Dear Mr. Cardozo:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Form OPCA-16a:

<table>
<thead>
<tr>
<th>Section 552</th>
<th>Section 552a</th>
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</tbody>
</table>

479 page(s) were reviewed and 142 page(s) are being released.

☐ Document(s) were located which originated with, or contained information concerning other Government agency(ies) [OGA]. This information has been:

☐ referred to the OGA for review and direct response to you.

☐ referred to the OGA for consultation. The FBI will correspond with you regarding this information when the consultation is finished.

☑️ You have the right to appeal any denials in this release. Appeals should be directed in writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Number assigned to your request so that it may be easily identified.

1-cc: Ms. Jennifer Lynch
The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown, when ident, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

See additional information which follows.

Sincerely yours,

[Signature]

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

Enclosure(s)

The enclosed documents contained in the FBI Office of Government Counsel response and the FBI Operational Technology Division (OTD) response, section two, represent the final release of information responsive to your Freedom of Information Act (FOIA) request submitted to the FBI Records Management Division (RMD) at Winchester, Virginia.
EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

(b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;

(b)(2) related solely to the internal personnel rules and practices of an agency;

(b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could be reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could be reasonably expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

(d)(5) information compiled in reasonable anticipation of a civil action proceeding;

(j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;

(k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;

(k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;

(k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;

(k)(4) required by statute to be maintained and used solely as statistical records;

(k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;

(k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;

(k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

FBI/DOJ
Total Deleted Page(s) ~ 87
Page 27 ~ b2, b5, b7E
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Page 34 ~ b2, b5, b7E
Page 35 ~ b2, b5, b7E
Page 36 ~ b2, b5, b7E
Page 37 ~ b2, b5, b7E
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Page 66 ~ b2, b5, b7E
Page 67 ~ b2, b5, b7E

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X Deleted Page(s) X
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From: DICLEMENTE, ANTHONY P. (OTD) (FBI)
Sent: Friday, March 13, 2009 5:19 PM
To: DICLEMENTE, ANTHONY P. (OTD) (FBI)
Cc: (OTD) (FBI)
Subject: FW: Advisory Board Files

UNCLASSIFIED
NON-RECORD

Have you started anything on this?

Anthony P. DiClemente
Chief, Data Acquisition / Intercept Section
Operational Technology Division

From: DICLEMENTE, ANTHONY P. (OTD) (FBI)
Sent: Friday, March 13, 2009 5:19 PM
To: DICLEMENTE, ANTHONY P. (OTD) (FBI)
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Subject: FW: Advisory Board Files

UNCLASSIFIED
NON-RECORD

[Please print for Mr. D.]

From: DICLEMENTE, ANTHONY P. (OTD) (FBI)
Sent: Monday, March 16, 2009 9:55 AM
To: DICLEMENTE, ANTHONY P. (OTD) (FBI)
Cc: DICLEMENTE, ANTHONY P. (OTD) (FBI)
Subject: RE: Advisory Board Files

UNCLASSIFIED
NON-RECORD

DRAFT Going Dark Authorities.ppt

From: DICLEMENTE, ANTHONY P. (OTD) (FBI)
Sent: Tuesday, March 10, 2009 4:18 PM
To: THOMAS, MARCUS C. (OTD) (FBI); DICLEMENTE, ANTHONY P. (OTD) (FBI); (OTD) (FBI); (OTD) (FBI); (OTD) (FBI); (OTD) (FBI); (OTD) (FBI)
Cc: (OTD) (FBI); (OTD) (FBI); (OTD) (FBI); (OTD) (FBI)
Subject: FW: Advisory Board Files

UNCLASSIFIED
NON-RECORD

[Attached file: DRAFT Going Dark Authorities.ppt]
On March 18, OTD will be hosting a meeting for members of the Director's Advisory Board regarding Going Dark. I have attached an agenda for the meeting. Those on the To: line are being asked to do a 15 minute presentation as indicated in the enclosed agenda. I have also attached a template for the presentation. On Monday March 16th at 10AM in the AD's conference room, we will have a review of the presentations.

☐ I know you will not be able to attend the meeting. Marcus or Pat will present but can you fill in the template?

☐ I will put together the ppt for Law Enforcement Outreach. Can you give him input from your side so he can fill in the template?

☐ Can you do the ppt for Tony?

Thanks,

<< File: DRAFT Going Dark DAB 20090310.ppt >> << File: Director's Advisory Board Agenda.doc >>
OPERATIONAL TECHNOLOGY DIVISION (OTD)
Going Dark
SIGNIFICANT MONTHLY ACCOMPLISHMENTS
September 2008

(U) GOING DARK:

- (U) The CALEA Implementation Unit (CIU) drafted the OTD response to a Science and Technology (S&T) Branch tasking from the Director's Office regarding the Going Dark Initiative.

- (U) The CALEA Implementation Unit (CIU) provided CIU drafted an electronic communications (EC) for distribution to all FBI Field Office regarding "Going Dark Initiative" goals and objectives for review within OTD. The goals and objectives are based on the five-pronged National Electronic Surveillance Strategy and are aligned to the OTD Strategy Map.

- (U) The CALEA Implementation Unit (CIU) drafted a report summarizing.

- (U) The CALEA Implementation Unit (CIU) continued drafting.

- (U) RSDU held a meeting with Met with entities from.
Meeting focus included as well as:

- (U//FOUO) The Technical Liaison Unit (TLU) coordinated and hosted to meet with senior OTD management and to receive a Going Dark initiative briefing.

- (S//REL USA, GBR) participated with...

- (S//N) In response to DITU tasking and...

- (U) On 7/30/2008, the ENC Program Team within the ELSUR Technology Management Unit (ETMU) was charged with the responsibility to...

  The ENC team is coordinating with and several FBI divisions (Information Technology Operations Division, Security Division, and Office of General Counsel) to ensure that to all FBI field offices is consistent/in compliance with current FBI policies, procedures, and investigative guidelines.

- (U) The EMTU ELSUR National Contracts (ENC) Program prepared for a 10/01/2008 implementation of...

  In doing so, the ENC worked in conjunction with...

  Additionally, the ENC has coordinated with the FBI Security Division, CD-8, and personnel from to ensure...
(U) Special Projects Technology Unit (SPTU) personnel tested, configured, and supplied with deployment against in a criminal investigation being conducted in conjunction with for testing and potential deployment against.
OPERATIONAL TECHNOLOGY DIVISION (OTD)

GOING DARK
SIGNIFICANT MONTHLY ACCOMPLISHMENTS
January 2009

(U) GOING DARK:

(U)  The Electronic Surveillance (ELSUR) National Contracts Program, ETMU acquired

(U) On 12/16/2009, OTD management met with

Classified Per OGA Letter 01/20/2011
(U) The CALEA Implementation Unit (CIU) prepared a one-page white paper providing an update of CALEA implementation activities and the Going Dark initiative for the Director's briefing book.

(U) The CALEA Implementation Unit (CIU), in its effort to increase cooperation with

(U/FOUO) On 01/23/2009 TLU SSA met with
received a Letter of Commendation for his assistance in resolving issues from an ongoing development effort. Specifically, provided recommendations for

Shortfall; $ in Services funding for which is Task 8 of

Why is this critical? The FBI is responsible for participation in the implementation of
OPERATIONAL TECHNOLOGY DIVISION (OTD)

GOING DARK MONTHLY ACCOMPLISHMENTS
March 2009

(U) Remote Operations Unit (ROU)

(U) Cryptologic & Electronic Analysis Unit (CEAU)

• (U//FOUO) Enhanced LEA/IC coordination - On 03/10/2009, CEAU hosted a visit by

(U) Forensic Audio/Video & Image Analysis Unit (FAVIAU)

Classified Per OGA Letter 01/20/2011
(U) Funding of $ was applied for. This new project will focus on linked to. The project is

The funding source is

(U) CALEA Implementation Unit (CIU)

• (U) The CALEA Implementation Unit (CIU) developed presentations and agenda for a National Lawful Intercept Strategy briefing before the Director's Advisory Board. The presentations highlighted the implementation of CALEA, necessary legislative changes, and enhanced law enforcement coordination. CIU also participated in the briefing of the Director's Advisory Board regarding the National Lawful Intercept Strategy and "Going Dark" Initiative.

• (U) The CALEA Implementation Unit (CIU) assisted the Data Intercept Technology Unit (DITU) in addressing issues with for a criminal investigation supported by

• (U) The CALEA Implementation Unit (CIU) assisted the Data Intercept Technology Unit (DITU) to address several outstanding technical issues with DITU with issues that

• (U) The CALEA Implementation Unit (CIU) participated in the International Law Enforcement Technical Symposium (ILETS) drafting group meeting in Siegburg, Germany. Provided a presentation on and discussed the upcoming agenda for

• (U) The CALEA Implementation Unit (CIU), held a meeting of the Law Enforcement Technical Forum (LETF) focused on the progress to date with the "Going Dark" initiative and the role of other Federal, State, and local law enforcement in the continued
implementation of the National Lawful Intercept Strategy. Additionally, CIU demonstrated

- (U) The CALEA Implementation Unit (CIU) drafted a revised whitepaper describing
  to conduct lawful interception. The whitepaper is to serve the purpose of introducing recipients to the National Lawful Intercept Strategy and the "Going Dark" initiative.

(U) Derived from: FBI NSISC Guide 20090407
(U) Declassify on: 20340407
GOING DARK MONTHLY ACCOMPLISHMENTS
April 2009

- (U/FOUO) Enhanced (international) LEA/IC coordination. From 03/26/2009 to 04/02/2009, TD and EEP PM attended the Five Eyes Conference in Melbourne, Australia. They met with representatives of and on matters of mutual concern.

- (U) Enhanced (international) LEA/IC coordination. From 04/18/2009 to 04/22/2009, SSA attended.

- (U) An Image Examiner was invited by the ASAC in Buffalo to the Search and Seizure of Digital Evidence Conference in Buffalo, NY. The examiner presented. The conference attendees included local area law enforcement agencies.

- (U) An Image Examiner met with Department of State (DOS) representatives in Washington, DC, to discuss and provide an update on training activities being pursued by FAVIAU. In May 2009.

Classified Per OGA Letter 01/20/2011
Why is this critical? The FBI is responsible for participation in

Why can't cover this with our current base funding? A new contract has been requested since FY2004, but this effort has become quite protracted and still is not in place.

What is the impact if unable to obtain funding for this?

TTU met with to discuss
• (U) TTU met with

• (U) TTU met with for a briefing on

• (U) contacted TPDU regarding

• (U//FOUO) On behalf of the FBI and the Operational Technology Division, the TLU sponsored and participated in

• (U) The CALEA Implementation Unit (CIU) developed draft presentations for and participated in the Science and Technology Branch Investment Symposium describing efforts of the Operational Technology Division (OTD) and the Going Dark Initiative.

• (U) The CALEA Implementation Unit (CIU) provided assistance with

  Participated in conference call

  Issues focused on
(U) The CALEA Implementation Unit (CIU) updated the quarterly "Going Dark" status presentation for inclusion in the Director's SMS Initiative meeting. Updates included revising the past and future timeline of events, descriptive text of upcoming events, and requested actions of upper level FBI management.

(U) The CALEA Implementation Unit (CIU) assisted the Data Intercept Technology Unit (DITU) in addressing a potential issue with
On March 18, OTD will be hosting a meeting for members of the Director's Advisory Board regarding Going Dark. I have attached an agenda for the meeting. Those on the To: line are being asked to do a 15 minute presentation as indicated in the enclosed agenda. I have also attached a template for the presentation. On Monday March 16th at 10AM in the AD's conference room, we will have a review of the presentations.

☐ I know you will not be able to attend the meeting. Marcus or Pat will present but can you fill in the template?

☐ I will put together the ppt for Law Enforcement Outreach. Can you give him input from your side so he can fill in the template?

☐ Can you do the ppt for Tony?

Thanks,

---

<< File: DRAFT Going Dark DAB 20090310.ppt >> << File: Director's Advisory Board Agenda.doc >>
Tony looks good to me. I don’t see anything in here necessarily classified unless you see something in particular. We can just leave it marked it law enforcement sensitive.

I made some edits to the attached so please review for accuracy. Also, pls classify as appropriate. Thanks,

Anthony P. DiClemente
Chief, Data Acquisition / Intercept Section
Operational Technology Division

Tony,
Here is the presentation for tomorrow make any changes as appropriate

<< File: DRAFT Going Dark gdk 20090310rev.ppt >>
**Director's Advisory Board**  
**March 18, 2009 Meeting**  
**Going Dark Initiative**  
**Agenda**

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<tr>
<th>Time</th>
<th>Topic</th>
<th>Presenter</th>
</tr>
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<tbody>
<tr>
<td>10:00 am</td>
<td><em>Overview of the National Lawful Intercept Strategy</em> – Marcus Thomas, Assistant Director – Operational Technology Division (15-minute presentation followed by 15 minute Q&amp;A)</td>
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<tr>
<td>10:30 am</td>
<td><em>Operational Obstacles</em> – Data Acquisition and Intercept Section (DAIS) (15-minute presentation followed by 15 minute Q&amp;A)</td>
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<tr>
<td>11:00 am</td>
<td><em>Research and Development</em> – DAIS (15-minute presentation followed by 15 minute Q&amp;A)</td>
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<tr>
<td>11:30 am</td>
<td>Break</td>
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<tr>
<td>11:45 am</td>
<td><em>CALEA / New Legislative Efforts</em> – Acting Section Chief, Technical Programs Section (TPS) (15-minute presentation followed by 15 minute Q&amp;A)</td>
<td></td>
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<tr>
<td>12:15 pm</td>
<td><em>New Lawful Intercept Authorities</em> – Tony DiClemente, Section Chief, DAIS (15-minute presentation followed by 15 minute Q&amp;A)</td>
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<td>12:45 pm</td>
<td>Break</td>
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<tr>
<td>1:00 pm</td>
<td><em>Law Enforcement Outreach</em> – DAIS (15-minute presentation followed by 15 minute Q&amp;A)</td>
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<tr>
<td>1:30 pm</td>
<td><em>Industry Outreach</em> – Technical Liaison Unit, TPS (15-minute presentation followed by 15 minute Q&amp;A)</td>
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<tr>
<td>2:00 pm</td>
<td>Round Table: <em>The Future of Lawful Intercept</em> – All One-hour discussion</td>
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<tr>
<td>3:00 pm</td>
<td>Close</td>
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☐ I will put together the ppt for Law Enforcement Outreach. Can you give him input from your side so he can fill in the template?

☐ Can you do the ppt for Tony?

Thanks,
Here’s the presentation for the ODNI.

The supersedes Going Dark ARM 6-03-08 ppt. I’ll send it to you on the low side.

Mb
"Going Dark"

Law Enforcement's Need to Preserve Lawful Intercept (LI) Capabilities

Title III Electronic Surveillance 1968-2007

June 2008
Title III Electronic Surveillance 1968-2007 *

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"Going Dark"

Law Enforcement's Need to Preserve
Lawful Intercept (LI) Capabilities

Foreign Intelligence Surveillance Act (FISA)
Court Orders 1979-2007

June 2008
This seems to be the latest, its from April.

The latest "Going Dark."

Can we get copies of this brief printed for all the attendees of this Thursday's meeting?

Louis
Kerry E. Haynes
Executive Assistant Director
Science and Technology Branch
FBIHQ Room 7125
I added a few slides after we talked. Here are the slides I put together for the 'proposed' business model development.
Is this the briefing you needed?

Per your conversation with Louis Grever a few minutes ago, please see the attached "Going Dark" Briefing.

Thanks,

Executive Office
Science and Technology Branch
@fbi.gov
WITH CHART ATTACHED!

Can you get a copy of this to [Redacted]? This has updated chart.

Marcus

Marcus C. Thomas
Assistant Director,
Operational Technology Division

UNCLASSIFIED

UNCLASSIFIED

UNCLASSIFIED

UNCLASSIFIED

UNCLASSIFIED
From: GREVER, LOUIS E (DO) (FBI)
Sent: Thursday, January 31, 2008 3:45 PM
To: (DO) (FBI)
Subject: FW: Going Dark

UNCLASSIFIED NON-RECORD

Here you go............

Executive Office
Science and Technology Branch
@ic.fbi.gov

From: THOMAS, MARCUS C (OTD) (FBI)
Sent: Thursday, January 31, 2008 1:00 PM
To: HAYNES, KERRY E. (DO) (FBI); GREVER, LOUIS E. (DO) (FBI)
Subject: Going Dark

UNCLASSIFIED NON-RECORD

For tomorrow's GD planning session.

Briefing.

Directors
leffing_29Jan08_v18

Marcus C. Thomas
Assistant Director,
Operational Technology Division

UNCLASSIFIED
FBI National Electronic Surveillance Strategy: Countering ELSUR Impediments on the road to "Going Dark"

Briefing for the Director
January 24, 2008
by the Operational Technology Division
the FBI is barely keeping its head above water. All law enforcement agencies are in imminent danger of “Going Dark.”

- Working with industry to ensure effective service provider lawful intercept target identifiers and exist is becoming more difficult as the industry expands to include new entrants never before responsible for facilitating any form of lawful interception.
- Finding the substantial technical resources, personnel, and funding required to field and operate complex and costly systems to "collect," "process," "decrypt," "view," "analyze," and "share" lawful intercept information.

**Background:** Key law enforcement and industry representatives have devised a comprehensive five-pronged National Lawful Intercept Strategy to meet the serious threats to lawful intercept. While self-help has always been a first instinct for law enforcement agencies, we are at a point where additional funding and continued, enhanced, outside help is required. The five prongs of the National Lawful Intercept Strategy include:

A. 

B. 

C. **Law Enforcement Coordination:** To increase efficiency and cost-effectiveness, integrated leadership and support within law enforcement must be increased and coordinated. Examples of law enforcement coordination include: research and development; distribution of analysis, processing, and presentation tools and applications; strategic and tactical technical and operational assistance; sharing of technical best practices; and outreach and liaison with entities within the communications industry.

D. **Industry Cooperation:** To institute greater and broader industry liaison, particularly with IP-based communications service providers and manufacturers and emerging trusted third-party lawful intercept solution providers. This effort will focus on obtaining greater information and insight into emerging technologies, services, applications to ensure that law enforcement can field more timely, cost-effective technical solutions and identify less expensive commercial lawful intercept solutions.

E. **Resources:** To accomplish the above four prongs of the National Lawful Intercept Strategy, additional resources are required.
Legal Authorities: The legal authorities under which lawful intercept takes place include, but are not limited to Title III of the Omnibus Crime Control and Safe Streets Act, the Electronic Communications Privacy Act (ECPA), and the Foreign Intelligence Surveillance Act (FISA). Further, much of the interaction between law enforcement and the communications industry, particularly the mandate for telecommunications carriers to design into their networks capabilities to perform lawful intercept, is based on the Communications Assistance for Law Enforcement Act (CALEA).

Recommendations / Actions: The FBI will continue to pursue the development and implementation of the National Lawful Intercept Strategy to ensure the future viability of this effective, useful, and indispensable investigative tool for the entire law enforcement community.

A. Seek continued input from law enforcement leadership (e.g., IACP, Major Cities Chiefs, Major County Sheriffs' Association) and industry regarding the development and implementation of the five-pronged National Lawful Intercept Strategy. The FBI will finalize the five-pronged National Lawful Intercept Strategy based on the above described continuing dialog.

B. Vet the Strategy with key Administration officials (e.g., Office of Management and Budget [OMB], Office of the Director of National Intelligence [ODNI]; Department of Justice [DOJ]) to ensure approval and commitment from necessary components.

C. Socialize the Strategy with key Congressional members and staff (e.g., Judiciary, Intelligence, Appropriations) as appropriate.

D. Explore potential for early Strategy implementation, resource allocation, and funding and secure the five-pronged Strategy package: legislative and full-scale resource and funding enhancements.
Law Enforcement’s Need to Preserve Lawful Intercept Capabilities

Issue: Court-authorized lawful interception is a critically important governmental technique utilized in all types of investigations to enforce the Nation’s laws, ensure the safety of its citizens, and maintain the Nation’s security.

Practically speaking, failing to maintain lawful intercept technical capabilities effectively repeals the lawful authority created by the Congress to conduct lawful interception. Lawful interception capabilities must be maintained.

A. 

and evidence in criminal and

•

•

B. The convergence of communications and the increased variety and complexity of advanced services and technologies has resulted in impediments to lawful intercept capabilities and created an increasingly evident “lawful intercept capabilities gap.” In the face of more diverse and complex communications services and technologies, including the rapid growth in diverse protocols, proprietary compression techniques, encryption, and other technological factors, law enforcement is now faced with several especially daunting lawful interception challenges.

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The costs of conducting lawful intercepts are increasing daily. State and locale law enforcement agencies are being shut out; and
“Going Dark”
Law Enforcement’s Need to Preserve Lawful Intercept Capabilities

I. Issue: Court-authorized lawful interception is a critically important governmental technique utilized in all types of investigations to enforce the Nation's laws, ensure the safety of its citizens, and maintain the Nation's security. Practically speaking, failing to maintain lawful intercept technical capabilities effectively repeals the lawful authority created by the Congress to conduct lawful interception. Lawful interception capabilities must be maintained.

A. and evidence in criminal and

B. The convergence of communications and the increased variety and complexity of advanced services and technologies has resulted in impediments to lawful intercept capabilities and created an increasingly evident "lawful intercept capabilities gap." In the face of more diverse and complex communications services and technologies, including the rapid growth in diverse protocols, proprietary compression techniques, encryption, and other technological factors, law enforcement is now faced with several especially daunting lawful interception challenges.

• The costs of conducting lawful intercepts are increasing daily. State and local law enforcement agencies are being shut out; and the FBI is barely keeping its head above water. All law enforcement agencies are in imminent danger of "Going Dark."

• Working with industry to ensure effective service provider lawful intercept target identifiers and exist is
becoming more difficult as the industry expands to include new entrants never before responsible for facilitating any form of lawful interception.

- Finding the substantial technical resources, personnel, and funding required to field and operate complex and costly systems to “collect,” “process,” “decrypt,” “view,” “analyze,” and “share” lawful intercept information.

II. **Background:** Key law enforcement and industry representatives have devised a comprehensive five-pronged National Lawful Intercept Strategy to meet the serious threats to lawful intercept. While self-help has always been a first instinct for law enforcement agencies, we are at a point where additional funding and continued, enhanced, outside help is required. The five prongs of the National Lawful Intercept Strategy include:

A. ****

B. ****

C. **Law Enforcement Coordination:** To increase efficiency and cost-effectiveness, integrated leadership and support within law enforcement must be increased and coordinated. Examples of law enforcement coordination include: research and development; distribution of analysis, processing, and presentation tools and applications; strategic and tactical technical and operational assistance; sharing of technical best practices; and outreach and liaison with entities within the communications industry.

D. **Industry Cooperation:** To institute greater and broader industry liaison, particularly with IP-based communications service providers and manufacturers and emerging trusted third-party lawful intercept solution providers. This effort will focus on obtaining greater information and insight into emerging technologies, services, applications to ensure that law enforcement can field more timely, cost-effective technical solutions and identify less expensive commercial lawful intercept solutions.

E. **Resources:** To accomplish the above four prongs of the National Lawful Intercept Strategy, additional resources are required.

III. **Legal Authorities:** The legal authorities under which lawful intercept takes place include, but are not limited to Title III of the Omnibus Crime Control and Safe Streets Act, the Electronic Communications Privacy Act (ECPA), and the Foreign Intelligence Surveillance Act (FISA). Further, much of the interaction between law enforcement and the communications industry, particularly the mandate for telecommunications carriers to design into their networks capabilities to perform
lawful intercept, is based on the Communications Assistance for Law Enforcement Act [CALEA]).

IV. Budget: There is no current budget allocated for the Going Dark Initiative. The
would support the expansion of capacity of certain critical lawful intercept collection tools.

V. Recommendations / Actions: The FBI will continue to pursue the development and implementation of the National Lawful Intercept Strategy to ensure the future viability of this effective, useful, and indispensable investigative tool for the entire law enforcement community.
A. Seek continued input from law enforcement leadership (e.g., IACP, Major Cities Chiefs, Major County Sheriffs' Association) and industry regarding the development and implementation of the five-pronged National Lawful Intercept Strategy. The FBI will finalize the five-pronged National Lawful Intercept Strategy based on the above described continuing dialog.
B. Vet the Strategy with key Administration officials (e.g., Office of Management and Budget [OMB], Office of the Director of National Intelligence [ODNI]; Department of Justice [DOJ]) to ensure approval and commitment from necessary components.
C. Socialize the Strategy with key Congressional members and staff (e.g., Judiciary, Intelligence, Appropriations) as appropriate.
D. Explore potential for early Strategy implementation, resource allocation, and funding and secure the five-pronged Strategy package: legislative and full-scale resource and funding enhancements.

VI. Point(s) of Contact:
A. Marcus Thomas, Assistant Director, OTD
B. Patrick Cook, Deputy Assistant Director, OTD
C. Barry Smith, Chief, Technical Programs Section (TPS), OTD
D. Acting Chief, CALEA Implementation Unit (CIU), OTD @askcalea.net

Information provided by: Section Chief Charles Barry Smith
Information Approved by: AD Marcus Thomas
Dated: 07/30/2008
GOING DARK

What is “Going Dark”?

Response:

- The term “Going Dark,” is used to refer to constriction of the law enforcement’s ability to comprehensively and lawfully collect data and information, conduct electronic surveillance and analyze the raw data.

- The challenge is due to two factors:
  - the rapid evolution of telecommunications and data collection technology and services; and,
  - Law enforcement’s inability to quickly develop and deploy robust surveillance, intercept/collection, and analytical capabilities.

- These circumstances reflect an emerging “capability gap” for the FBI and other law enforcement.

Didn’t Congress already solve this problem when it passed the Communications Assistance for Law Enforcement Act (CALEA) in 1994?

Response:

- No, CALEA applied to telecommunications carriers and to services that replace a substantial portion of the local exchange service.

- CALEA excluded, and still excludes, a wide range of other services which today travel over wire and electronic communications transmission networks and are interwoven in network traffic.

- I will be happy to work further on this matter with you and the Committee.

What are some of the specific problems the FBI and the rest of the law enforcement are facing?

Response:

-
How does the FBI propose to solve this problem?

Response:

- To meet this challenge, key law enforcement and industry representatives have collaborated with the FBI to form a comprehensive, five-pronged National Lawful Intercept Strategy. Key points include:
  
  - modernizing lawful intercept laws;
  - updating lawful intercept authorities;
  - increasing law enforcement coordination;
  - establishing broader industry liaison, and
  - seeking increased funding for these efforts.

Why should the FBI's strategy be pursued on behalf of law enforcement?

Response:

- The FBI is well suited to gain consensus regarding advanced methods of electronic surveillance and to ensure comprehensive understanding of the challenges faced by law enforcement and help devise and implement solutions. The FBI routinely works with the communications industry to develop intercept capabilities for the law enforcement community, as industry is comfortable working with the FBI under its domestic authority. In addition, the FBI has long assisted other federal, state, and local law enforcement effect criminal and Cyber-based electronic surveillance and provides vital support in national security matters.

Information provided/approved by: AD Marcus Thomas, OTD
Date:
July 7, 2008

Contracting Officer
Federal Bureau of Investigation
935 Pennsylvania Ave., N.W., Room 10254
Washington, D.C. 20535


Dear

RAND is pleased to submit the subject change proposal in response to your email request dated, June 26, 2008. It is assumed that the resulting funding will be provided as a modification to Contract No. J-FBI-03-290, including a new purchase order.

If you have any questions related to the technical proposal, please feel free to contact at [email] or by email at [email].

For contractual or administrative matters, please contact the undersigned at (310) 393-0411 x____ or by email at [email].

Sincerely,

Enclosed as stated

cc: 

OBJECTIVE ANALYSIS, EFFECTIVE SOLUTIONS.
FBI Going Dark Initiative Electronic Surveillance Analysis Project

Principal Investigators

Submitted to
Federal Bureau of Investigation

Submitted by
RAND
1776 Main Street
Santa Monica, California 90407-2138

July 7, 2008

This material is considered proprietary to RAND. These data shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than evaluation, provided that if work is approved as a result of or in connection with the submission of these data, the Government shall have the right to duplicate, use or disclose the data to the extent provided in the contract. This restriction does not limit the Government's right to use information contained in the data if it is obtained from another source without restriction.
Data Acquisition/Intercept Section Unit Chief Meeting
Aug. 21, 2008 1:30 pm - 2:30 pm

Attendees:

Items of Discussion:

• A whitepaper on Going Dark will be distributed to each Unit Chief. This was sent out in the August 22, 2008 mail run. Comments from each Unit Chief are due August 29, 2008.
Going Dark Whitepaper Edits

From DITU:

In the section titled starting on page 10, a paragraph should be added on page 11 stating something to the effect of:

On page 12 there is a bullet that provides a suggestion on however their was no prior mention of the problem which this suggestion addresses.

From SPTU:

Page 7 uses the phrase while on page 11 says This should be consistent (I like the first usage on page 7).

Page 10, second paragraph, gives Alternatively, they could

I thought the document was difficult to get through due to the heavy use of acronyms. In particular and LI (Lawful interception) were rather forgetful and often had me wondering what the heck they stood for.

From TICTU:

I requested TICTU’s SSAs and Program Managers to read and provide input to the "Going Dark" whitepaper. The team overall believe that the whitepaper had validity and provided a good overview from past to present challenges. There seemed to be consensus that as mentioned on page 11 of this write-up. However,

The team agreed that a move in the right direction is with the five-pronged National LI Strategy.

- Modernization of LI LAWS-
- LI Authorities Enactment-
- Enhanced LEA Coordination
- Greater Industry/LEA Cooperation
- New Federal Resources

If additional information is required, please advise.
Hello.

The attached file contains sections that I have written towards the Going Dark ETR Bulletin. I seem to be at a point where the information needs to be reviewed before going to editing.

Whenever you get a chance, please let me know where changes/addition/deletions need to be made.

P.S.

Not that I suspect it would be a problem, but don’t worry about hurting my feelings. My approach is to get a product out for comment and then modify it as directed.
Director's Advisory Board
March 18, 2009 Meeting
Going Dark Initiative
Agenda

10:00 am: Overview of the National Lawful Intercept Strategy – Marcus Thomas, Assistant Director – Operational Technology Division (15-minute presentation followed by 15 minute Q&A)

10:30 am Research and Development – Data Acquisition and Intercept Section (DAIS) (15-minute presentation followed by 15 minute Q&A)

11:00 am: Operational Obstacles – DAIS (15-minute presentation followed by 15 minute Q&A)

11:30 am Break

11:45 am CALEA/New Legislative Efforts – Acting Section Chief, Technical Programs Section (TPS) (15-minute presentation followed by 15 minute Q&A)

12:15 pm New Lawful Intercept Authorities – Tony DiClemente, Section Chief, DAIS (15-minute presentation followed by 15 minute Q&A)

12:45 pm Break

1:00 pm Law Enforcement Outreach – DAIS (15-minute presentation followed by 15 minute Q&A)

1:30 pm Industry Outreach – Marcus Thomas (15-minute presentation followed by 15 minute Q&A)

2:00 pm Round Table: The Future of Lawful Intercept – All One-hour discussion

3:00 pm Close
Attached is the revised agenda.

Thanks,

Director's Advisory Board Agen...
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NON-RECORD

Will do.

Thanks

Management & Program Analyst
Strategic Resources Unit
Operational Technology Division

Voice
Mobile
Fax

UNCLASSIFIED
NON-RECORD

Mr. Thomas indicated one accomplishment could be Going Dark and for others he suggested that you canvass the SCs to see what they have for suggestions.

Executive Assistant
Operational Technology Division

Blackberry
@ic.fbi.gov

UNCLASSIFIED
In SC McNally's absence, would you please advise if this is going to the appropriate OGC person?

Thanks,

Budget Formulation and Presentation Unit
Finance Division

--- Original Message ---
From: [OGC] (FBI)
Sent: Tuesday, June 16, 2009 11:04 AM
To: [OGC] (FBI)
Cc: [OGC] (FBI); [FD] (FBI); [FD] (FBI); [OGC] (FBI)
Subject: FW: Surveillance Worksheet

UNCLASSIFIED
NON-RECORD

Hello [__________],
I spoke with [__________] who referred me to you. While [__________] provided her comments on these FBI responses, we thought it should also be reviewed by someone in NSLB as well. I am unsure if [__________] is the correct contact and I have not yet heard from her—- if it needs to be farmed out to someone else in OGC would you please advise?

Thank you,

Budget Formulation and Presentation Unit
Finance Division

--- Original Message ---
From: [OGC] (FBI)
Sent: Tuesday, June 16, 2009 10:15 AM
To: [OGC] (FBI)
Subject: RE: Surveillance Worksheet

UNCLASSIFIED
NON-RECORD
- I will try to get you some comments ASAP.

-----Original Message-----
From: (FD) (FBI)
Sent: Monday, June 15, 2009 5:30 PM
To: (OGC) (FBI); (FD) (FBI); (FD) (FBI); (FD) (FBI)
Cc: (FD) (FBI); (FD) (FBI); (FD) (FBI); (FD) (FBI)
Subject: FW: Surveillance Worksheet

UNCLASSIFIED
NON-RECORD

DOJ has been asked by the Hill to compile Department Surveillance activities. As the
attached questionnaire received from DOJ has legal references (questions I., II. 1, and
II.3), would you please review. These responses were provided by OTD, CIRG, and CD.

DOJ initially asked us to submit this by COB today, however, now that we've deemed it to
require OGC review we've pushed back on them for the deadline (tomorrow COB if possible).
Please note that our responses must be unclassified.

Call with any questions,

PS please forward to appropriate persons, thanks.

Budget Formulation and Presentation Unit
Finance Division

-----Original Message-----
From: (FD) (FBI)
Sent: Monday, June 15, 2009 4:35 PM
To: (IR) (FBI); (CD) (FBI); (FD) (FBI); (FD) (FBI)
Cc: (IR) (FBI); (CD) (FBI); (OTD) (FBI); (FD) (FBI)
Subject: RE: Surveillance Worksheet

UNCLASSIFIED
NON-RECORD

CIRG, OTD, and CD-

Attached please find the consolidated "Surveillance Questionaire" with your submitted
information. A reminder that this needs to be unclassified, so please advise if you have
any concerns or see anything which needs revision before submission to DOJ tonight.

Please advise within the hour, Thanks.

Budget Formulation and Presentation Unit
Finance Division

-----Original Message-----
From: (FD) (FBI)
UNCLASSIFIED
NON-RECORD

CIRG and CD-

Please see the attached questionnaire and below email for context, concerning a Department collection of information on surveillance activities. Would you please individually complete the attached concerning your respective surveillance programs and send back to me by Friday COB so that we are able to consolidate responses and return to DOJ by Monday deadline.

Please note that DOJ is looking for high-level unclassified information only.

Please advise if you have any concerns,

---

Budget Formulation and Presentation Unit
Finance Division

-----Original Message-----
From: [mailto:](mailto:FD (FBI)
Sent: Wednesday, June 10, 2009 2:30 PM
To: [FD (FBI); Koscielny, Kristin M.; Klein, Richard L.]
Cc: [FD (FBI)]
Subject: FW: Surveillance Worksheet

I think [ ] is taking the lead on answering these question. She has reached out to CIRG, CD and OTD.

Where they are looking for performance measures, I suggest we use the ones we already provide in the DU narratives. There are some questions about what challenges we face. We could answer those in terms of our FY 2010 budget request and how the FY 2010 budget request answers those challenges to some extent. Technical challenges would include the going dark discussion. Statutory issues might include issues related to the patriot act.

[ ] please include this on the tracker, with [ ] as the lead and note due date, June 15.

Others, FYI only.

-----Original Message-----
From: [mailto:]
Sent: Wednesday, June 10, 2009 11:02 AM
To: [FD (FBI); ]
Cc: [FD (FBI)]
Subject: FW: Surveillance Worksheet
Please take a look at the email below and let me know if you have questions.

Thanks!

Department of Justice, Budget Staff
Justice Management Division

From: [Redacted]
Sent: Wednesday, June 10, 2009 11:01 AM
To: [Redacted]
Cc: [Redacted]
Subject: Surveillance Worksheet

Good Morning,

We have been asked by the hill to compile Department Surveillance Activities. Please have your components (DEA, ATF, USMS, FBI) complete the attached and return by COB Monday June 15th. Please note that we are looking for high-level unclassified information only. Let me know if you have any questions at all.

Thanks!

<<Surveillance Questionnaire LECG.doc>>

Department of Justice, Budget Staff
Justice Management Division
FBI Responses to DOJ Surveillance Questionnaire  
(Law Enforcement Components)

I. Legal Statutes

1. Under what legal authorities does the component operate and how is approval obtained? (1-2 paragraphs response maximum)

A) Physical Surveillance
The Special Surveillance Group and Lookout Program operate pursuant to EO 12333, the Foreign Intelligence Act, US PATRIOT Act. Surveillance operation authority is outlined in the Attorney General's Guidelines (AGG) and the FBI's Domestic Investigations and Operations Guidelines (DIOG). Each physical surveillance case request is reviewed and approved by a Supervisory Special Agent (SSA) and Assistant Special Agent in Charge (ASAC) in the field division where the investigation is occurring.

B) Electronic Surveillance
The FBI conducts lawful electronic surveillance and searches under Title 18 USC 2510 (Wiretap), Rule 41 Search Warrants, Title 18 USC 3123 Pen Register/Trap and Trace, Title 50 Foreign Intelligence Surveillance Act (FISA) authorities for Electronic Surveillance, Physical Search and Pen Register. Some other electronic surveillance is performed under consent of a party to the communications as an exception to the order. In addition, the FBI conducts lawful electronic surveillance under state authority as authorized by the Attorney General (AG Order 2954-2008).

II. Current Surveillance Capabilities

1. What kind of surveillance (Physical, electronic) requires a warrant and what kind of warrant? (1-3 sentences per type of surveillance)

A) Physical Surveillance
Does not require a warrant.

B) Electronic Surveillance
Any electronic surveillance that involves a scenario where a person has an expectation of privacy necessitates the need for a court order or a lawful exception.

2. Please provide a brief description of where in the organization surveillance activities occur (under which division/branch, etc) and who performs surveillance? (1-2 paragraphs maximum)

A) Physical Surveillance
Within FBI Headquarters, the physical surveillance program is part of the Critical Incident Response Group (CIRG). This includes the Special Operations Group (SOG), Special Surveillance Group (SSG), Lookout program, and the Aviation program.

Actual surveillance activities are carried out by armed FBI SOG Agents assigned to SOG surveillance teams in the field divisions. These SOG teams are assigned to squads managed by a Supervisory Special Agent (SSA), reporting to an Assistant Special Agent in Charge (ASAC). Surveillance operations are also conducted by personnel of the Special Surveillance Group and Lookout Program in the field divisions.

Headquarters oversight of the aviation component of the surveillance program is handled by the Field Flight Operations Unit. The pilots assigned to the surveillance teams also normally report to the field SOG SSA.

**B) Electronic Surveillance**

Electronic Surveillance is conducted in each FBI Field Office by Technically Trained Agents (TTAs) assigned to the Technical Investigative Program or by those individuals assigned to the Operational Technology Division (OTD) at the Engineering Research Facility, Quantico, Virginia.

3. **What kind of surveillance does the organization do (physical, electronic)? For what purpose and under which authorities? (1-3 paragraphs maximum)**

The FBI does both physical and electronic surveillance under the authorities described in section I (above).

4. **Please provide a brief description of any specialized operational training provided for surveillance? (1-2 sentences maximum)**

**A) Physical Surveillance**

Surveillance non-Agent personnel receive a six week Basic Surveillance for new hires, Advance Field Training for experienced personnel, related cultural training delivered by the FBI and/or the Joint Counterintelligence Training Academy and other FBI approved vendors, Mentoring Seminar for Surveillance Program managers, training for technology introduced into the work environment, among others.

SOG Agent surveillance personnel receive basic physical surveillance training at the FBI Academy as part of New Agent training. After being assigned to an SOG squad later in their career, they participate in on the job training at the SOG squad, complete on-line Virtual Academy training courses, attend the advanced surveillance course sponsored by SOGU, attend the Tactical Emergency Vehicle Operations Course (TEVOC) and attend an advanced photography course to achieve surveillance certification. Additional courses are available to continue to increase the skills of surveillance agent operators.
B) Electronic Surveillance
Training for Technically Trained Agents (TTAs) and those individuals assigned to the Operational Technology Division (OTD) who perform electronic surveillance intercepts is conducted by the OTD.

5. Please provide a description of the different types of technologies used in surveillance, what it is used for, and any new technologies that the component is developing (2-3 paragraphs maximum)?

A) Physical Surveillance

Technologies currently used includes:
1) 
2) 
3) 
4) 
5) 
6) 

Technology that is being tested and fielded includes:
1) 
2) 
3) 
4) 
5) 

B) Electronic Surveillance
The OTD is involved in the development and deployment of surveillance technologies. This includes

6. Please provide some details on workload that the component currently tracks (number of wiretaps, FISA’s executed, etc.) (1-3 paragraphs maximum).

A) Physical Surveillance
The number of surveillances requested, conducted, or unaddressed and underaddressed, support to priority matters and threat issues (Time Utilization Record Keeping-CTURK) are tracked for

The workload that SOGU currently tracks include

B) Electronic Surveillance
The number of FISA ELSUR intercepts is classified. Criminal numbers for wiretap and pen register are reported to DOJ separately and are identified in the annual Wiretap Report.

III. Challenges/Future

1. What are some challenges (in the area of surveillance) the component faces related to (few sentences maximum per item):

   Lack of sufficient base funding to support daily operations such as which will eliminate the requirement to realign equipment funding to maintain daily operations.

   a. Training (for example, are there any special training needs?)

   A) Physical Surveillance
   Personnel of the Surveillance corps need an appropriately designed training program.

   Challenges related to training include

   Training is necessary to maintain a proficiency regarding, for example
Funding for training remains a concern.

B) Electronic Surveillance
The FBI and the law enforcement community have developed a National Strategy to ensure the continued viability of lawful electronic surveillance intercept capabilities. These challenges are explained in the Going Dark initiative of the FBI.

b. Workforce Retention

A) Physical Surveillance
Workforce retention is complicated by the nature of the work which requires

This will begin in the locations with highest threats.

B) Electronic Surveillance
N/A

c. Workload

A) Physical Surveillance
There continues to be a substantial unaddressed/underaddressed workload.

B) Electronic Surveillance
Training and workload requirements continue to increase.

2. What are some technological challenges (in the area of surveillance) the component faces?

Technological challenges include

2. Are there any statutory issues the component faces?
N/A
I know. So was I. Although [redacted] really is not in tomorrow or Monday.

I was joking. [redacted] and [redacted] have been working on it today. [redacted] will be back tomorrow and will pitch in then. This is due on Monday, right?

Steven N. Siegel, Section Chief
NSLB - Policy, Litigation, Training and Oversight

He's not in tomorrow or Monday.

We were hoping that [redacted] would handle them for us. Is he in tomorrow and Monday?
Who's working the budget issues in NSLB? I've heard [ ] is out?

Everyone:

Can you please tell me if your branches are planning to request any FSL as part of the Computer Intrusions initiatives? If so, how many?

According to my records, for FY2011 (only): [ ]

Are you going to reduce these numbers proportionately or are your priorities shifting? Please advise ASAP so I can integrate into the overall threat request.

NSLB - I need more than numbers from you this time - metrics would be ideal.

Please be sure to include SC Sherry Sabol on any responses because after today I will be on A/L until next Tuesday.

FYI - for FY 2011 [ ]

for Operational R&D/Going Dark. I hope to have a blurb/justification to [ ] before I go. If I don't get it to you, then please contact Sherry.

Thanks,
Since all the submissions are pretty much branch composites, I'm not at all sure how useful individual unit data will be. But here are first quick (warty) scratchings from PCLU:
Bottom line:
The requested enhancements are necessary to support efforts by

( U )
DEPRECATED FROM: Multiple Sources
DECLASSIFY ON: 20340318
SECRET/NOFORN

DEPRECATED FROM: Multiple Sources
DECLASSIFY ON: 20340318
SECRET/NOFORN

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NSLB - I need more than numbers from you this time - metrics would be ideal.

Please be sure to include SC Sherry Sabol on any responses because after today I will be on A/L until next Tuesday.

FYI - (or Operational R&D/Going Dark).

Thanks,
Since all the submissions are pretty much branch composites, I'm not at all sure how useful individual unit data will be. But here are first quick (warty) scratchings from PCLU:
Bottom line: The requested enhancements are necessary to support efforts by
The FBI's Multi-Billion "High-Tech Surveillance" Program

by Tom Burghardt

The Federal Bureau of Investigation's budget request for Fiscal Year 2010 reveals that America's political police intend to greatly expand their high-tech surveillance capabilities.

According to ABC News, the FBI is seeking additional funds for the development of a new 'Advanced Electronic Surveillance' program which is being funded at $233.9 million for 2010. The program has 133 employees, 15 of whom are agents."

Known as "Going Dark," the program is designed to beef up the Bureau's already formidable electronic surveillance, intelligence collection and evidence gathering capabilities "as well as those of the greater Intelligence Community," ABC reports. An FBI spokesperson told the network:

"The term 'Going Dark' does not refer to a specific capability, but is a program name for the part of the FBI, Operational Technology Division's (OTD) lawful interception program which is shared with other law enforcement agencies."

"The term applies to the research and development of new tools, technical support and training initiatives." (Jason Ryan, "DOJ Budget Details High-Tech Crime Fighting Tools," ABC News, May 9, 2009)

Led by Assistant Director Marcus C. Thomas, OTD describes the office as supporting "the FBI's investigative and intelligence-gathering efforts- and those of our federal, state, and local law enforcement/intelligence partners— with a wide range of sophisticated technological equipment, examination tools and capabilities, training, and specialized experience. You won't hear about our work on the evening news because of its highly sensitive nature, but you will continue to hear about the fruits of our labor..."

According to OTD's website, the Division possesses "seven core capabilities": Digital Forensics; Electronic Surveillance; Physical Surveillance; Special Technology and Applications; Tactical Communications; Tactical Operations and finally, Technical Support/Coordination.

Under the heading "Electronic Surveillance," OTD deploys "tools and techniques for performing lawfully-authorized intercepts of wired and wireless telecommunications and data network communications technologies; enhancing unintelligible audio; and working with the communications industry as well as regulatory and legislative bodies to ensure that our continuing ability to..."
But as we have seen throughout the entire course of the so-called "war on terror," systemic constitutional breaches by the FBI—from their abuse of National Security Letters, the proliferation of corporate-dominated Fusion Centers to the infiltration of provocateurs into antiwar and other dissident groups—the only thing "impaired" by an out-of-control domestic spy agency have been the civil liberties of Americans.

Communications Backdoor Provided by Telecom Grifters

While the Bureau claims that it performs "lawfully-authorized intercepts" in partnership with the "communications industry," also known as telecommunications' grifters, the available evidence suggests otherwise.

As Antifascist Calling reported last year, security consultant and whistleblower Babak Pasdar, in a sworn affidavit to the Government Accountability Project (GAP), provided startling details about the collusive—and profitable alliance—between the FBI and America's wireless carriers.

Pasdar furnished evidence that FBI agents have instantly transferred data along a high-speed computer circuit to a Bureau technology office in Quantico, Virginia. The so-called Quantico Circuit was provided to the FBI by Verizon, The Washington Post revealed.

According to published reports, the company maintains a 45 megabit/second DS-3 digital line that allowed the FBI and other security agencies virtually "unfettered access" to the carrier's wireless network, including billing records and customer data "transferred wirelessly." Verizon and other telecom giants have supplied FBI technical specialists with real-time access to customer data.

"The circuit was tied to the organization's core network," Pasdar wrote. Such access would expose customers' voice calls, data packets, even their physical movements and geolocation to uncontrolled—and illegal—surveillance.

In April, Wired obtained documents from the FBI under a Freedom of Information Act request. Those files demonstrate how the Bureau's "geek squad" routinely hack into wireless, cellular and computer networks.

Although the FBI released 152 heavily-redacted pages, they withheld another 623, claiming a full release would reveal a "sensitive investigative technique." Nevertheless, Wired discovered that the FBI is deploying spyware called a "computer internet protocol address verifier," or CIPAV, designed to infiltrate a target's computer and gather a wide range of information, "which it sends to an FBI server in eastern Virginia." While the documents do not detail CIPAV's capabilities, an FBI affidavit from a 2007 case indicate it gathers and reports,

- a computer's IP address; MAC address; open ports; a list of running programs;
- the operating system type, version and serial number; preferred internet browser and version; the computer's registered owner and registered company name; the current logged-in user name and the last-visited URL.

After sending the information to the FBI, the CIPAV settles into a silent "pen register" mode, in which it lurks on the target computer and monitors its internet use, logging the IP address of every server to which the machine connects. (Kevin Poulsen, "FBI Spyware Has Been Snaring Extortionists, Hackers for Years," Wired, April 16, 2009)

"Going Dark" is ostensibly designed to help the Bureau deal with
technological changes and methods to intercept Voice Over Internet Protocol (VOIP) phone calls facilitated by programs such as Skype. But a tool that can seamlessly target hackers and cyber-criminals can just as easily be deployed against political opponents.

The FBI also intends to continue their use of automated link- and behavioral analysis derived from data mining as investigative tools. As a subset of applied mathematics, social network theory and its derivatives, link- and behavioral analysis, purport to uncover hidden relationships amongst social groups and networks. Over time, it has become an invasive tool deployed by private- and state intelligence agencies against political activists, most recently, as Antifascist Calling reported in February, against protest groups organizing against the Republican National Convention.

These methods raise very troubling civil liberties' and privacy concerns. The Electronic Privacy Information Coalition (EPIC) filed a Freedom of Information Act request, demanding that the General Services Administration (GSA) turn over agency records "concerning agreements the GSA negotiated between federal agencies and social networking services, including Flickr, YouTube, Vimeo, Blip.tv, and Facebook."

With the proliferation of social networking sites, applications allow users to easily share information about themselves with others. But as EPIC points out, "Many online services relay information about online associations as users create new relationships. While government agencies may use social networking, cloud computing, and Internet services to create greater transparency on their activities, it remains unclear if there are data collection, use, and sharing limitations."

And with "information discoverability" all the rage amongst spooky security agencies ranging from the FBI to the NSA, "connecting the dots," particularly when it comes to dissident Americans, "is gaining increasing attention from homeland security officials and experts in their ongoing attempt to corral anti-terrorism information that resides across federal, state and local jurisdictions," Federal Computer Week reports.

Will an agreement between Facebook and the FBI facilitate "dot connecting" or will it serve as a new, insidious means to widen the surveillance net, building ever-more intrusive electronic case files on dissident Americans?

The Electronic Police State

As Antifascist Calling reported earlier this month, citing the Electronic Frontier Foundation's (EFF) dossier on the FBI's Investigative Data Warehouse (IDW), the office had "transitioned to the operations and maintenance phase during FY 2008" and now possesses some "997,368,450 unique searchable documents," ready for data mining.

But as study after study has revealed, most recently the comprehensive examination of various programs by the National Research Council, automated data mining is "likely to generate huge numbers of false leads."

Because the mountainous volumes of data "mined" for "actionable intelligence" are drawn from dozens of disparate sources on terrorism or criminal suspects, "they have an enormous potential for privacy violations because they will inevitably force targeted individuals to explain and justify their mental and emotional states."

EFF documented that the Bureau's Telephone Application (TA) "provides a central repository for telephone data obtained from investigations." TA allegedly functions as an "investigative tool ... for all telephone data.

https://www.324mail.com/owa/?ae=Item&t=IPM.Note&id=RgAAAACZIMnLjTJeTqkICP... 9/24/2009
collected during the course of FBI investigations. Included are pen register data, toll records, trap/trace, tape-edits, dialed digits, airnet (pager intercepts), cellular activity, push-to-talk, and corresponding subscriber information."

Additionally, the civil liberties' group revealed that "records obtained through National Security Letters are placed in the Telephone Application, as well as the IDW by way of the ACS [Automated Case] system." It would appear that "Going Dark" will serve as a research subsystem feeding the insatiable appetite of the Investigative Data Warehouse.

In fact, these programs are part and parcel of what the security website Cryptohippie refers to as the Electronic Police State. Far from keeping us safe from all manner of dastardly plots hatched by criminals and/or terrorists, Cryptohippie avers:

An electronic police state is quiet, even unseen. All of its legal actions are supported by abundant evidence. It looks pristine.

An electronic police state is characterized by this:

State use of electronic technologies to record, organize, search and distribute forensic evidence against its citizens.

The two crucial facts about the information gathered under an electronic police state are these:

1. It is criminal evidence, ready for use in a trial.

2. It is gathered universally and silently, and only later organized for use in prosecutions.

In an Electronic Police State, every surveillance camera recording, every email you send, every internet site you surf, every post you make, every check you write, every credit card swipe, every cell phone ping... are all criminal evidence, and they are held in searchable databases, for a long, long time. Whoever holds this evidence can make you look very, very bad whenever they care enough to do so. You can be prosecuted whenever they feel like it—the evidence is already in their database. ("The Electronic Police State, 2008 National Rankings," Cryptohippie, no date)

Unfortunately, this is not the stuff of paranoid fantasies, but American reality in the year 2009; one unlikely to change in the foreseeable future.

In addition to "Going Dark," the FBI is busily constructing what ABC News refers to as the "development of the Biometric Technology Center, a Joint Justice, FBI and DoD program." At a cost of $97.6 million, the center will function as a research and development arm of the Bureau's Biometric Center of Excellence (BCOE), one which will eventually "be a vast database of personal data including fingerprints, iris scans and DNA which the FBI calls the Next Generation Identification (NGI)."

The program is closely tied with technology under development by West Virginia University's Center for Identification Technology Research (CITeR). As the FBI's "lead academic partner in biometrics research" according to a Bureau press release, CITeR provides "biometrics research support to the FBI and its law enforcement and national security partners and serve as the FBI liaison to the academic community of biometric researchers nationwide."

Indeed, CITeR director Lawrence A. Hornak, "a visionary of the Big Brother school of technology" told The Register, he awaits the day "when devices
will be able to 'recognize us and adapt to us.' The "long-term goal," Hornak declared, is the "ubiquitous use of biometrics."

But as The Register pointed out when the program was publicly rolled-out, "civil libertarians and privacy advocates are not amused."

They claim that the project presents nightmare scenarios of stolen biometric information being used for ever-more outlandish forms of identity theft, which would be nearly impossible to correct. Correcting an inaccurate credit report is already an insulting and hair-raising experience in America, and critics contend that the use of biometrics would make correcting inaccurate credit reports or criminal histories nearly impossible. Besides, they argue, the US government does not exactly have a sterling record when it comes to database security—what happens when, as seems inevitable, the database is hacked and this intimate and allegedly indisputable data is compromised? ...

Databases usually become less accurate, rather than more, the older and bigger they get, because there’s very little incentive for the humans that maintain them to go back and correct old, inaccurate information rather than simply piling on new information. Data entry typically trumps data accuracy. Furthermore, the facial recognition technology in its current iteration is woefully inaccurate, with recognition rates as low as 10 per cent at night. All in all, there is ample reason for skepticism—not that it will make much of a difference. (Burke Hansen, "FBI preps $1bn biometric database," The Register, December 24, 2007)

But VWU’s CITeR isn’t the only partner lining-up to feed at the FBI’s trough. ABC reports that the Bureau "has awarded the NGI contract to Lockheed Martin to update and maintain the database which is expected to come online in 2010. After being fully deployed the NGI contract could cost up to $1 billion."

However, Federal Computer Week reported in 2008 that although the initial contract will "consist of a base year," the potential for "nine option years" means that "the value of the multiyear contract ... could be higher." You can bet it will!

Additional firms on Lockheed Martin’s "team" as subcontractors include IBM, Accenture, BAE Systems, Global Science & Technology, Innovative Management & Technology Services and Platinum Solutions. In other words, NGI is yet another in a gigantic herd of cash cows enriching the Military-Industrial-Security Complex.

Democracy "Going Dark"

The "vast apparatus of domestic spying" described by the World Socialist Web Site, greatly expanded under the criminal Bush regime is a permanent feature of the capitalist state; one that will continue to target political dissent during a period of profound economic crisis.

That the Obama administration, purportedly representing fundamental change from the previous government, has embraced the felonious methods of the Bush crime family and its capo tutti capo, Richard Cheney, should surprise no one. Like their Republican colleagues, the Democrats are equally complicit in the antidemocratic programs of repression assembled under the mendacious banner of the "global war on terror."

From warrantless wiretapping to the suppression of information under cover of state secrets, and from the waging of imperialist wars of conquest to torture, the militarist mind-set driving capitalist elites at warp speed towards an abyss of their own creation, are signs that new political provocations are being
prepared by America's permanent "shadow government"—the military-intelligence-corporate apparatus.

Global Research.ca

Assistant General Counsel
Science and Technology Law Unit
Office of the General Counsel
Federal Bureau of Investigation
Direct Dial: [redacted]
E-mail: [redacted]@askciaea.net

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https://www.324mail.com/owa/?ae=Item&t=IPM.Note&id=RgAAAAACZlMnLjTJcTqkJCP... 9/24/2009
From: | (OGC) (FBI)
Sent: | Tuesday, January 13, 2009 10:04 AM
To: | (OTD) (FBI)
Subject: | FW: CALEA 2004 Audit
Attachments: | Lawful InterceptStrategyWhitepaper 20081028.doc

UNCLASSIFIED
NON-RECORD

From: | (OGC) (FBI)
Sent: | Wednesday, December 17, 2008 4:04 PM
To: | (OTD) (FBI)
Subject: | RE: CALEA 2004 Audit

UNCLASSIFIED
NON-RECORD

Here is the National Lawful Intercept Strategy Whitepaper. It is law enforcement sensitive.

Lawful InterceptStrategyWhitepaper

From: | (INSD) (FBI)
Sent: | Wednesday, December 17, 2008 11:18 AM
To: | (OTD) (FBI)
Cc: | (OGC) (FBI)
Subject: | CALEA 2004 Audit

UNCLASSIFIED
NON-RECORD

Good Morning,

It has been a while since I've communicated with you and I was wondering if the living "draft" for the above audit has become a "final" version.

Thank you,
A few thoughts on the white paper:

High-level thoughts:

I sometimes got a feeling that the paper was missing the forest for the trees. I agree that there are several problems that are all contributing to relative darkness now, greater darkness in the near future, and near-total darkness in a few years, but doesn't the near-total darkness in a few years kind of dwarf the rest? And the near-total darkness, as far as I can tell, comes from

There are other problems that are causing difficulties now, but aren't they pretty much overshadowed by the really big problems I've described above?

To me,

All of that is included in here, but sometimes it seems buried. Maybe it just didn't speak to me.

More-specific comments:

On page 2: Maybe I haven't been watching enough Law and Order.

On page 5, second ¶ under: this sentence is overstated:

This sentence makes it sound like

Recommended replacement:

On page 8, the ¶ before: I like the topic of the paragraph, but two of the examples are not good:

On page 12, the bullets under item 1:

https://www.324mail.com/owa/?ae=Item&t=IPM.Note&id=RgAAAACZLMnLTcTqkICP... 9/24/2009
The second bullet says we need to

The third bullet says: I suggest replacing
Re: "Going Dark" white paper

Sherry:

As I mentioned briefly when we spoke last night, I agree with high-level comments on the Going Dark paper, and had the same reaction about missing the forest for the trees – the White Paper seems to be taking an "everything but the kitchen sink" approach rather than the more focused effort I think we were expecting to see.

In addition to the editorial/line edit type stuff I mentioned to you (which I can redline in if we end up getting a soft copy of the document), I had a few substantive comments/suggestions on some of the text:

In footnote 1, which describes, I think the description they have is confusing and somewhat inaccurate. It makes it sound like

I'd recommend replacing it with this sentence:

On Page 2, where the paper talks about, it might be helpful to drop a footnote off of that statement that lists a couple of examples for support/emphasis.

One that I know of is:

Copies of them are attached if you want to see what they say. By the way, you'll be interested to know that

Another one I know of is:
But I think you get the point of my comment...

On Page 4, under the second sentence of the paragraph that follows the block quote, it says: wonder what they mean by and thinking it might be better to which I do not think there is here.

On Page 4, under the second and third sentence read I think that the third sentence is not only an over- and or inaccurate statement, but is also kind of shoots us in the foot.

I'd suggest rewording the third sentence to say something like this:

On Page 5, I would change the last sentence in footnote 10 to say:

https://www.324mail.com/owa/?ae=Item&I=IPM.Note&id=RgAAAACZIMnLjTJeTqkI... 9/24/2009
On Page 5, in footnote 11, consider rewording the sentence to say:

Just a suggestion...

On Page 7, I'm wondering why we need that boxed quote when the same statement is at the top of the same page, but I guess that's neither here nor there. It just looks weird -- especially since there's no attribution as to who exactly said it. Just an observation...

On Page 9, in the first full paragraph, the second sentence says:

So I'd suggest rewording it this way, because I think this is really what we are trying to say:

- do you have any thoughts on the above rewording?

On Page 12, under some of these bullets are not worded as well as they could be. I would suggest these changes:

I'm confused by the 4th bullet concerning

https://www.324mail.com/owa/?ae=Item&t=IPM.Note&id=RgAAAACZfMnLjTcTqkICP... 9/24/2009
do you have any thoughts on this one?

I'm also confused by the 6th bullet about

I think the point we are trying to make in this bullet – but are not actually making – is that

do you have any thoughts on this one?

----- Original Message ----- 
From: [askcalea.net], [ic.fbi.gov], [ic.fbi.gov], [ic.fbi.gov]
To: [askcalea.net], [ic.fbi.gov], [ic.fbi.gov], [ic.fbi.gov]
Subject: "Going Dark" white paper
Date: Wed, 6 Aug 2008 16:29:03 -0400

>A few thoughts on the white paper:

>High-level thoughts:

> I sometimes got a feeling that the paper was missing the forest for the trees.
> I agree that there are several problems that are all contributing to relative
darkness now, greater darkness in the near future, and near-total darkness in a
>few years, but doesn't the near-total darkness in a few years kind of dwarf the
>rest? And the near-total darkness, as far as I can tell, comes from

> There are other problems that are causing difficulties now.
> but aren't they pretty much overshadowed by the really big problems I've
>described above?

>To me

https://www.324mail.com/owa/?ae=Item&t=IPM.Note&id=RgAAACZlMnLjTJcTqkJCP... 9/24/2009
All of that is included here, but sometimes it seems buried. Maybe it just didn't speak to me.

More-specific comments:

- On page 2, I haven't been watching enough Law and Order.

- On page 5, second under this sentence is overstated:

  This sentence makes it sound like

  Recommended replacement:

- On page 8, the before I like the topic of the paragraph -

  but two of the examples are not good:

- On page 12, the bullets under item 1:

  The second bullet says we need to

https://www.324mail.com/owa/?ae=Item&t=IPM.Note&id=RgAAAACZlMnLjTJcTqklCP... 9/24/2009
The third bullet says... I suggest replacing... FBI Science & Technology Law Unit (OGC)...
From: [mailto:]@fbi.gov
Sent: Friday, August 08, 2008 3:29 PM
To: [mailto:]@askcalea.net;
Sabol, Sherry E.;
Subject: RE: "Going Dark" white paper

Below, I respond in blue to a couple of points where directed questions to me (and one where she didn’t). - DAK

Original Message:
From: [mailto:]@askcalea.net
Sent: Friday, August 08, 2008 2:43 PM
To: [mailto:]@askcalea.net;
Sabol, Sherry E.;
Subject: Re: "Going Dark" white paper

Sherry:

As I mentioned briefly when we spoke last night, I agree with high-level comments on the Going Dark paper, and had the same reaction about missing the forest for the trees – the White Paper seems to be taking an “everything but the kitchen sink” approach rather than the more focused effort I think we were expecting to see.

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9/22/2009
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But I think you get the point of my comment...

On Page 4, under in the second sentence of the paragraph that follows the block quote, it says: wonder what they mean by be better to, which I do not think there is here.

On Page 4, under the second and third sentence read: I think that the third sentence is not only an over- and or inaccurate statement, but is also kind of shoots us in the foot. I know that I'd suggest rewording.

9/22/2009
the third sentence to say something like this:

On Page 5, I would change the last sentence in footnote 10 to say:

On Page 5, in footnote 11, consider rewording the sentence to say:

On Page 7, I'm wondering why we need that:

On Page 9, in the first full paragraph, the second sentence says:

I'm not sure that's a fair statement - at least as to all of those things. I think it's probably more accurate to

So I'd suggest rewording it this way, because I think this is really what we are trying to say:

Do you have any thoughts on the above rewording?

DAK>> I think you've reworded it well to more fairly say that:

On Page 12, under

9/22/2009
some of these bullets are notworded as well as they could be. I would suggest these changes:

DAK>> Or would argue that

I'm confused by the 4th bullet concerning

we need to better explain that in this bullet. do you have any thoughts on this one?

DAK>> I interpreted this as

? I don't think this

I'm also confused by the 6th bullet about make in this bullet - but are not actually making - I think the point we are trying to make in this bullet - but are not actually making - do you have any thoughts on this one?

DAK>> I don't have it in front of me so I don't remember exactly how that bullet was worded, but I think the idea is that Part of the solution, I think, is

But if we're talking about I think the easiest-to-understand proposal is just to say that That's what says above - that we want

A few thoughts on the white paper:

High-level thoughts:

1. I sometimes got a feeling that the paper was missing the forest for the trees. I agree that there are several problems that are all contributing to relative darkness now, greater darkness in the near future, and near-total darkness in a few years, but doesn't the near-total darkness in a few years kind of dwarf the rest? And the near-total darkness, as far as I can tell, comes from

There are other problems that are causing difficulties now.

but aren't they pretty much overshadowed by the really big problems I've described above?

To me, All of that is included in here, but sometimes it seems buried. Maybe it just didn't speak to me.

More-specific comments:

On page 2, Maybe I haven't been watching enough Law and Order.
On page 5, second ¶ under this sentence is overstated:

This sentence makes it sound like

Recommended replacement:

On page 8, the ¶ before I like the topic of the paragraph - but two of the examples are not good:

On page 12, the bullets under item 1:

The second bullet says we need to

The third bullet says

--- I suggest replacing

PRIVILEGED INTERNAL DELIBERATIVE DOCUMENT - ATTORNEY WORK PRODUCT

FBI Science & Technology Law Unit (OGC),

9/22/2009
Sherry:

Per your request during our recent discussions regarding the OTD "Going Dark" paper, attached is a document that consolidates the "high level" and "specific" comments and line edits that [removed] and I previously provided to you on the paper.

I'm also attaching a document that consolidates the comments that [removed] and I previously provided on our earlier proposed CALEA amendments, as well as our [removed] "wish list" - the interplay between these and the paper should hopefully be pretty clear but we can further discuss if you want more background, information, or clarification.
COMMENTS FROM SLTU ON THE OTD “GOING DARK” WHITE PAPER

A. High-Level Comments

The White Paper seems take an “everything but the kitchen sink” approach to the problem – rather than a more focused effort – and in doing so, appears to somewhat miss the forest for the trees. While there are obviously several problems that are all contributing to relative darkness now (e.g.,), greater darkness in the near future, and near-total darkness in a few years, the near-total darkness in a few years would seem to dwarf the rest and drive the real problem.

The near-total darkness appears to comes from

All of that is included in the White Paper, but not in a very front-and-center manner, and thus often seems buried.

B. More Specific Comments and Suggested Edits

General: Although we assume that the proponent of this paper is the FBI – on behalf of itself and state, local and other federal law enforcement agencies – that is not entirely clear from the title and summary. We suggest clarifying that point up front.
Page 1: The description of [ ] in footnote 1 is confusing and somewhat inaccurate. As currently worded, it gives the impression that [ ]

We suggest the following replacement text for footnote 1:

Page 2: On Page 2, where the paper talks about [ ] it might be helpful to drop a footnote off of that statement that lists a couple of examples for support/emphasis. The following are some examples that could be cited here:

1. [ ]
2. [ ]
Under the paper says that we wonder whether that is an overstatement.

In the section regarding we are unclear about why this section references when the paper is supposed to be emphasizing lawful interception. The reference to is fine, but we suggest deleting the reference to since it does not really have anything to do with lawful interception and may confuse the matter or make it seem as though we are overstating the importance.

We have the same concern in the section regarding regarding the reference to The reference to is fine, but we suggest deleting the reference to since it does not really have anything to do with lawful interception and may confuse the matter or make it seem as though we are overstating the importance.

Under in the second sentence of the paragraph that follows the block quote, it says We are curious as to what is meant by which we do not think there is here.

Under the second and third sentence read We think that the third sentence is not only an overstatement and/or an inaccurate statement, but also kind of shoots us in the foot. We suggest rewording the third sentence as follows (choose from one of the two bracketed phrases):
We think there is a stronger legal point that could be made in the last sentence of footnote 10, and suggest changing that sentence to read as follows:

In the second paragraph under we think the sentence that reads is overstated. As currently written, this sentence makes it sound like We suggest the following replacement text:

We suggest rewording the sentence in footnote 11 to read as follows:
Page 7: We wonder if the boxed quote on this page is necessary when the same statement is at the top of the same page—it seems misplaced to us, especially since there is no attribution with respect to who exactly made this statement.

Page 8: In the paragraph right before the section, the topic of the paragraph is good but two of the examples provided are not good.

Page 9: The second sentence in the first full paragraph says We are not sure that is a fair statement—at least as to all of those things. We think it is probably more accurate to

We think this a way to more fairly get the point across that
We suggest rewording the sentence to read as follows, because we think this is really what we are trying to say here:

Page 9: We think it might be helpful to

Page 12: The second bulleted sentence under says we need to

Page 12: The fourth bulleted sentence under concerning the
Page 12: The sixth bulleted sentence under concerning is also somewhat confusing.

Part of the solution may be

In terms of statutory fixes, the goal would be

The easiest-to-understand proposal would be to

-- but

our preference is really for

Page 12: We think that some of the bulleted thoughts under are not worded as well as they could be and could benefit from some rewording. We suggest the following changes.
Split the first bulleted thought into two separate bulleted thoughts that read as follows:

- 
- 

Replace in the third bullet so that it reads as follows:

- 

Replace the text in the seventh bullet with one of the following sentences:

- 

or

- 

Page 12: We think it would be helpful to have a separate bullet on that discusses We suggest adding an additional bullet that says:

- 

Page 12: We think it would be helpful to have a bullet that talks about We suggest adding an additional bullet to the list that reads something like:

- 
At Sherry's request, I am forwarding OGC's high level and specific comments on the "Going Dark" White Paper.

Also attached is a document that contains our thoughts regarding the current relevance of

Sherry mentioned that there was some confusion as to what

But as mentioned in the attached document, there are
From: [Redacted]
Sent: Wednesday, August 06, 2008 4:29 PM
To: Sabol, Sherry E.; [Redacted]@askcalea.net
Subject: "Going Dark" white paper

A few thoughts on the white paper:

High-level thoughts:

I sometimes got a feeling that the paper was missing the forest for the trees. I agree that there are several problems that are all contributing to relative darkness now, greater darkness in the near future, and near-total darkness in a few years, but doesn't the near-total darkness in a few years kind of dwarf the rest? And the near-total darkness, as far as I can tell, comes from:

There are other problems that are causing difficulties now, like [Redacted] but aren't they pretty much overshadowed by the really big problems I've described above?

To me: All of that is included in here, but sometimes it seems buried. Maybe it just didn't speak to me.

More-specific comments:

On page 2, [Redacted] Maybe I haven't been watching enough Law and Order.

On page 5, second ¶ under [Redacted] this sentence is overstated:

This sentence makes it sound like [Redacted] Recommended replacement:

On page 8, the ¶ before [Redacted] I like the topic of the paragraph but two of the examples are not good:

9/24/2009
On page 12, the bullets under item 1:

The second bullet says we need to

The third bullet says
-- I suggest replacing
From: [ic.fbi.gov]
Sent: Friday, August 08, 2008 10:21 PM
To: Sabol, Sherry E.
Subject: RE: White House briefing and CALEA

Just a few thoughts (from the iuddite in the group):

1. It is unclear from the title/beginning exactly who is the proponent of this paper. The FBI? LE as a whole? Federal LE?

2. Page 2 - the first sentence of that paragraph appears to be an overstatement. The next sentence says that...

3. Page 3 - not sure why it cites to when this paper is supposed to emphasize LI. Maybe remove the reference to when it mentions. The latter halves of these examples have noting to do with LI so they may only confuse the matter, or make it look like we are overstating the importance once again. Also, what is and how recent a case is it? I like the real world examples, but the language is off.

4. Page 4 - the final paragraph mentions and indicates that it will be discussed below. I was unable to figure out exactly where. Maybe a more clear reference to a page will do that, otherwise it should be clarified/defined.

5. Page 4 - the third sentence indicated that...

6. Page 5 - can we really call?

7. Page 6 - Do we need to clarify what is in the Wiretap Report? all wiretaps nationwide? only Federal? FBI?

8. Page 7 - Not sure what will face, but they may be worth spelling out (e.g.). Also, might want to beef up that is cited.

9. Page 8 - examples are merely referenced, with no explanation of those unique problems or any proposed solutions for that. In such a comprehensive document, why mention this and then propose no answers? Also, under aren't? If so, we should emphasize that and point out deficiencies and potential results.
Otherwise, I concur with [ ] and [ ] comments.

From: [askcalea.net] [askcalea.net]
Sent: Thursday, August 07, 2008 6:13 PM
To: [Sabol, Sherry E.: askcalea.net]
Cc: 
Subject: RE: White House briefing and CALEA

Sherry:

On the discussion of the earlier CALEA amendment package, I don't have much to add to the points made (with which I concur), except to throw in an additional plug about [ ]

On [ ] category, I agree with all of [ ] points, and don't have any additional to add. But I would consider modifying the bullet on [ ] to say [ ]

I would also consider adding to [ ] bullet that [ ]

I don't have much to add on [ ] you mentioned, except to say that I [ ]

thought that much of [ ] there may be other things we are looking to do - like [ ] - that we still need support for.

I'll send my specific thoughts on the Going Dark paper separately to you as an add on to [ ] comments...
Original Message

From: [Email Address]
To: "Sabol, Sherry E." <Sherry.Sabol@ic.fbi.gov>, 
Feaskcalea.net" <Feaskcalea.net>
Cc: [Email Address]
Subject: RE: White House briefing and CALEA
Date: Thu, 7 Aug 2008 16:07:29 -0400

---

**********

Come to think of it, I guess I would like to add one more suggestion to my comments on the white paper:

That said, I really wouldn't want that statement to leak.

So here are my thoughts on some general bullets that could go under the category of based in part on taking the white paper's word for what OTD has found are important problems:

1) 

2) As mentioned on page 12 of the white paper. I assume this refers to

3) I'm not sure we can

4) And we might

also try to ensure that
>5) Some ideas:

>6)

>7)

>This list has a lot of similarity to the list on page 12 of the white paper.

>--- Original Message ---
>From: Sabol, Sherry E.
>Sent: Thursday, August 07, 2008 1:45 PM
>To:
>CC:
>Subject: White House briefing and CALEA
>Importance: High
subject is the going dark initiative, particularly possible legislative initiatives that would assist in overcoming the obstacles we anticipate will reduce our ability to conduct electronic surveillance in the future. I need to put together a one page overview/leave behind that outlines the issues. I am literally talking about an outline with general statements - not specific legislative proposals. As of now, we see breaking down into categories as follows:

1) 
2) 
3) 
4) 
5) 

One of you has, at some indicated, that if we were to go forward with the CALEA amendment package had worked on, we may need to tweak or change our approach to some issues - can you tell me what you meant? Was it the nuts and bolts of a legislative amendment we've made or something broader?

I haven't had a chance to digest your comments on the going dark paper but will review those this afternoon - the information I'm looking for may lie in your comments - in the meantime, could you and come up with a few bullets that would fall under the arena? If you have thoughts on any of the other areas based on your review of the Going Dark paper, I'm open to them as well.
same for you if you have had a chance to review the Going Dark paper and have any thoughts.

I told Marcus I'd have something for him to review Friday morning. I would like to have something to Valerie tomorrow afternoon and intend to work on it tonight and tomorrow - if anyone has any thoughts - I'm open to hearing them.
From: @askcalea.net on behalf of sherry@askcalea.net
Sent: Friday, August 08, 2008 2:43 PM
To: Sabol, Sherry E.
Subject: Re: "Going Dark" white paper
Attachments: pdf

Sherry:

As I mentioned briefly when we spoke last night, I agree with high-level comments on the Going Dark paper, and had the same reaction about missing the forest for the trees - the White Paper seems to be taking an "everything but the kitchen sink" approach rather than the more focused effort I think we were expecting to see.

I addition to the editorial/line edit type stuff I mentioned to you (which I can redline in if we end up getting a soft copy of the document), I had a few substantive comments/suggestions on some of the text:

In footnote 1, which describes confusing and somewhat inaccurate. I think the description they have is makes it sound like

I'd recommend replacing it with this sentence:

On Page 2, where the paper talks about it might be helpful to drop a footnote off of that statement that lists a couple of examples for support/emphasis.

One that I know of is

of them are attached if you want to see what they say. By the way, you'll be interested to know that

Another one I know of is
But I think you get the point of my comment...

On Page 4, under the second sentence of the paragraph that follows the block quote, it says I'm wondering what they mean by which I do not think there is here.

On Page 4, under the second and third sentence read I think that the third sentence is not only an over- and or inaccurate statement, but is also kind of shoots us in the foot. I'd suggest rewording the third sentence to say something like this:

On Page 5, I would change the last sentence in footnote 10 to say:

On Page 5, in footnote 11, consider rewording the sentence to say:
Just a suggestion...

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On Page 9, in the first full paragraph, the second sentence says

- So I'd suggest rewording it this way, because I think this is really what we are trying to say:

---

- do you have any thoughts on the above rewording?

On Page 12, under some of these bullets are not worded as well as they could be. I would suggest these changes:

I'm confused by the 4th bullet concerning

- do you have any thoughts on this one?

I'm also confused by the 6th bullet about trying to make in this bullet but are not actually making - is that

- do you have any thoughts on this one?

---

Original Message

From: [Email Address]
To: [Email Address]
A few thoughts on the white paper:

High-level thoughts:

1. I sometimes got a feeling that the paper was missing the forest for the trees.
2. I agree that there are several problems that are all contributing to relative darkness now, greater darkness in the near future, and near-total darkness in a few years, but doesn’t the near-total darkness in a few years kind of dwarf the rest? And the near-total darkness, as far as I can tell, comes from

3. There are other problems that are causing difficulties now, but aren’t they pretty much overshadowed by the really big problems I’ve described above?

To me, All of that is included in here, but sometimes it seems buried. Maybe it just didn’t speak to me.

More-specific comments:

On page 2, Maybe I haven’t been watching enough Law and Order.

On page 5, second ¶ under this sentence is overstated:
This sentence makes it sound like

Recommended replacement:

On page 8, the I before I like the topic of the paragraph but two of the examples are not good:

On page 12, the bullets under item 1:

The second bullet says we need to

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I suggest replacing

PRIVILEGED INTERNAL DELIBERATIVE DOCUMENT - ATTORNEY WORK PRODUCT

FBI Science & Technology Law Unit (OGC),
Just a few thoughts (from the luddite in the group):

1. It is unclear from the title/beginning exactly who is the proponent of this paper. The FBI? LE as a whole? Federal LE?

2. Page 2 - the first sentence of that paragraph appears to be an. The next sentence says that.

3. Page 3 - section - not sure why it cites to when this paper is supposed to emphasize LI. Maybe remove the reference to. Same concern for the section when it mentions. The latter halves of these examples have noting to do with LI so they may only confuse the matter, or make it look like we are overstating the importance once again. Also, what is and how recent a case is it? I like the real world examples, but the language is off.

4. Page 4 - the final paragraph mentions and indicates that it will be discussed below. I was unable to figure out exactly where. Maybe a more clear reference to a page will do that, otherwise it should be clarified/defined.

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6. Page 5 - can we really call?

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9. Page 8 - examples are merely referenced, with no explanation of those unique problems or any proposed solutions for that. In such a comprehensive document, why mention this and then propose no answers? Also, under aren't and point out deficiencies and potential results.

Otherwise, I concur with and comments.
Subject: RE: White House briefing and CALEA

Sherry:

On the discussion of the earlier CALEA amendment package, I don't have much to add to the points made (with which I concur), except to throw in an additional plug about adding to bullet that I would also consider.

On additional category, I agree with all of points, and don't have any to add. But I would consider modifying the bullet on to say adding to bullet that I would also consider.

I don't have much to add on you mentioned, except to say that I thought that much of that I still need support for.

I'll send my specific thoughts on the Going Dark paper separately to you as an add on to comments...

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From: bic.fbi.gov> 
To: "Sabol, Sherry E." <Sherry.Sabol@ic.fbi.gov>, bic.fbi.gov> 
Cc: askcalea.net> 
Subject: RE: White House briefing and CALEA 
Date: Thu, 7 Aug 2008 16:07:29 -0400 

> 
> >
> >
Come to think of it, I guess I would like to add one more suggestion to my comments on the white paper:

So here are my thoughts on some general bullets that could go under the category of based in part on taking the white paper's word for what OTD has found are important problems:

1. As mentioned on page 12 of the white paper.
2. I'm not sure we can...
3. And we might also try to ensure that...
4. Some ideas:
5.  
6.  

3
This list has a lot of similarity to the list on page 12 of the white paper.

Original Message

From: Sabol, Sherry E.
Sent: Thursday, August 07, 2008 1:45 PM
To: [redacted]
Cc: [redacted]
Subject: White House briefing and CALEA
Importance: High

Subject is the going dark initiative, particularly issues/possible legislative initiatives that would assist in overcoming the obstacles we anticipate will reduce our ability to conduct electronic surveillance in the future. I need to put together a one page overview/leave behind that outlines the issues. I am literally talking about an outline with general statements – not specific legislative proposals. As of now, we see breaking down into categories as follows:

1) [redacted]
2) [redacted]
3) [redacted]
4) [redacted]
5) [redacted]

One of you has, at some indicated, that if we were to go forward with the CALEA amendment package we had worked on, we may need to tweak or change our approach to some issues - can you tell me what you meant? Was it the nuts and bolts of a legislative amendment we've made or something broader?
I haven't had a chance to digest your comments on the going dark paper but will review those this afternoon - the information I'm looking for may lie in your comments - in the meantime, could you and come up with a few bullets that would fall under the arena? If you have thoughts on any of the other areas based on your review of the Going Dark paper, I'm open to them as well.

same for you if you have had a chance to review the Going Dark paper and have any thoughts.

I told Marcus I'd have something for him to review Friday morning. I would like to have something to Valerie tomorrow afternoon and intend to work on it tonight and tomorrow - if anyone has any thoughts - I'm open to hearing them.
RE: "Going Dark" white paper

RE: "Going Dark" white paper

Sent: Friday, August 08, 2008 3:29 PM
To: baskcalea.net: Sabol, Sherry E.; baskcalea.net

Below, I respond in blue to a couple of points where directed questions to me (and one where she didn't).
- DAK

-----Original Message-----
From: baskcalea.net [mailto:baskcalea.net]
Sent: Friday, August 08, 2008 2:43 PM
To: Sabol, Sherry E.; baskcalea.net
B.
Subject: Re: "Going Dark" white paper

Sherry:

As I mentioned briefly when we spoke last night, I agree with high-level comments on the Going Dark paper, and had the same reaction about missing the forest for the trees - the White Paper seems to be taking an "everything but the kitchen sink" approach rather than the more focused effort I think we were expecting to see.

I addition to the editorial/line edit type stuff I mentioned to you (which I can redline in if we end up getting a soft copy of the document), I had a few substantive comments/suggestions on some of the text:

In footnote 1, which describes I think the description they have is confusing and somewhat inaccurate. It makes it sound like replacing it with this sentence:

On Page 2, where the paper talks about it might be helpful to drop a footnote off of that statement that lists a couple of examples for support/emphasis.

One that I know of is Copies of them are attached if you want to see what they say. By the way, you’ll be interested to know

https://www.324mail.com/owa/?ae=Item&t=IPM.Note&id=RgAAAACZlMnLjTJcTqkCP... 9/24/2009
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But I think you get the point of my comment...

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I'm wonder what they mean by and thinking it might be better to which I do not think there is here.

On Page 4, under the second and third sentence read

I think that the third sentence is not only an over- and or inaccurate statement, but is also kind of shoots us in the foot.
I'd suggest rewording the third sentence to say something like this:

On Page 5, I would change the last sentence in footnote 10 to say:

On Page 5, in footnote 11, consider rewording the sentence to say:

Just a suggestion...

On Page 7, I'm wondering why we need that boxed quote when the same statement is at the top of the same page, but I guess that's neither here nor there. It just looks weird—especially since there's no attribution as to who exactly said it. Just an observation...

On Page 9, in the first full paragraph, the second sentence says I'm not sure that's a fair statement—at least as to all of those things. I think it's probably more accurate to

So I'd suggest rewording it this way, because I think this is really what we are trying to say:

--- do you have any thoughts on the above rewording?

DAK>> I think you've reworded it well to more fairly say that
On Page 12, under some of these bullets are not worded as well as they could be. I would suggest these changes:

DAK>> Or

(I would argue that)

I'm confused by the 4th bullet concerning - do you have any thoughts on this one?

DAK>> I interpreted this as

I don't think this

I'm also confused by the 6th bullet about. I think the point we are trying to make in this bullet - but are not actually making - is that thoughts on this one?

DAK>> I don't have it in front of me so I don't remember exactly how that bullet was worded, but I think the idea is that Part of the solution, I think is

But if we're talking about I think the easiest-to-understand proposal is just to say that

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https://www.324mail.com/owa/?ae=Item&t=IPM.Note&id=RgAAAACZlMnLjTkJkCP... 9/24/2009
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> High-level thoughts:

I sometimes got a feeling that the paper was missing the forest for the trees. I agree that there are several problems that are all contributing to relative darkness now, greater darkness in the near future, and near-total darkness in a few years, but doesn't the near-total darkness in a few years kind of dwarf the rest? And the near-total darkness, as far as I can tell, comes from

> There are other problems that are causing difficulties now, like

but aren't they pretty much overshadowed by the really big problems I've described above?

To me,

All of that is included in here, but sometimes it seems buried. Maybe it just didn't speak to me.

More-specific comments:

On page 2,
RE: "Going Dark" white paper

Maybe

I haven't been watching enough Law and Order.

On page 5, second ¶ under I haven't been watching enough Law and Order. this sentence is overstated:

This sentence makes it sound like this has happened often. Recommended replacement:

On page 8, the ¶ before I like the topic of the paragraph -

On page 12, the bullets under item 1:

The second bullet says we need to

The third bullet says

I suggest replacing

https://www.324mail.com/owa/?ae=Item&t=IPM.Note&id=RgAAAACZ1MnLTJcTqkICP... 9/24/2009
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From: askcalea.net [mailto:askcalea.net]
Sent: Friday, August 08, 2008 2:43 PM
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That's what says above - that we want

----- Original Message ----- b5
From: [fireic.fbi.gov] To: "Sabol, Sherry E." <Sherry.Sabol@ic.fbi.gov>, "Taskcalea.net" <Taskcalea.net@sic.fbi.gov>
Subject: "Going Dark" white paper
Date: Wed, 6 Aug 2008 16:29:03 -0400

>A few thoughts on the white paper:
>  
>  
>  
>High-level thoughts:
>  
>  
>  
>I sometimes got a feeling that the paper was missing the forest for the trees.
>I agree that there are several problems that are all contributing to relative darkness now, greater darkness in the near future, and near-total darkness in a few years, but doesn't the near-total darkness in a few years kind of dwarf the rest? And the near-total darkness, as far as I can tell, comes from
There are other problems that are causing difficulties now, but aren't they pretty much overshadowed by the really big problems I've described above?

To me, all of that is included in here, but sometimes it seems buried. Maybe it just didn't speak to me.

More-specific comments:

On page 2, I haven't been watching enough Law and Order.

On page 5, second ¶ under this sentence is overstated:

This sentence makes it sound like Recommended replacement:

On page 8, the ¶ before I like the topic of the paragraph - but two of the examples are not good:
> On page 12, the bullets under item 1:
>
> The second bullet says we need to
>
> The third bullet says

--- I suggest replacing

---

> PRIVILEGED INTERNAL DELIBERATIVE DOCUMENT - ATTORNEY WORK PRODUCT

FBI Science & Technology Law Unit (OGC),
Per our conversation a little while ago, here are revised/redlined versions of the Going Dark Initiative one-page executive summary and the Attachment 1 and 2 charts that go with the summary. As I mentioned, I revised the one-page executive summary to make sure that the scope matched what we're proposing in the amendments (i.e., ELSUR and ELSUR plus).

I also did some light revisions in Attachments 1 and 2. I did not give them a full and complete scrub (just a quick skim) but fixed stuff where something caught my eye. Most of the revisions are non-substantive and should be self-explanatory. The only substantive revisions are...

Sherry is still awaiting confirmation from Marcus about whether we are correct about the scope of "Going Dark" for purposes of the legislative effort - once she hears back, we (OTD and OGC) can finalize the summary and attachments and then get them up to OCA.

Thanks,

Assistant General Counsel
Science and Technology Law Unit
Office of the General Counsel
Federal Bureau of Investigation
Direct Dial: 
E-mail: @askcalea.net
OTD provided the following document this morning which outlines the Going Dark Initiative (again). This document sets forth categories of concern on the legislative front. I understand there was already a follow on legislative meeting set for May 14th. They claim to be waiting for the "lawyers" to continue their conversations. Upon my objection, Marcus agreed that they should have a follow on meeting without the lawyers to have something in hand on May 14 that we can discuss. Marcus tasked (and, 2) to produce two documents with a rough draft by end of next week: 1) I also talked to yesterday as we discussed. He is leaving town this afternoon and asked that we have a follow up conversation next week specifically on this issue. Bottom line, according to - as we have discussed to some extent, there are several issues that OGC may not agree with... and have already had some level of discussion with them on certain issues that fall into this category - Marcus indicated he thought the conversation was fruitful and gives them something to think about. I think this is where we will have to weigh in once they produce their documents next week. At your convenience, I can bring you up to speed on what other issues they are likely to request that or, like the issue above, we believe we can.

Thanks

Sherry.
"Going Dark"

Law Enforcement's Need to Preserve Lawful Intercept (LI) Capabilities

July 2008
Attached as discussed with OCA in connection with the DOJ legislative call due on March 13, 2009 are a one-page Going Dark Initiative executive summary and two charts (Attachments 1 and 2) that summarize the legislative proposals associated with the initiative.

Please let us know if you or others have any questions or need additional information,

Executive Summary of The Going Dark...
The Going Dark initiative

Lawfully-authorized electronic surveillance (ELSUR) is critical to enforcing the law, protecting our citizens, and maintaining our nation's security. Preserving and enhancing the capabilities used to intercept specific communications content and communication-identifying information is essential to this effort. In recent years, the variety and complexity of communications services and technologies introduced to the marketplace have increased dramatically.

In an effort to remedy interception and ELSUR-related gaps, and provide LEAs with the tools they need to accomplish their mission, the FBI has developed a national strategy known as the "Going Dark Initiative." The Going Dark Initiative includes several significant elements, one of which is the attached catalog of ELSUR and ELSUR-related legislative proposals designed to update and improve existing Federal ELSUR laws and assistance mandates and to enact new ELSUR and ELSUR-related laws to support LEAs' investigative efforts. As the events of September 11, 2001 show, law enforcement cannot connect the intelligence and evidentiary dots unless it first collects those dots.

The specific legislative proposals and the rationale for each are set forth in Attachments 1 and 2 below.
Attachment 1: Updating and Improving Federal ELSUR Laws and Assistance Mandates
Attachment 2: Enacting New ELSUR and ELSUR-Related Laws and Capabilities
Court-authorized electronic surveillance (ELSUR) is critical to enforcing the law, protecting our citizens, and maintaining our Nation's security. Therefore, maintaining a capability to intercept specific communications content and communications identifying information is likewise critical.
Attached is a catalogue of legislative proposals that support Going Dark and other OTD interests. [Names] have been working on this in response to DOJ’s recent call for the top 5 agency legislative issues. We’ve coordinated with OCA and they agree on this format (our concern was it wasn’t just one legislative proposal).

Marcus - I revised this a bit (just the first page) from the version you saw yesterday so want to make sure you see it again before it goes forward.

As soon as we hear from both of you we’ll send it forward to OCA - they need it asap as usual.

Sherry E. Sabol
Section Chief
Office of Science and Technology Law
Federal Bureau of Investigation

https://www.324mail.com/owa/?ae=Item&t=IPM.Note&id=RgAAACZlMnJyTJcTjklCP... 9/24/2009
The Going Dark Initiative

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