C (Intelligence)
Cc: [REDACTED] John Demers <John.Demers@usdoj.gov>
Sent: Fri Feb 22 21:41:14 2008
Subject: Update

This evening the remaining provider who was not cooperating with new taskings informed us they would cooperate. We were informed after the letter was sent.

We are working to implement immediately. Will keep you updated.

Do not know if there will be a release issued by us, a letter, etc.

b2/b6

followed the letter.

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From: [REDACTED]
To: Davidson, M (Intelligence); Livingston, J (Intelligence); Jeremy Bash <[REDACTED]@mail.house.gov>; Chris Donesa <[REDACTED]@mail.house.gov>; Healey, C (Intelligence)
Cc: [REDACTED]
[REDACTED] John Demers <John.Demers@usdoj.gov>
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From: "Davidson, M (Intelligence)" <[REDACTED]@ssci.senate.gov>
Sent: 02/22/2008 11:41 PM EST
To: [REDACTED] "Livingston, J (Intelligence)" <[REDACTED]@ssci.senate.gov>; [REDACTED] <[REDACTED]@mail.house.gov>; [REDACTED] <[REDACTED]@mail.house.gov>; "Healey, C (Intelligence)" <[REDACTED]@ssci.senate.gov>
Cc: [REDACTED] <John.Demers@usdoj.gov>
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Hope that the ODNI will do that as quickly as possible.

6/30/2008 5:21 PM

b2/b6

Mike

Sent from my BlackBerry Wireless Handheld

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

From: [REDACTED]
To: Davidson, M. (Intelligence); Livingston, J (Intelligence); Jeremy Bash
[REDACTED]@mail.house.gov>; Chris Donesa <[REDACTED]@mail.house.gov>; Healey,
C (Intelligence)

Cc: [REDACTED] John Demers <John.Demers@usdoj.gov>

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We are working to implement immediately. Will keep you updated.

Do not know if there will be a release issued by us, a letter, etc.

ba/bv

[REDACTED]

From:

To: "Mike Davidson" <[REDACTED]@ssci.senate.gov>, "Brett Gerry" <Brett.Gerry@usdoj.gov>, "John Eisenberg" <John.Eisenberg@usdoj.gov>, "Wito Potenza (work)" <[REDACTED]>, "Carl Nichols" <Carl.Nichols@usdoj.gov>, "Matthew \ (NSD) Olsen" <Matthew.Olsen@usdoj.gov>, "John Demers" <John.Demers@usdoj.gov>

cc:

"Jack Livingston" <[REDACTED]@ssci.senate.gov>, "Christine Healey" <[REDACTED]@ssci.senate.gov>, "K Rice" <[REDACTED]@ssci.senate.gov>, "Starzak, Alissa (Intelligence)" <[REDACTED]@ssci.senate.gov>

[REDACTED]

bcc:

Date: Tuesday, November 13, 2007 10:29PM

Subject: Re: FISA

Thanks Mike. We will check on schedules and see what works. Happy to proceed however committee sees fit, and would welcome Mary/Nick.

Very unclear to me what will come out of SJC and our initial read of some of the proposals is that they may miss the mark by a wide margin.

I think we have identified some discrete issues with s2248, but have worked hard to get many of the more significant items correct as a matter of policy and precise drafting. I hope we don't end up reopening s2248 in a frenetic drafting exercise as that may not turn out well for anyone.

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

From: "Davidson, M (Intelligence)" <[REDACTED]@ssci.senate.gov>

Sent: 11/13/2007 06:37 PM EST

To: [REDACTED]; Gerry, Brett (OLP)" <Brett.Gerry@usdoj.gov>; <John.Eisenberg@usdoj.gov>; Potenza, Vito" <[REDACTED]>; <Carl.Nichols@usdoj.gov>; [REDACTED]; <Matthew.Olsen@usdoj.gov>; <John.Demers@usdoj.gov>

Cc: Livingston, J (Intelligence)" <[REDACTED]@ssci.senate.gov>; Healey, C (Intelligence)" <[REDACTED]@ssci.senate.gov>; Rice, K (Intelligence)" <[REDACTED]@ssci.senate.gov>; Starzak, Alissa (Intelligence)" <[REDACTED]@ssci.senate.gov>

Subject: FISA

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),

ba/bb

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

b2/b4

From: [REDACTED]
To: "Mike Davidson" [REDACTED]@ssci.senate.gov
cc: "Brett Gerry" <Brett.Gerry@usdoj.gov>, "John Eisenberg" <John.Eisenberg@usdoj.gov>, "Jack Livingston" [REDACTED]@ssci.senate.gov, "K Rice" <[REDACTED]@ssci.senate.gov>, "Starzak, Alissa (Intelligence)" <[REDACTED]@ssci.senate.gov>, "Christine Healey" <[REDACTED]@ssci.senate.gov>, "Carl Nichols" <Carl.Nichols@usdoj.gov>

Date: Tuesday, October 09, 2007 11:39PM
Subject: Re: new drafts

Great, thanks.

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

From: "Davidson, M (Intelligence)" [REDACTED]@ssci.senate.gov]
Sent: 10/09/2007 09:26 PM AST
To: [REDACTED]
Cc: <Brett.Gerry@usdoj.gov>; <John.Eisenberg@usdoj.gov>; Livingston, J (Intelligence)" <[REDACTED]@ssci.senate.gov>; Rice, K (Intelligence)" <[REDACTED]@ssci.senate.gov>; Starzak, Alissa (Intelligence)" <[REDACTED]@ssci.senate.gov>; Healey, C (Intelligence)" <[REDACTED]@ssci.senate.gov>; <Carl.Nichols@usdoj.gov>
Subject: Re: new drafts

Vito and Patrick will be most welcome.

Sent from my BlackBerry Wireless Handheld

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

From: Ben Powell [REDACTED]
To: Davidson, M (Intelligence)
Cc: Gerry, Brett (OLP) <Brett.Gerry@usdoj.gov>; Eisenberg, John <John.Eisenberg@usdoj.gov>; Livingston, J (Intelligence); Rice, K (Intelligence); Starzak, Alissa (Intelligence); Healey, C (Intelligence); Nichols, Carl (CIV) <Carl.Nichols@usdoj.gov>
Sent: Tue Oct 09 20:54:27 2007
Subject: Re: new drafts

See you at 1pm. Would like to have Vito/Patrick join us given how short the deadlines are and want to make sure we do not overlook a critical issue. Let me know if that is a problem. may need a few extra chairs.

Davidson, M (Intelligence) wrote:

>Yes, let's start at 1 pm.
>

ba/bv



>Ben and Carl -- does that work for you as well?

>
>Mike

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

>From: Gerry, Brett (OLP) [mailto:Brett.Gerry@usdoj.gov]
>Sent: Tuesday, October 09, 2007 10:43 AM
>To: Davidson, M (Intelligence); [REDACTED]
>Cc: Eisenberg, John; Livingston, J (Intelligence); Rice, K (Intelligence); Starzak, Alissa (Intelligence); Healey, C (Intelligence); Nichols, Carl (CIV)
>Subject: Re: new drafts

>
>Mike-

>I will be there, but am hoping we could start a bit later (say 1pm). (I have a conflict in the morning that will be very hard to break.). I know tomorrow am is bad for john also.

>
>Thanks,
>Brett

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

>From: Davidson, M (Intelligence) <[REDACTED]@ssci.senate.gov>
>To: Ben Powell <[REDACTED]>
>Cc: Gerry, Brett (OLP); Eisenberg, John; Livingston, J (Intelligence) <[REDACTED]@ssci.senate.gov>; Rice, K (Intelligence) <[REDACTED]@ssci.senate.gov>; Starzak, Alissa (Intelligence) <[REDACTED]@ssci.senate.gov>; Healey, C (Intelligence) <[REDACTED]@ssci.senate.gov>; Nichols, Carl (CIV)
>Sent: Tue Oct 09 10:33:49 2007
>Subject: RE: new drafts

>
>Ben, Brett, John, and Carl:

>
>
>
>In the hope that tomorrow is OK for a marathon session, I've reserved a conference room from 10 on.

>
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>
>On our end, we're on the hook to settle by sometime Thursday on what we'll be recommending that the Chairman and Vice Chairman present to the Committee for its markup on October 18.

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>Let us know what will be possible on your end.

>
>
>
>Mike
>
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b2/b6

[REDACTED]

>From: Ben Powell [REDACTED]
>Sent: Monday, October 08, 2007 12:15 PM
>To: Davidson, M (Intelligence)
>Cc: Brett.Gerry@usdoj.gov; john.eisenberg@usdoj.gov; Livingston, J (Intelligence); Rice, K (Intelligence); Starzak, Alissa (Intelligence); Healey, C (Intelligence); carl.nichols@usdoj.gov
>Subject: Re: new drafts

>
>
>
>Mike -- If I read it right, I agree that we will need the #1 transition procedure as you suggest and it is important. I want to look more at #2 and #3.

>
> We got together last night and discussed a couple of issues. We are very concerned about creating a new definition of "communications". One concern is that we will miss something and then place a future President/Congress back into a TSP-like world -- and perhaps over a technical issue. For example, suppose there is some new communication tech that people overseas are using and we are able to get great intel from it. But for some reason it doesn't fit the definition b/c we didn't get it right. But then there is a fear that modifying it through Congress will be the subject of speculation and people will figure out (probably pretty easily) "oh, they know want to get [insert new tech here -- I don't know, make up something -- combined HDTV, Internet, VOIP, video teleconferencing via laser, quantum remote computing]". Also, we fear creating a new cottage industry at DOJ/OIPR where everything is delayed while everyone checks each new data piece to see if it fits the definition of communication, when the real focus should be the target.

>
> We also worry that we will need to make the definitions so broad, that it will raise the "scary hypotheticals" problem and therefore we will still need to put in explicit limitations (as we would do anyways with the current PAA) such as "Act does not authorize opening mail, searching homes of Americans, etc."

>
> In any event, no need to debate it via email, but just some things we are looking deeply at and will want to sit down and discuss with you/Chris/Jack/Kathleen/Alissa this week.

>
>Davidson, M (Intelligence) wrote:

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>
>
>
>Sunday multi-tasking -- Redskins and FISA.

>
>(1) The PAA's transition procedures includes:

>
>"The Government also may file new applications, and the court established under section 103(a) of the Foreign Intelligence Surveillance Act ... shall enter orders granting such applications ... as long as the application meets the requirements set forth under the provisions of such Act as in effect on the day before the effective date of this Act."

>
>It could turn out to be a useful, indeed necessary provision, if for example a question arises about the scope or constitutionality of the PAA (or its successor). In place of "as in effect on the day before the effective date of this Act," we could substitute "as in effect on the day before the effective date of the Protect America Act."

>
>(2) The necessity of the "clarification" or "limitation" on the definition of electronic

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surveillance remains unclear. Why isn't the affirmative grant of collection authority sufficient? In our report how do we complete this sentence: "The redefinition of electronic surveillance is required because _____."

> (3) But if we do include it, can we deal with the impact of the redefinition on the various places that the term electronic surveillance appears -- sections 102, 106, 109, 110, 301(5), by limiting the redefinition as follows: "Nothing in the definition of electronic surveillance under section 101(f), as applied to sections 104 and 105, shall be construed ..."

> Happy Columbus Day to all.

> Mike

> -----
> Sent from my BlackBerry Wireless Handheld

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

> From: Ben Powell

> To: Davidson, M (Intelligence)

> Cc: Gerry, Brett (OLP) <Brett.Gerry@usdoj.gov> <mailto:Brett.Gerry@usdoj.gov> ; john.eisenberg@usdoj.gov <john.eisenberg@usdoj.gov>

> <mailto:john.eisenberg@usdoj.gov> ; Livingston, J (Intelligence); Rice, K (Intelligence); Starzak, Alissa (Intelligence); Healey, C (Intelligence); carl.nichols@usdoj.gov

> <carl.nichols@usdoj.gov> <mailto:carl.nichols@usdoj.gov>

> Sent: Fri Oct 05 17:58:54 2007

> Subject: Re: new drafts

> Thanks Mike. We will take a look and we can give you more detail in secure spaces about the current practice. Will have to check on schedule with Brett.

> Davidson, M (Intelligence) wrote:

> Ben, Brett, and John:

> I wanted to flag for your attention a paragraph that we added, in the draft sent earlier today, to the section on Directives - paragraph (2), on page 5, line 2-3.

> It provides that each directive shall contain a list of specific targets.

> The paragraph reflects a suggestion we received here that it would help allay the driftnet concern if it were clear that directives addressed specific targets.

> But, in including it, I realize that we don't know whether the practice now is for directives to include specific selectors, and hence whether a provision such as the one

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[Redacted]

From: [Redacted]
To: "Jeremy Bash" [Redacted]@mail.house.gov>
cc: "Brett Gerry" <Brett.Gerry@usdoj.gov>, "Greenwald Eric"
[Redacted]@mail.house.gov>, [Redacted]
bcc: [Redacted] "Bill Burck"

Date: Monday, May 19, 2008 12:38PM
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" <Eric.Greenwald@mail.house.gov>
Subject: RE: Technical issues

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[REDACTED]

From: [REDACTED]
To: "Nick Rossi" [REDACTED]@judiciary-rep.senate.gov>
cc: "John Demers" <John.Demers@usdoj.gov>, [REDACTED]

Date: Friday, May 09, 2008 03:00PM
Subject: Re: FISA

understood, will do. Always feel free to call if you have questions.
Ben

-----"Rossi, Nick (Judiciary-Rep)" <[REDACTED]@judiciary-rep.senate.gov> wrote: -----

To: "Ben Powell" <[REDACTED]> "Demers, John (NSD)" <John.Demers@usdoj.gov>
From: "Rossi, Nick (Judiciary-Rep)" <[REDACTED]@judiciary-rep.senate.gov>
Date: 05/09/2008 02:45PM
Subject: FISA

Ben & John,

I just received a copy of your latest draft from other staff. I realize Sen. Specter's continued pursuit of "substitution" has limited our role in these discussions, but I will be better equipped to persuade him of the merits of the final product if I can brief him on the ebb and flow of the negotiations. So, if possible, please keep me in the loop as new language is being circulated and discussed.

Much Appreciated,
Nick

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From: [REDACTED]
To: "K Rice" <[REDACTED]@ssci.senate.gov>

Date: Thursday, October 18, 2007 09:31PM
Subject: Re: Amendments for Mark-up

No problem. Will need tech fix at some point. Any idea when comm will release bill text?

----- Original Message -----
From: "Rice, K (Intelligence)" <[REDACTED]@SSCI.senate.gov>
Sent: 10/18/2007 09:29 PM AST
To: [REDACTED]
Subject: RE: Amendments for Mark-up

I think you may have already spoken with Louis, but thanks for your help with this. We'll see what happens and what we can do to fix this (if anything)

From: Ben Powell [REDACTED]
Sent: Thursday, October 18, 2007 7:03 PM
To: Ben Powell
Cc: Tucker, L (Intelligence); Livingston, J (Intelligence); John.Eisenberg@usdoj.gov; Gerry, Brett (OLP); [REDACTED]
[REDACTED] Rice, K (Intelligence); [REDACTED]
Subject: Re: Amendments for Mark-up

louis/jack/kathleen -- let me know if you received this.

Ben Powell wrote:

Louis: I understand this is the text below. As we read it it would mean:

1) If you are getting contents outside the US, that would not fall within the definition of electronic surveillance in FISA (those definitions basically apply to things inside the US -- with some exceptions not applicable here). So this provision says if you are doing something on US person overseas, you have to get a FISA. But yet, those activities are not within FISA because it will not fall within the definition of electronic surveillance.

So, the provision says you must have an order, but yet you can't get one under FISA. So that means we have to drop coverage.

2) This brings overseas activities directed at US person inside FISA (or at least brings them

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in, but you can't get an order). That is problematic for the reasons we have outlined before in hearings in terms of ability to get cooperation, etc.

Bottom Line is that this will not work.

On page 6, after line 22 insert:

| An acquisition authorized under subsection (a) may not target a United States person except pursuant to Title I of this Act.

| The acquisition by any electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a United States person who is reasonably believed to be located outside the United States, if the contents are acquired outside the United States, by intentionally targeting that United States person, under circumstances in which a person has reasonable expectation of privacy and a warrant would be required for law enforcement purposes if the technique were used inside the United States, may occur only subsequent to an order obtained pursuant to Title I of this Act.

| The Attorney General shall submit to the Foreign Intelligence Surveillance Court, no later than 30 days following the passage of this Act, procedures for determining whether a target reasonably believed to be outside the United States is a United States person. No targeting shall occur contrary to the procedures, as approved by the Court.