b2/ b6

[redacted]

From: [redacted] "John Demers" <John.Demers@usdoj.gov>, [redacted]
To: [redacted]
cc: [redacted]

Date: Friday, May 23, 2008 08:06AM
Subject: Re: Offer to Hoyer

[redacted] b5

----- Original Message -----
From: [redacted]
Sent: 05/23/2008 06:42 AM EDT
To: [redacted] ; "John Demers" <john.demers@usdoj.gov>; [redacted]
Cc: [redacted]
Subject: Re: Offer to Hoyer

[redacted] b5

[redacted]
Associate General Counsel
Office of the Director of National
Intelligence
[redacted]

NOTE: After June 6, 2008 my contact information will change. New
Contact
information is as follows:

email: [redacted]
phone: [redacted]

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

b2/b6

[redacted]

From: [redacted]
Sent: 05/23/2008 12:19 AM EDT
To: [redacted]; "John Demers" <John.Demers@usdoj.gov>; [redacted]
Cc: [redacted]
Subject: Fw: Offer to Hoyer

[redacted] b5

b2/b6

[redacted]

9/4/2008 1:55

b2/b6

From: [redacted]
To:
cc:

Date: Tuesday, July 10, 2007 05:03AM
Subject: Re: Mtg for the DNI with Chairman Reyes ref Need for FISA Moderni zation

---

Ben. - no worry will work arouind your time off

[redacted]

----- Original Message -----
From: [redacted]
Sent: 07/10/2007 12:39 AM EDT
To: [redacted]
Cc:
Subject: Re: Mtg for the DNI with Chairman Reyes ref Need for FISA Moderni zation

Please not thu july 19 or fri July 20 as I plan to be out of office.

----- Original Message -----
From: [redacted]
Sent: 07/09/2007 10:07 PM AST
To: [redacted]
Cc:
Subject: Fw: Mtg for the DNI with Chairman Reyes ref Need for FISA Moderni zation

[redacted] Based on the green light from Chairman Reyes' Staff Director, please reach out to Reyes' scheduler for a 45-60 minute session in H-405 on FISA with Ben Powell and me. If we could do it in the next 2 weeks that would be great. Thanks!
Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence
[redacted]

----- Original Message -----
From: "Delaney, Mike" [redacted]@mail.house.gov]
Sent: 07/09/2007 07:34 PM AST
To: [redacted] Parker, Wyndee" [redacted]@mail.house.gov>; Bash, Jeremy" [redacted]@mail.house.gov>
Cc:
Subject: Re: Mtg for the DNI with Chairman Reyes ref Need for FISA Moderni

---

b2/b6

zation

Chairman says that is fine. Set it up.

Mike Delaney
HPSCI 202-225-7690

-----Original Message-----
From: [redacted]
To: Delaney, Mike; Parker, Wyndee; Bash, Jeremy
CC: [redacted]
Sent: Mon Jul 09 19:14:36 2007
Subject: Mtg for the DNI with Chairman Reyes ref Need for FISA Modernization

Hello Mike, Wyndee and Jeremy: Director McConnell would like to meet with Chairman Reyes sometime over the next few weeks and give him an update on the urgency and imperatives for FISA Modernization and solicit his views on how to gain traction for the Bill. I know they have talked about this subject on the margins of other meetings, but we do not recall that they have actually sat down to discuss it in a focused way. Is this something you think we could make happen? I have infoed the DNI's scheduler, [redacted], as she can work directly with the Chairman's scheduler.

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

[redacted]

b2/b6

[redacted]

From: [redacted]
To: "D (Intelligence) Grannis" [redacted]@ssci.senate.gov>
bcc: [redacted]

Date: Friday, July 27, 2007 01:02AM
Subject: Fw:

David- text attached as discussed. Also sent to andy j. And mike D.

Ben

----- Original Message -----
From: "Ben Powell" [redacted]
Sent: 07/27/2007 12:59 AM AST
To: [redacted]

The FISA mod file contains text that does the following:

1) Adds one paragraph to the existing statute making clear that FISA does not cover surveillance directed at a person overseas.

2) Provides a means of compelling assistance from communications providers.

3) Effective date and providing for transition of any currently existing FISA orders. If this is short-term fix with a sunset, would suggest adding the sunset date to this clause.

The additional provision file contains text that addresses a concern raised in past discussions about "reverse targeting". The text provides that the primary purpose of acquiring communications of a non-US person overseas cannot be to acquire the communications of a person in the US (unless a FISA order is obtained of course).

The second concern raised by some has been issues about "mass targeting" and interpretation of the phrase "particular, known" in our full proposal. There is not a need to address this issue in this surgical fix as the existing definitions of electronic surv under FISA remain the same domestically, with only a carve out for activity directed overseas. [And, for the record, we do not agree that our proposal allowed such alleged mass targeting (or reverse targeting), but in any event, no need to address the issue in the attached approach]

I would note the time of night that I am sending up this text – The FISA technical experts are going to need to think through this text and I would not be surprised if we would have additional adjustments to make to ensure the text accomplishes what I think is our common goal. Obviously, this represents a late night email and not a fully coordinated proposal (or one that has even been seen/approved by DNI), but time is short.

b2/b6

[redacted]

Ben

Attachments:
FISA additional provision.doc
FISA Mod surgical July 26 2007.doc

Out of Scope

[redacted]

To: "Jack Livingston" <[redacted]@ssci.senate.gov>
From: [redacted]
Date: 10/16/2007 10:39PM
Subject: Re: Amendments

Also, heard sen. wyden mentioned to dni about having someone present at markup for tech assistance. Also understand that it would be unusual and Andy has said no. In any event, that is matter for committee--I would come with brett if the committee wants us there.

----- Original Message -----
From: [redacted]
Sent: 10/16/2007 10:21 PM EDT
To: Jack Livingston" <[redacted]@ssci.senate.gov>
Subject: Re: Amendments

[redacted]

----- Original Message -----
From: "Livingston, J (Intelligence)" [[redacted]@ssci.senate.gov]
Sent: 10/16/2007 10:06 PM AST
To: [redacted]
Subject: RE: Amendments

[redacted]

From: [redacted]
Sent: Tuesday, October 16, 2007 9:55 PM
To: Livingston, J (Intelligence)
Subject: Re: Amendments

6/16

Thanks.

62/66

----- Original Message -----
From: "Livingston, J (Intelligence)" [redacted]@ssci.senate.gov]
Sent: 10/16/2007 09:34 PM AST
To: Gerry, Brett (OLP)" <Brett.Gerry@usdoj.gov>; [redacted]; Eisenberg, John" <John.Eisenberg@usdoj.gov>; Demers, John (NSD)" <John.Demers@usdoj.gov>; Vito Potenza (work)" [redacted]
Cc: Wainstein, Kenneth (NSD)" <Kenneth.Wainstein@usdoj.gov>
Subject: Amendments

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

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

--[if !supportLists]-->1) <!--[endif]-->Define electronic surveillance (technology neutral DNI April definition)

--[if !supportLists]-->2) <!--[endif]-->Define contents consistent with Title III

--[if !supportLists]-->3) <!--[endif]-->Add WMD to agent of a foreign power, with conforming amendments

--[if !supportLists]-->4) <!--[endif]-->Strike second element of probable cause physical search applications to make it consistent with the Court's finding

--[if !supportLists]-->5) <!--[endif]-->Add to exception for emergency authorizations not approved by the FISC to allow retention of "critical foreign intelligence" in addition to current "threat of death or serious bodily harm"

--[if !supportLists]-->6) <!--[endif]-->Add beefed up immunity language for carriers in the foreign targeting procedures.

--[if !supportLists]-->7) <!--[endif]-->Add back in the requirement that the FISC act on the any challenge of a directive within 72 hours and put the frivolous wording back in.

You all had mentioned that you had changes to 106, so maybe some of those could form the

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

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

b2/b6

[redacted]

From: [redacted]
To: "Andy Johnson" [redacted]@ssci.senate.gov>
cc: [redacted]@ssci.senate.gov, [redacted]@ssci.senate.gov
bcc: [redacted]

Date: Friday, April 04, 2008 05:18PM
Subject: RE: On the return of H.R. 3773 to the Senate

Andy: Barring Ben Powell's inability to get back to DC from his overseas travels (he arrives at Dulles on Sunday), he will attend the discussion on Monday afternoon at 2 pm. Thanks and have a great weekend.

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

-----"Johnson, A (Intelligence)" [redacted]@ssci.senate.gov> wrote: -----

> To: "Ben Powell" <[redacted]
> From: "Johnson, A (Intelligence)" [redacted]@ssci.senate.gov>
> Date: 04/04/2008 02:17PM
> cc: "Davidson, M (Intelligence)" <[redacted]@ssci.senate.gov>, "Dubee, M (Intelligence)" <[redacted]@ssci.senate.gov>
> Subject: RE: On the return of H.R. 3773 to the Senate
>
> Ben and Kathleen:
>
> See below.
>
> This meeting was set up a week ago. Resolving FISA is the top priority of the DNI, the Chairman, and a host of others. The DNI has repeatedly stated the danger of delay, both publicly and privately. In light of the urgency of the matter, the discussion between Chairman Rockefeller and the Director earlier this week, and that everyone has scheduled the meeting, the notion that this long-delayed meeting would be delayed another 5 days because a single staff person is told he can't attend is unacceptable.
>
> I need to assure the Chairman that this meeting -- which the DNI said is not a negotiation session but an exchange of information -- is proceeding as scheduled and promised. If Jack wishes a reprise of what is discussed or a continuation of the discussion on Friday, then that is fine. But it should not further delay what is an important exchange on views and information -- and exchange that is necessary if we are eventually going to get an agreement and a bill through both houses that the President will sign.

[redacted]

b2/b6

I need to contact the Chairman about this promptly if there is a change afoot. The sooner you can reply back to me with the Director's intention regarding the Monday meeting, the better.

Thanks in advance,

Andy

-----Original Message-----
From: Davidson, M (Intelligence)
Sent: Friday, April 04, 2008 1:47 PM
To: Johnson, A (Intelligence); Dubee, M (Intelligence)
Subject: Fw: On the return of H.R. 3773 to the Senate

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Demers, John <John.Demers@usdoj.gov>
To: Livingston, J (Intelligence); Davidson, M (Intelligence); Ben Powell [redacted]; Eisenberg, John <John.Eisenberg@usdoj.gov>; Nichols, Carl (CIV) <Carl.Nichols@usdoj.gov>; Potenza, Vito [redacted] Rice, K (Intelligence); DeRosa, Mary (Judiciary-Dem); Rossi, Nick (Judiciary-Rep); Espinel, Zulima (Judiciary-Dem); Solomon, Matthew (Judiciary-Dem)
Cc: Healey, C (Intelligence); Starzak, Alissa (Intelligence)
Sent: Fri Apr 04 13:41:38 2008
Subject: RE: On the return of H.R. 3773 to the Senate

Mike,

We are available Friday and would strongly prefer for this meeting to involve all of the key players on the Senate side.

Thanks,
John

From: Livingston, J (Intelligence) [mailto:[redacted]@ssci.senate.gov]
Sent: Friday, April 04, 2008 1:16 PM
To: Davidson, M (Intelligence); Ben Powell; Demers, John; Eisenberg, John; Nichols, Carl (CIV); Potenza, Vito; [redacted] Rice, K (Intelligence); DeRosa, Mary (Judiciary-Dem); Rossi, Nick (Judiciary-Rep); Espinel, Zulima (Judiciary-Dem); Solomon, Matthew (Judiciary-Dem)
Cc: Healey, C (Intelligence); Starzak, Alissa (Intelligence)
Subject: RE: On the return of H.R. 3773 to the Senate

Mike,

b2/b6

[redacted]

Consistent with our earlier discussion this morning, I just spoke with Louis and I need to keep Monday free to help out with the Minority Report to the Committee's Phase II reports. Louis has authorized me to participate in bipartisan negotiations on Friday, April 11. My schedule is pretty open that day, so if you want to go with the 2:00 meeting time, or perhaps something earlier, that's fine with me. Thanks.

Jack

From: Davidson, M (Intelligence)
Sent: Friday, March 28, 2008 4:54 PM
To: 'Ben Powell'; 'Demers, John (NSD)'; 'Eisenberg, John'; [redacted]
'Carl.Nichols@usdoj.gov'; 'Potenza, Vito'; '[redacted] Livingston, J (Intelligence); Rice, K (Intelligence); DeRosa, Mary (Judiciary-Dem); Rossi, Nick (Judiciary-Rep); Espinel, Zulima (Judiciary-Dem); Solomon, Matthew (Judiciary-Dem)
Cc: Healey, C (Intelligence); Starzak, Alissa (Intelligence)
Subject: RE: On the return of H.R. 3773 to the Senate

After consulting with Ben about a date and time, let's plan to meet on Monday, April 7, at 2, for a full afternoon, bipartisan Senate-side discussion (Intelligence and Judiciary) with ODNI/DOJ/NSA to help set us on a path that enables the branches to reach agreement on a good law.

I've reserved both our hearing room, SH-219, and a conference room in SH-211, depending on the number of participants. Let's assume for now that we'll meet in 219.

Looking forward to seeing all.

Mike

From: Davidson, M (Intelligence)
Sent: Friday, March 14, 2008 5:43 PM
To: 'Ben Powell'; Demers, John (NSD); 'Eisenberg, John'; [redacted]
Carl.Nichols@usdoj.gov; Potenza, Vito; [redacted]
Livingston, J (Intelligence); Rice, K (Intelligence); DeRosa, Mary (Judiciary-Dem); Rossi, Nick (Judiciary-Rep); Espinel, Zulima (Judiciary-Dem); Solomon, Matthew (Judiciary-Dem)
Cc: Healey, C (Intelligence); Starzak, Alissa (Intelligence)
Subject: On the return of H.R. 3773 to the Senate

b2/b6

[redacted]

Dear ODNI/DOJ/NSA and Senate Intelligence and Judiciary colleagues:

Given the possibility, as is now occurring, that the FISA bill would come back to the Senate, over the last day or so Chris, Alissa, and I have prepared a draft for discussion. It is not a formal Rockefeller draft, but something that we hope advances the discussion, together with ideas that all of you might put on the table. It will, of course, be important to begin a discussion that also includes House colleagues, and we will share this with them. Still, it will be good to get our mutual bearings on the Senate side, and we hope this will make a contribution to that end.

The underlying document begins with the Senate amendment to H.R. 3773. The strike outs and insertions represent a combination of matters (additions, deletions, or modifications) in the House amendment that we would propose for acceptance, or matters that we would propose be amended in some way. There are a number of items in the House amendment that are not included (e.g., the Commission and statute of limitations amendment). The matters taken or modified from the House amendment include both substantive matters and drafting recommendations from the House Legislative Counsel, some of which, such as much of Title III, the two Legislative Counsel offices worked on together.

All of the proposed changes are in Titles I and III. The attached makes no changes to Title II.

Principal items are:

The proposed sunset, which is in Title III (in accordance with a Legislative Counsel placement recommendation), is December 2011, in order to provide more time for experience than the 2009 date would allow while making clear the expectation that the permanent system should be settled on during the term of the President who will be elected this November.

The Feinstein exclusivity amendment is included. For ourselves, we have not foreclosed the possibility of including some form of the additional text that David Grannis had been exchanging with Jack and John D. on collection following an attack on the United States, particularly one for which the Congress enacts an AUMF. That could very well be a subject of discussion.

The IG review provision is included -- as the text had been developed by Senator Leahy, with the House modification that the IGs should select one of them who is presidentially appointed and Senate confirmed to coordinate the review. Not to mix up legislative issues, but we would be happy if that turned out to be an Inspector General for the Intelligence Community.

52/66

[redacted]

Our proposed alternative to the electronic surveillance definition carve-out, which we believe achieves everything that may have been sought in the carve-out, is in section 702(c)(2) on page 4: "Nothing in the definition of electronic surveillance shall be construed to require an application under section 104 for an acquisition that is targeted in accordance with this section at a person reasonably believe to be located outside the United States." If there is any need to have anything that achieves the purpose of a carve-out (to confess, we're doubters about that in light of the "notwithstanding any" preface to section 702 (old 703)), new 702(c)(2) does that by making clear that nothing in the definition of e.s. produces the consequence to be avoided, namely, a requirement of proceeding under Title I. And because, that can be achieved without a change in the definition of e.s., there is no need for any of the anti-carve-out provisions in the bill. We've placed a substantially identical provision in section 703 (old 704).

A key aspect of the attached is a solution, which we believe works, to the timing of judicial review debate.

Whatever the practical or theoretical significance of the prior approval/pre-approval debate may have been before enactment of the PAA when every authorization under the PAA would be a first-time authorization, the fact is that a large part of what occurs in the future will be an annual cycle of reauthorizations.

702(i)(5), on page 11, is designed to encourage orderliness in that annual process by providing, to the extent practicable, a schedule of synchronized handoffs from one year's authorizations to the next, while making it absolutely clear in 5(E) that the AG/DNI are free to submit certifications for additional authorizations at other times during the year as necessary.

Building on this, as a matter of both administrative and judicial efficiency, the AG/DNI should be able to submit, in advance of the expiration of an annual authorization (or set of them) the certification and procedures for the new authorization year. That, as a practical matter, will allow for approval by the beginning of the new authorization year. But the attached makes perfectly clear that at any time, without characterizing it as an emergency, the AG/DNI may provide for immediate action.

There is a goal or expectation, but not a mandate, that accompanies this. Approval by the beginning of a new authorization year (subject to the AG/DNI's immediate implementation power) serves valuable interests, none of which involves any solicitude toward foreign targets. It will mean that directives which are issued come with the strength, that may be important someday to a doubtful carrier, that the U.S. person protections (i.e., the completeness of certifications and adequacy of targeting and minimization procedures) have been approved. It will also increase the opportunity to be able (note, not mandated, but be able) to make corrections before collection

b2/b4

[redacted]

begins. The same goal, when possible, exists for new authorizations.

But to underscore the point again, the attached is written to give the AG/DNI the full authority to begin when needed, and to continue until directed otherwise by the Court of Review.

One other topic - guidelines. You'll see that we propose, in 702(f) on pages 4-5 a general provision for guidelines, applicable to all the limitations in 702(b), without any required detail, the existence of which the AG/DNI must certify, but which are submitted to committees here, not to the FISC for review.

These are highlights. There are other items, all of which we should discuss.

Chris and Alissa are here next week; I'll be away. We'll reverse that during the second week of the recess. Please don't hesitate to begin an exchange of thoughts with whomever may be here. Let's definitely plan to sit down together as early as possible during the first week back.

And a Happy Easter and start of spring to all.

Mike

b2/b6

[redacted]

From: [redacted]
To: "Jack Livingston" [redacted]@ssci.senate.gov>

Date: Tuesday, October 16, 2007 10:56PM
Subject: Re: Amendments

[redacted]

----- Original Message -----
From: "Livingston, J (Intelligence)" [redacted]@ssci.senate.gov]
Sent: 10/16/2007 10:49 PM AST
To: [redacted]
Subject: RE: Amendments

[redacted]

From: [redacted]
Sent: Tuesday, October 16, 2007 10:45 PM
To: Livingston, J (Intelligence)
Subject: Re: Amendments

[redacted]

----- Original Message -----
From: "Livingston, J (Intelligence)" [redacted]@ssci.senate.gov]
Sent: 10/16/2007 10:43 PM AST
To: [redacted]
Subject: RE: Amendments

[redacted]

From: [redacted]
Sent: Tuesday, October 16, 2007 10:21 PM

b2/b6

[redacted]

To: Livingston, J (Intelligence)
Subject: Re: Amendments

[redacted]

----- Original Message -----
From: "Livingston, J (Intelligence)" [redacted]@ssci.senate.gov]
Sent: 10/16/2007 10:06 PM AST
To: [redacted]
Subject: RE: Amendments

[redacted]

From: [redacted]
Sent: Tuesday, October 16, 2007 9:55 PM
To: Livingston, J (Intelligence)
Subject: Re: Amendments

Thanks.

----- Original Message -----
From: "Livingston, J (Intelligence)" [redacted]ssci.senate.gov]
Sent: 10/16/2007 09:34 PM AST
To: Gerry, Brett (OLP)" <Brett.Gerry@usdoj.gov>; [redacted] Eisenberg, John" <John.Eisenberg@usdoj.gov>; Demers, John (NSD)" <John.Demers@usdoj.gov>; Vito Caproni, Valerie Potenza (work)" [redacted] E." [redacted]
Cc: Wainstein, Kenneth (NSD)" <Kenneth.Wainstein@usdoj.gov>
Subject: Amendments

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

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

b2/b6

[redacted]

Define electronic surveillance (technology neutral DNI April definition)

Define contents consistent with Title III

Add WMD to agent of a foreign power, with conforming amendments

Strike second element of probable cause physical search applications to make it consistent with the Court's finding

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

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

b2/b6

[redacted]

From: [redacted]
To: "Jack Livingston" [redacted]@ssci.senate.gov>
bcc: [redacted]

Date: Tuesday, October 16, 2007 10:39PM
Subject: Re: Amendments

Also, heard sen. wyden mentioned to dni about having someone present at markup for tech assistance. Also understand that it would be unusual and Andy has said no. In any event, that is matter for committee--I would come with brett if the committee wants us there.

----- Original Message -----
From: [redacted]
Sent: 10/16/2007 10:21 PM EDT
To: Jack Livingston" [redacted]@ssci.senate.gov>
Subject: Re: Amendments

[redacted]

----- Original Message -----
From: "Livingston, J (Intelligence)" [redacted]@ssci.senate.gov]
Sent: 10/16/2007 10:06 PM AST
To: [redacted]
Subject: RE: Amendments

[redacted]

From: [redacted]
Sent: Tuesday, October 16, 2007 9:55 PM
To: Livingston, J (Intelligence)
Subject: Re: Amendments

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b2/b6

[redacted]

----- Original Message -----
From: "Livingston, J (Intelligence)" [redacted]@ssci.senate.gov]
Sent: 10/16/2007 09:34 PM AST
To: Gerry, Brett (OLP)" <Brett.Gerry@usdoj.gov>; [redacted] Eisenberg, John"
<John.Eisenberg@usdoj.gov>; Demers, John (NSD)" <John.Demers@usdoj.gov>; Vito
Potenza (work)" [redacted]
E." [redacted]
Cc: Wainstein, Kenneth (NSD)" <Kenneth.Wainstein@usdoj.gov>
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One caveat, no need to suggest the redefinition of agent of a foreign power to include non-us persons with foreign intelligence information. Thanks.

Out of scope

[redacted]

From: [redacted]
Sent: Sunday, April 20, 2008 8:51 PM
To: "Louis Tucker"
Subject: Re: FISA

Hey Louis: Ben, [redacted] and I will be there. Ben has to leave at 11:30. Can we try and wrap up the mtg then? From DoJ, John Demers and [redacted] will attend, and NSA's Vito Potenza will attend. See you Mon am.

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

—— Original Message ——
From: "Tucker, L (Intelligence)" [L_Tucker@SSCI.Senate.Gov]
Sent: 04/19/2008 01:16 PM AST
To: "Livingston, J (Intelligence)" <[redacted]@SSCI.Senate.Gov>; "Davidson, M (Intelligence)" <[redacted]@SSCI.Senate.Gov>; [redacted]; "Demers, John (NSD)" <John.Demers@usdoj.gov>; [redacted]; "Potenza, Vito" <[redacted]; "Eisenberg, John" <John.Eisenberg@usdoj.gov>; <Carl.Nichols@usdoj.gov>; "Rice, K (Intelligence)" <[redacted]@SSCI.Senate.Gov>; <[redacted]>; [redacted]; "Rossi, Nick (Judiciary-Rep)" <[redacted]@Judiciary-dem.senate.gov>; "DeRosa, Mary (Judiciary-Dem)" <[redacted]@Judiciary-dem.senate.gov>; <[redacted]@judiciary-rep.senate.gov>; "Espinel, Zulima (Judiciary-Dem)" <[redacted]@mail.house.gov>; "Solomon, Matthew (Judiciary-Dem)" <[redacted]@Judiciary-dem.senate.gov>; <[redacted]@mail.house.gov>; "Johnson, A (Intelligence)" <[redacted]@mail.house.gov>; <[redacted]@mail.house.gov>; "Abegg, John (McConnell)" <[redacted]@SSCI.Senate.Gov>; <[redacted]@mail.house.gov>; "Hawkins, Tom (McConnell)" <[redacted]@mcconnell.senate.gov>; <[redacted]@mcconnell.senate.gov>; "Lettre, Marcel (Reid)" <[redacted]@mail.house.gov>; <[redacted]@mail.house.gov>; <[redacted]@who.eop.gov>; <harold_h._kim@who.eop.gov>; <[redacted]@reid.senate.gov>; "Healey, C (Intelligence)" <[redacted]@SSCI.Senate.Gov>; <joel_d._kaplan@who.eop.gov>; <[redacted]@mail.house.gov>; "Weich, Ron (Reid)" <[redacted]@mail.house.gov>; "Starzak, Alissa (Intelligence)" <[redacted]@SSCI.Senate.Gov>; "Wolfe, J (Intelligence)" <[redacted]@SSCI.Senate.Gov>
<[redacted]@reid.senate.gov>;
Subject: FISA

Staff: Congressman Hoyer and Senator Bond have been in contact regarding a possible way forward with respect to FISA. Senator Bond expressed to Congressman Hoyer that because the Senate bill has bipartisan support with a supermajority in the Senate and an apparent simple majority in the House and is supported by the DNI/DOJ/Administration, he believed the most helpful way forward would be to hear from the House Democratic

b2/b6

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

Louis Tucker
Republican Staff Director
Senate Select Committee on Intelligence

[redacted]

From: "Tucker,L (Intelligence)" [redacted]@SSCI.Senate.Gov>
To: [redacted]
cc: "Livingston,J (Intelligence)" [redacted]@SSCI.Senate.Gov>, "Rice,K (Intelligence)" [redacted]@SSCI.Senate.Gov>

Date: Friday, April 04, 2008 07:39PM
Subject: Re: On the return of H.R. 3773 to the Senate

The question isn't if but when, did Rockefeller and the DNI agree to Monday or next week sometime? You know there are other things in motion and they will use this. If you the timing of that, and their UC today and what they'll say coming from Monday, etc. are just coincidences, I'd think again. Bond will be objecting Monday to their UC to pass/extend the PAA for 30 days on the Senate floor. If you want a bipartisan meeting with Senate Intel that would be next Friday. That's our recommendation, you're free of course to do as you will.

----- Original Message -----
From: [redacted]
To: Tucker, L (Intelligence)
Cc: Livingston, J (Intelligence); Benjamin Powell <[redacted]
Sent: Fri Apr 04 19:15:54 2008
Subject: Re: On the return of H.R. 3773 to the Senate

Louis: We said we'd come period. We cannot walk this one back. The DNI told Rockefeller on the phone Ben would be there, and the DNI said: We are not coming to negotiate.

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

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

To: [redacted]@dni.gov>, "Livingston, J (Intelligence)" [redacted]@SSCI.Senate.Gov>
From: "Tucker, L (Intelligence)" [redacted]@SSCI.Senate.Gov>
Date: 04/04/2008 07:14PM
cc: [redacted]
Subject: Re: On the return of H.R. 3773 to the Senate

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[redacted]

Makes more sense to bump till Friday. You guys said you'd come if it was bipartisan, will be bipartisan on Friday when we will attend, why not bump to Friday?

----- Original Message -----
From: [redacted]
To: Livingston, J (Intelligence)
Cc: Benjamin Powell <[redacted]; Tucker, L (Intelligence); [redacted]
Sent: Fri Apr 04 18:46:50 2008
Subject: RE: On the return of H.R. 3773 to the Senate

Jack: We are planning to attend on Monday at 2 pm; we told Mike over a week ago that we would and the Chairman raised it with the DNI in a phone call earlier this week. It is not a negotiation session. Have a good weekend Jack.

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

-----"Livingston, J (Intelligence)" [redacted]@ssci.senate.gov> wrote: -----

To: "Davidson, M (Intelligence)" [redacted]@ssci.senate.gov>, "Ben Powell" <[redacted], "Demers, John (NSD)" <John.Demers@usdoj.gov>, "Eisenberg, John" <John.Eisenberg@usdoj.gov>, <Carl.Nichols@usdoj.gov>, "Potenza, Vito" [redacted] "Rice, K (Intelligence)" <K_Rice@ssci.senate.gov>, "DeRosa, Mary (Judiciary-Dem)" <[redacted]@Judiciary-dem.senate.gov>, "Rossi, Nick (Judiciary-Rep)" <[redacted]@judiciary-rep.senate.gov>, "Espinel, Zulima (Judiciary-Dem)" <[redacted]@Judiciary-dem.senate.gov>, "Solomon, Matthew (Judiciary-Dem)" <[redacted]@Judiciary-dem.senate.gov>
From: "Livingston, J (Intelligence)" <[redacted]@ssci.senate.gov>
Date: 04/04/2008 01:16PM
cc: "Healey, C (Intelligence)" <[redacted]@ssci.senate.gov>, "Starzak, Alissa (Intelligence)" <[redacted]@ssci.senate.gov>
Subject: RE: On the return of H.R. 3773 to the Senate

Mike,

Consistent with our earlier discussion this morning, I just spoke with Louis and I need to keep Monday free to help out with the Minority Report to the Committee's Phase II

b2/b6

[redacted]

reports. Louis has authorized me to participate in bipartisan negotiations on Friday, April 11. My schedule is pretty open that day, so if you want to go with the 2:00 meeting time, or perhaps something earlier, that's fine with me. Thanks.

Jack

From: Davidson, M (Intelligence)
Sent: Friday, March 28, 2008 4:54 PM
To: 'Ben Powell'; 'Demers, John (NSD)'; 'Eisenberg, John'; [redacted] Livingston, 'Carl.Nichols@usdoj.gov'; 'Potenza, Vito'; [redacted] J (Intelligence); Rice, K (Intelligence); DeRosa, Mary (Judiciary-Dem); Rossi, Nick (Judiciary-Rep); Espinel, Zulima (Judiciary-Dem); Solomon, Matthew (Judiciary-Dem)
Cc: Healey, C (Intelligence); Starzak, Alissa (Intelligence)
Subject: RE: On the return of H.R. 3773 to the Senate

After consulting with Ben about a date and time, let's plan to meet on Monday, April 7, at 2, for a full afternoon, bipartisan Senate-side discussion (Intelligence and Judiciary) with ODNI/DOJ/NSA to help set us on a path that enables the branches to reach agreement on a good law.

I've reserved both our hearing room, SH-219, and a conference room in SH-211, depending on the number of participants. Let's assume for now that we'll meet in 219.

Looking forward to seeing all.

Mike

From: Davidson, M (Intelligence)
Sent: Friday, March 14, 2008 5:43 PM
To: 'Ben Powell'; Demers, John (NSD); 'Eisenberg, John'; Carl.Nichols@usdoj.gov; [redacted] Livingston, J (Intelligence); Rice, K (Intelligence); DeRosa, Mary (Judiciary-Dem); Rossi, Nick (Judiciary-Rep); Espinel, Zulima (Judiciary-Dem); Solomon, Matthew (Judiciary-Dem)
Potenza, Vito;
Cc: Healey, C (Intelligence); Starzak, Alissa (Intelligence)
Subject: On the return of H.R. 3773 to the Senate

b2/b6

[redacted]

Dear ODNI/DOJ/NSA and Senate Intelligence and Judiciary colleagues:

Given the possibility, as is now occurring, that the FISA bill would come back to the Senate, over the last day or so Chris, Alissa, and I have prepared a draft for discussion. It is not a formal Rockefeller draft, but something that we hope advances the discussion, together with ideas that all of you might put on the table. It will, of course, be important to begin a discussion that also includes House colleagues, and we will share this with them. Still, it will be good to get our mutual bearings on the Senate side, and we hope this will make a contribution to that end.

The underlying document begins with the Senate amendment to H.R. 3773. The strike outs and insertions represent a combination of matters (additions, deletions, or modifications) in the House amendment that we would propose for acceptance, or matters that we would propose be amended in some way. There are a number of items in the House amendment that are not included (e.g., the Commission and statute of limitations amendment). The matters taken or modified from the House amendment include both substantive matters and drafting recommendations from the House Legislative Counsel, some of which, such as much of Title III, the two Legislative Counsel offices worked on together.

All of the proposed changes are in Titles I and III. The attached makes no changes to Title II.

Principal items are:

The proposed sunset, which is in Title III (in accordance with a Legislative Counsel placement recommendation), is December 2011, in order to provide more time for experience than the 2009 date would allow while making clear the expectation that the permanent system should be settled on during the term of the President who will be elected this November.

The Feinstein exclusivity amendment is included. For ourselves, we have not foreclosed the possibility of including some form of the additional text that David Grannis had been exchanging with Jack and John D. on collection following an attack on the United States, particularly one for which the Congress enacts an AUMF. That could very well be a subject of discussion.

The IG review provision is included -- as the text had been developed by Senator Leahy, with the House modification that the IGs should select one of them who is presidentially appointed and Senate confirmed to coordinate the review. Not to mix up

b2/b6

[redacted]

legislative issues, but we would be happy if that turned out to be an Inspector General for the Intelligence Community.

Our proposed alternative to the electronic surveillance definition carve-out, which we believe achieves everything that may have been sought in the carve-out, is in section 702(c)(2) on page 4: "Nothing in the definition of electronic surveillance shall be construed to require an application under section 104 for an acquisition that is targeted in accordance with this section at a person reasonably believe to be located outside the United States." If there is any need to have anything that achieves the purpose of a carve-out (to confess, we're doubters about that in light of the "notwithstanding any" preface to section 702 (old 703)), new 702(c)(2) does that by making clear that nothing in the definition of e.s. produces the consequence to be avoided, namely, a requirement of proceeding under Title I. And because, that can be achieved without a change in the definition of e.s., there is no need for any of the anti-carve-out provisions in the bill. We've placed a substantially identical provision in section 703 (old 704).

A key aspect of the attached is a solution, which we believe works, to the timing of judicial review debate.

Whatever the practical or theoretical significance of the prior approval/pre-approval debate may have been before enactment of the PAA when every authorization under the PAA would be a first-time authorization, the fact is that a large part of what occurs in the future will be an annual cycle of reauthorizations.

702(i)(5), on page 11, is designed to encourage orderliness in that annual process by providing, to the extent practicable, a schedule of synchronized handoffs from one year's authorizations to the next, while making it absolutely clear in 5(E) that the AG/DNI are free to submit certifications for additional authorizations at other times during the year as necessary.

Building on this, as a matter of both administrative and judicial efficiency, the AG/DNI should be able to submit, in advance of the expiration of an annual authorization (or set of them) the certification and procedures for the new authorization year. That, as a practical matter, will allow for approval by the beginning of the new authorization year. But the attached makes perfectly clear that at any time, without characterizing it as an emergency, the AG/DNI may provide for immediate action.

There is a goal or expectation, but not a mandate, that accompanies this. Approval by the beginning of a new authorization year (subject to the AG/DNI's immediate implementation power) serves valuable interests, none of which involves any solicitude toward foreign targets. It will mean that directives which are issued come with the strength,

b2/b6

[redacted]

that may be important someday to a doubtful carrier, that the U.S. person protections (i.e., the completeness of certifications and adequacy of targeting and minimization procedures) have been approved. It will also increase the opportunity to be able (note, not mandated, but be able) to make corrections before collection begins. The same goal, when possible, exists for new authorizations.

But to underscore the point again, the attached is written to give the AG/DNI the full authority to begin when needed, and to continue until directed otherwise by the Court of Review.

One other topic – guidelines. You'll see that we propose, in 702(f) on pages 4-5 a general provision for guidelines, applicable to all the limitations in 702(b), without any required detail, the existence of which the AG/DNI must certify, but which are submitted to committees here, not to the FISC for review.

These are highlights. There are other items, all of which we should discuss.

Chris and Alissa are here next week; I'll be away. We'll reverse that during the second week of the recess. Please don't hesitate to begin an exchange of thoughts with whomever may be here. Let's definitely plan to sit down together as early as possible during the first week back.

And a Happy Easter and start of spring to all.

Mike

Out of Scope

[redacted]

From: [redacted]
Sent: Monday, February 11, 2008 8:07 PM
To: "Sozan, Michael \(Webb\)" [redacted] "Stout, Jennifer \(Webb\)"
Cc: "Jones, Nelson \(Webb\)"; [redacted]
Subject: RE: DNI Response to Letter from Sen. Webb

Michael: It does not. Those documents are not under the purview of the DNI to provide access. NSA would be happy to come up and brief Senator Webb on issues if he is available. Many thanks.

b2/b6

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

-----"Sozan, Michael \(Webb\)" [redacted]@webb.senate.gov> wrote: -----

To: [redacted]
From: "Sozan, Michael \(Webb\)" [redacted]@webb.senate.gov>
Date: 02/11/2008 04:49PM
cc: "Jones, Nelson \(Webb\)" [redacted]@webb.senate.gov>, [redacted] "Stout, Jennifer \(Webb\)" [redacted]@webb.senate.gov>
Subject: RE: DNI Response to Letter from Sen. Webb

Kathleen:

Sen. Webb is curious whether the classified package includes the documents from the White House that other selected members (such as members of the Senate Intelligence Committee) have been permitted to view?

Thank you.

Michael L. Sozan
Legislative Director
U.S. Senator Jim Webb

b6/b6

From: [redacted]
Sent: Thursday, February 07, 2008 10:13 AM
To: Sozan, Michael (Webb)
Cc: Jones, Nelson (Webb); [redacted] Stout, Jennifer (Webb)
Subject: Re: DNI Response to Letter from Sen. Webb

Correct. The unclassified pkg we delivered last week is pretty comprehensive. This classified pkg provides additional info responsive to his questions and concerns.
Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence
[redacted]

----- Original Message -----
From: "Sozan, Michael \(Webb\)" [redacted]@webb.senate.gov]
Sent: 02/07/2008 10:07 AM EST
To: [redacted]
Cc: "Jones, Nelson \(Webb\)" <[redacted]@webb.senate.gov>; [redacted] "Stout, Jennifer \(Webb\)" <[redacted]@webb.senate.gov>
Subject: RE: DNI Response to Letter from Sen. Webb

No, neither Jen nor any staffer in our office is cleared for that. I am surprised that these documents are classified at that high level. I suppose only Sen. Webb would be able to review these documents.

From: [redacted]
Sent: Thursday, February 07, 2008 9:59 AM
To: Sozan, Michael (Webb)
Cc: Jones, Nelson (Webb); [redacted] Stout, Jennifer (Webb)
Subject: Re: DNI Response to Letter from Sen. Webb

About 25 pages. They are classified Top Secret Codeword and I am not aware she is cleared for that. Is she?
Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence
[redacted]

----- Original Message -----
From: "Sozan, Michael \(Webb\)" [redacted]@webb.senate.gov]

b2/b6

Sent: 02/07/2008 09:35 AM EST
To: [redacted]
Cc: "Jones, Nelson \(Webb\)" <[redacted]@webb.senate.gov>; "[redacted]" <[redacted]> "Stout, Jennifer \(Webb\)" <[redacted]@webb.senate.gov>
Subject: RE: DNI Response to Letter from Sen. Webb

Thank you Kathleen.

Later today, or possibly tomorrow (depending on schedule), Jennifer Stout will go to Hart 211 to review the documents. Can you give us a sense of how many pages of documents are there to be reviewed?

Michael L. Sozan
Legislative Director
U.S. Senator Jim Webb

From: [redacted]
Sent: Wednesday, February 06, 2008 9:28 PM
To: Sozan, Michael (Webb)
Cc: Jones, Nelson (Webb); [redacted] Stark, Lisa (Webb); Stout, Jennifer (Webb)
Subject: Re: DNI Response to Letter from Sen. Webb

Michael: The classified response will be in Hart 211 for Sen. Webb to review tomorrow. The SSCI Security Director can assist. Thanks.
Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence
[redacted]

----- Original Message -----
From: [redacted]
Sent: 02/01/2008 04:09 PM EST
To: "Sozan, Michael \(Webb\)" <[redacted]@webb.senate.gov>
Cc: "Jones, Nelson \(Webb\)" <[redacted]@webb.senate.gov>; [redacted] "Stark, Lisa \(Webb\)" <[redacted]@webb.senate.gov>; "Stout, Jennifer \(Webb\)" <[redacted]@webb.senate.gov>
Subject: RE: DIN Response to Letter from Sen. Webb

Will do.

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

b2/b6

Fax: 202-201-1870

-----"Sozan, Michael \(Webb\)" [redacted]@webb.senate.gov> wrote: -----

To: [redacted]
From: "Sozan, Michael \(Webb\)" [redacted]@webb.senate.gov>
Date: 02/01/2008 03:49PM
cc: "Jones, Nelson \(Webb\)" [redacted]@webb.senate.gov>, [redacted] "Stark, Lisa \(Webb\)" [redacted]@webb.senate.gov>, "Stout, Jennifer \(Webb\)" [redacted]@webb.senate.gov>
Subject: RE: DIN Response to Letter from Sen. Webb

Kathleen:

Thank you for the response.

We will talk with Sen. Webb about a potential visit to Maryland.

Please let us know when the classified infromation is sent over.

Michael L. Sozan
Legislative Director
U.S. Senator Jim Webb

From: [redacted]
Sent: Friday, February 01, 2008 3:36 PM
To: Stout, Jennifer (Webb)
Cc: Sozan, Michael (Webb); Jones, Nelson (Webb); [redacted]
Subject: DIN Response to Letter from Sen. Webb

Jennifer: I have attached the DNI's response to Senator Webb, along with four attachments to that letter. We will also provide some classified information early next week to the SSCI Security Officer for the Senator to review in their Hart 211 spaces. The DNI, Mike McConnell, enjoyed meeting with the Senator and we hope this information helps address his concerns. At the mtg on Jan 29, we talked with the Senator about him going out to the National Security Agency (NSA) in Maryland, where he could see the process, meet the people, "kick the tires so to speak." We believe that would be very useful for him as he considers the upcoming FISA legislation. NSA could come pick him up at the Capitol and take him to their building, and the bring him back to the Capitol. That would take about 4 hours. Please let me know if we can assist in any way. Many thanks.

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

-----"Stout, Jennifer \(Webb\)" [redacted]@webb.senate.gov> wrote: -----

b2/b6

To: [redacted]
From: "Stout, Jennifer \(Webb\)" <[redacted]@webb.senate.gov>
Date: 01/31/2008 12:51PM
cc: "Sozan, Michael \(Webb\)" <[redacted]@webb.senate.gov>, "Jones, Nelson \(Webb\)" [redacted]@webb.senate.gov>
Subject: Letter from Sen. Webb to McConnell

Kathleen,

Attached, please find a letter from Senator Webb to Admiral McConnell as a follow up to their recent meeting.

Best,
Jennifer

Jennifer Park Stout
Senior Advisor
Office of Senator Jim Webb
144 Russell Senate Office Building
Washington, DC 20510
[redacted]

[redacted]

Out of Scope

To: "Marcel Lettre" [redacted]@reid.senate.gov>
From: [redacted]
Date: 03/26/2008 10:06AM
Subject: RE: Status

Marcel: I thought the mtg went well too. Thanks for any assistance on FISA--we are very concerned and I will keep you updated on what I know. Have a safe trip!

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

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

6/2/08

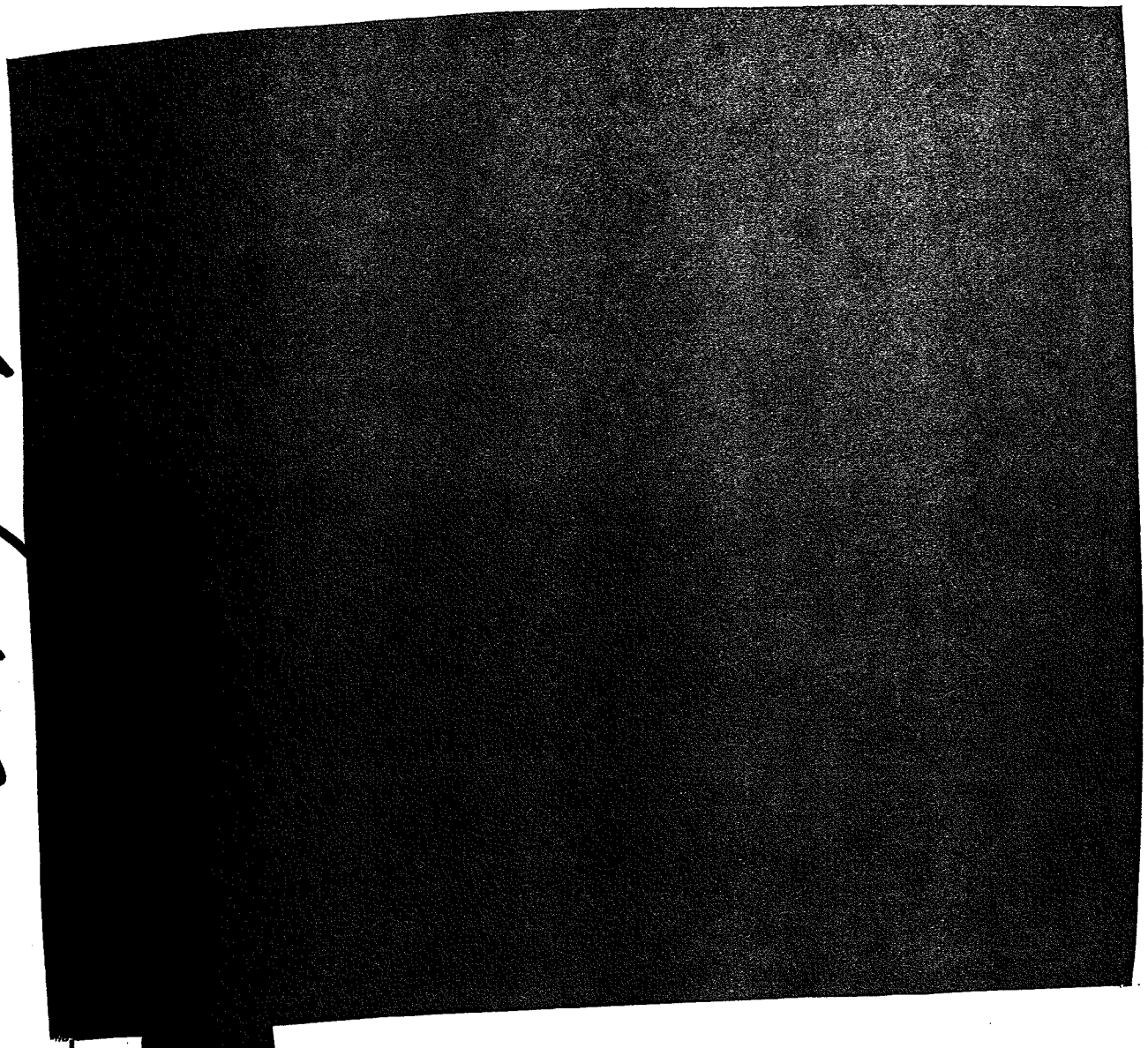
b2/b6

To: [redacted]
From: "Lettre, Marcel (Reid)" [redacted]@reid.senate.gov>
Date: 03/25/2008 10:51PM
Subject: RE: Status

Kathy - thanks so much for helping arrange the meeting between Graham and McConnell. Am traveling for rest of week as soon as I get Graham off to the airport tomorrow so may not circle back for a couple days, but will indeed circle back with anything he suggests re: followups.

Thanks also for the update on FISA and pls keep me posted -- Ron and I will be primed to urge Sen Reid to help catalyze movement starting the Monday we get back next week...

Marcel



Out of Scope

52/66

To: @mail.house.gov
From:
Date: 04/01/2008 07:40PM
cc: @mail.house.gov,
Subject: RE: Briefing on telecom cooperation-We can do it

Brian: we can do it. The DNI wants to come do it himself. Is there any chance we could start earlier than 5 pm--the DNI will be up appearing at a Hearing from 1:30 until 3:30; any chance we could do it at 4 pm or even 4:30 pm? We need a SCIFed room for the meeting. The DNI may ask the NSA Director and CIA Director to join him. I will keep you posted.

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

02/06

-----"Diffell, Brian" [redacted]@mail.house.gov> wrote: -----

To: [redacted]
From: "Diffell, Brian" [redacted]@mail.house.gov>
Date: 04/01/2008 06:38PM
cc: "Eddings, Richard" [redacted]@mail.house.gov>, [redacted]
Subject: RE: Briefing on telecom cooperation

Sooner the better. I'll let Richard propose another time if necessary.

From: [redacted]
Sent: Tuesday, April 01, 2008 6:20 PM
To: Diffell, Brian
Cc: Eddings, Richard; [redacted]
Subject: Re: Briefing on telecom cooperation

Brian: I am checking--it may not be pssoble this quickly, but I will get back to you tomorrow. Can we look at dates/times for next week also?

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

-----"Diffell, Brian" [redacted]@mail.house.gov> wrote: -----

To: [redacted]
From: "Diffell, Brian" [redacted]@mail.house.gov>
Date: 04/01/2008 12:45PM
cc: "Eddings, Richard" [redacted]@mail.house.gov>
Subject: Briefing on telecom cooperation

Kathleen - Per our discussion last week, Mr Blunt's calendar is free this Thursday at 5pm. Sorry for the quick turnaround, do you think you could have your guys come up and talk to him for an hour about the practical implications of not granting this liability protection on both FISA and non-FISA related cooperation?

Brian C. Diffell
Senior Policy Advisor
Office of the Republican Whip
[redacted]

Out of Scope

[redacted]

From: [redacted]
Sent: Tuesday, December 04, 2007 1:31 PM
To: [redacted]@mcconnell.senate.gov
Subject: Re: FISA

b2/b6

Tom: I do not think it is done yet--the counsels have been so swamped with all of the FISA action. I will ping them again for it and let you know where we stand.

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

-----"Hawkins, Tom (McConnell)" <[redacted]@mcconnell.senate.gov> wrote: -----

To: [redacted]
From: "Hawkins, Tom (McConnell)" <[redacted]@mcconnell.senate.gov>
Date: 12/04/2007 12:03PM
Subject: FISA

During the recess I asked you and Ben to provide me with an appeal/critique of the Wyden amendment in classified form. I never received this document.
If this is an oversight on my part, and it has been delivered to Senate Security, please let me know.
Thanks,
Tom

Out of Scope

[redacted]

From: [redacted]
Sent: Tuesday, December 04, 2007 2:18 PM
To: "Jim Smythers"
Cc: [redacted]
Subject: Re: problems with Wyden/Feingold amdts to SSCI FISA bill

Hi Jim: I just sent you the mid-Nov DNI-AG jointly signed Views letter when SJC did their mark-up. We are working on a SAP that should be done soon and I will esnuer you get a copy. We have great concerns with the SJC Bill.

52/66

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

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

To: <[redacted]
From: "Smythers, James (Intelligence)" [redacted]@SSCI.Senate.Gov>
Date: 12/04/2007 01:49PM
Subject: problems with Wyden/Feingold amdts to SSCI FISA bill

Kathleen or Pete,

Was there any SAP or DNI letter that outlined the problems with the Wyden and Feingold amendments to our SSCI FISA Bill?

If so, can you shoot a copy my way?

Thanks!
Jim

Out of Sco

[redacted]

From: [redacted]
Sent: Tuesday, December 04, 2007 2:52 PM
To: [redacted]@ssci.senate.gov
Subject: Re: fisa

Caroline: My two smart lawyers on FISA, Ben Powell and [redacted] are in Hart 219 with Mike and Jack right now. Can you swing by there and motion [redacted] to get his attention and he can help you. Will that work?

62/56

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

-----"Tess, Caroline (Intelligence)" [redacted]@ssci.senate.gov> wrote: -----

To: [redacted]
From: "Tess, Caroline (Intelligence)" [redacted]@ssci.senate.gov>
Date: 12/04/2007 02:50PM
Subject: fisa

Kathleen –

You referenced two Feingold amendments that are very problematic for the DNI. I just want to make sure I have the right ones – reverse targeting and bulk collection?

This is for a memo for my boss tonight so the sooner the better, I would appreciate it.

Thanks, Caroline

Caroline Tess
Senate Select Committee on Intelligence
202-224-1700

Out of Scope

[redacted]

From: [redacted]
Sent: Monday, December 03, 2007 3:24 PM
To: "Kirk McConnell"; "Sean Littlefield"
Cc: [redacted]
Subject: Re: briefing Friday

b2/b6

Kirk: Leaders Reid and McConnell invited the DNI and AG to come to S-407 for an all-Senate classified session on the FISA bill that will be on the Senate floor this week. We have worked closely with the SSCI on their Bill and believe it is a pretty good Bill.
Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence
[redacted]

----- Original Message -----
From: "McConnell, Kirk (Armed Services)" [redacted]@armed-services.senate.gov]
Sent: 12/03/2007 03:01 PM EST
To: [redacted]
Subject: briefing Friday

Kathleen/Sean:

My Chairman along with all other members has been invited by the majority Leader's office to a briefing on FISA for this coming Friday morning from McConnell and Mukasey. I have been tasked to put together some questions, which would be great if I had any idea what the briefing is about. Can someone help me with this?

Thanks, Kirk

Out of Scope

[redacted]

From: [redacted]
Sent: Monday, December 03, 2007 5:20 PM
To: "David Grannis"
Subject: Re: DNI briefing on Friday

Hi David; Leaders Reid and McConnell invited the DNI and AG to a closed all-Senate session to allow them to explain the impacts of the two Bills, but more importantly, to allow Members to ask them questions about the Bills. This has not been done since late July and much has transpired since then. Thanks.
Kathleen Turner
Director of Legislative Affairs
Office of the Director of National Intelligence
[redacted]

----- Original Message -----
From: "Grannis, D (Intelligence)" [redacted]@ssci.senate.gov]
Sent: 12/03/2007 05:10 PM EST
To: [redacted]
Subject: DNI briefing on Friday

Hello Kathleen –

Do you have any information on the subject of the Members briefing on FISA on Friday? Is there anything left to be said?

Thanks,
David

David Grannis
Professional Staff Member
Senate Select Committee on Intelligence
[redacted]
[redacted]@ssci.senate.gov

[redacted]

Out of Scope

From: [redacted]
Sent: Friday, November 02, 2007 9:14 AM
To: "David Grannis"
Cc: "Benjamin Powell"; [redacted]
Subject: RE: Mtg Set for Monday, Nov 5, 2:30-3:30, Hart 211

Thanks David.

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

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

To: [redacted]
From: "Grannis, D (Intelligence)" [redacted]@ssci.senate.gov>
Date: 11/02/2007 09:02AM
cc: "Benjamin Powell" <[redacted]
Subject: RE: Mtg Set for Monday, Nov 5, 2:30-3:30, Hart 211

She is most focused on the first point, and in particular any programs that fall outside of FISA's exclusivity.

Thanks Kathleen.

From: [redacted]
Sent: Thursday, November 01, 2007 6:37 PM
To: Grannis, D (Intelligence)
Cc: Benjamin Powell
Subject: Mtg Set for Monday, Nov 5, 2:30-3:30, Hart 211

Hi David: Thanks for the voice message; we are locked in for Monday from 2:30-3:30 pm with Senator Feinstein. I believe there are a few general issues related to FISA to discuss, but let me know if you think there are others:

--the first is about the FISA exclusive means language;
--the second issue is to address any questions she may have about immunity in advance of the SJC mark-up;
--if there is time, we can talk about our proposed fixes to the 2.5 language and why we need them.

b2/b6

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

b2/b6

[redacted]

From: [redacted]
Sent: Saturday, December 15, 2007 11:54 AM
To: "Marcel Lettre"
Subject: Re: letter

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

----- Original Message -----
From: "Lettre, Marcel (Reid)" [[redacted]@reid.senate.gov]
Sent: 12/15/2007 11:00 AM EST
To: [redacted]
Subject: RE: letter

Kathy – letter probably not finalized for Majority Leader's signature until tomorrow. Will get you the text as soon as it is approved by the Leader, probably tomorrow.

From: [redacted]
Sent: Friday, December 14, 2007 7:16 PM
To: Lettre, Marcel (Reid)
Cc: Weich, Ron (Reid); Hoy, Serena (Reid)
Subject: RE: FISA floor update

Marcel: I passed this on. Once you have the letter, pls fax to me and/or email. Thanks.

Kathleen Turner
Director of Legislative Affairs

b2/b6

Office of the Director of National Intelligence
[redacted]

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

To: [redacted]
From: "Lettre, Marcel (Reid)" <[redacted]@reid.senate.gov>
Date: 12/14/2007 06:31PM
cc: "Weich, Ron (Reid)" <[redacted]@reid.senate.gov>, "Hoy, Serena (Reid)" <[redacted]@reid.senate.gov>
Subject: RE: FISA floor update

Kathy –

Need to provide you one other update.

Sen Reid just spoke with us and, in light of requests from Senators to him in this regard as we prepare for floor action next week on the FISA bill (and specifically regarding the immunity provision), Sen Reid intends to send a letter to the DNI requesting that the Administration authorize access to any Senator who wishes to review the documents previously provided to SSCI and Judiciary related to carrier liability protection (e.g., legal opinions and presidential authorization letters). We are working on drafting the letter and hope to have it ready tonight or tomorrow but wanted to give you the earliest heads up possible so that the request could be given proper consideration on your end in advance of the beginning of floor debate on Monday.

Thanks,

Marcel

From: [redacted]
Sent: Friday, December 14, 2007 5:57 PM
To: Lettre, Marcel (Reid)
Cc: David Broome
Subject: Re: FISA floor update

Thanks Marcel. Try and enjoy the weekend if you can!

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

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

To: [redacted], <David_V._Broome@who.eop.gov>
From: "Lettre, Marcel (Reid)" <[redacted]@reid.senate.gov>
Date: 12/14/2007 05:27PM
Subject: FISA floor update

Senator Reid has now moved to proceed to S.2248, the FISA bill, and filed a cloture motion on his motion to proceed. The cloture vote on this motion to proceed will occur at 12 Noon on Monday,

December 17, 2007.

Sent from my BlackBerry

b2/b6

[redacted]

From: [redacted]
To: "Jeremy Bash" <[redacted]@mail.house.gov>
cc: "Christopher Frech" <Christopher_W._Frech@who.eop.gov>, "Brett Gerry" <Brett.Gerry@usdoj.gov>, "Sixkiller,Mariah" <[redacted]@mail.house.gov>, "DeBaca,Lou" <[redacted]@mail.house.gov>, [redacted] "Brian Benczkowski" <Brian.A.Benczkowski@usdoj.gov>

Date: Monday, May 19, 2008 05:07PM
Subject: Re: Peter Owen of the Administrative Office of US Courts

---

thanks Jeremy. will discuss with folks and get back to you.
-----"Bash, Jeremy" <[redacted]@mail.house.gov> wrote: -----

To: "Frech, Christopher W." <Christopher_W._Frech@who.eop.gov>, [redacted],
"Gerry, Brett " <Brett.Gerry@usdoj.gov>
From: "Bash, Jeremy" <[redacted]@mail.house.gov>
Date: 05/19/2008 05:04PM
cc: "Sixkiller, Mariah" <[redacted]@mail.house.gov>, "DeBaca, Lou" <[redacted]@mail.house.gov>
Subject: Peter Owen of the Administrative Office of US Courts

Peter Owen will be coming to the Hill tomorrow to provide feedback on the AO's view of the latest FISA drafts - the one that Sen Bond sent over on Tuesday, and the one we sent over on Friday morning. You all are welcome to attend. Rayburn 2148 at 10:30 tomorrow AM (5/20).

We have invited our minority counterparts.

Jeremy Bash | Chief Counsel

House Permanent Select Committee on Intelligence

Direct: [redacted]

Main: 202-225-7690

[redacted]

b2/b6

[redacted]

From: [redacted]
To: "Livingston,J (Intelligence)" <[redacted]@ssci.senate.gov>

Date: Friday, July 27, 2007 01:28AM
Subject: Re: Meeting

Don't know meeting list. We really need something before recess. Seems our options are increasingly limited.

----- Original Message -----
From: "Livingston, J (Intelligence)" [redacted]@ssci.senate.gov]
Sent: 07/27/2007 12:06 AM AST
To: [redacted]
Subject: Re: Meeting

Thanks for the heads up. Is this a meeting with the Dems only? Don't let them sell you a half loaf. We have presented a proposed vice chairman mark that would give you most of what you all have asked for. Mike Davidson told us that it would be difficult for them to get back to us on Monday with the chairman's response, which is nonsense.

Sent from my BlackBerry Wireless Device

----- Original Message -----
From: Ben Powell [redacted]
To: Johnson, A (Intelligence) [redacted]; [redacted]; Davidson, M (Intelligence); Healey, C (Intelligence); Brett.Gerry@usdoj.gov <Brett.Gerry@usdoj.gov>; Matthew.Olsen@usdoj.gov <Matthew.Olsen@usdoj.gov>; [redacted]; [redacted]; Joel_D._Kaplan@who.eop.gov <Joel_D._Kaplan@who.eop.gov>; Kenneth.Wainstein@usdoj.gov <Kenneth.Wainstein@usdoj.gov>; [redacted]; [redacted]; John.Eisenberg@usdoj.gov <John.Eisenberg@usdoj.gov>; Livingston, J (Intelligence)
Sent: Thu Jul 26 23:40:57 2007
Subject: Re: Meeting

Andy -- Thought I would send some language for your consideration. The FISA mod file contains text that does the following:

1) Adds one paragraph to the existing statute making clear that FISA does not cover surveillance directed at a person overseas.

2) Provides a means of compelling assistance from communications providers.

3) Effective date and providing for transition of any currently existing FISA orders. If this is

b2/b6

[redacted]

short-term fix with a sunset, would suggest adding the sunset date to this clause.

The additional provision file contains text that addresses a concern raised in past discussions about "reverse targeting". The text provides that the primary purpose of acquiring communications of a non-US person overseas cannot be to acquire the communications of a person in the US (unless a FISA order is obtained of course).

The second concern raised by some has been issues about "mass targeting" and interpretation of the phrase "particular, known" in our full proposal. There is not a need to address this issue in this surgical fix as the existing definitions of electronic surv under FISA remain the same domestically, with only a carve out for activity directed overseas. [And, for the record, we do not agree that our proposal allowed such alleged mass targeting (or reverse targeting), but in any event, no need to address the issue in the attached approach]

I would note the time of night that I am sending up this text -- The FISA technical experts are going to need to think through this text and I would not be surprised if we would have additional adjustments to make to ensure the text accomplishes what I think is our common goal. Obviously, this represents a late night email and not a fully coordinated proposal (or one that has even been seen/approved by DNI), but time is short.

See you in the morning.

Ben

Johnson, A (Intelligence) wrote:

Thanks Ben. We will see you and the entourage at 10 am in the hearing room, Senate Hart 219. -- Andy

---

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Ben Powell [redacted]
To: Johnson, A (Intelligence)
Cc: [redacted]; Davidson, M (Intelligence); Healey, C (Intelligence); Brett.Gerry@usdoj.gov <Brett.Gerry@usdoj.gov> <mailto:Brett.Gerry@usdoj.gov> ; Steve.Bradbury@usdoj.gov <Steve.Bradbury@usdoj.gov> <mailto:Steve.Bradbury@usdoj.gov> ; Matthew.Olsen@usdoj.gov <Matthew.Olsen@usdoj.gov> <mailto:Matthew.Olsen@usdoj.gov> ; [redacted]; Candida_P._Wolff@who.eop.gov <Candida_P._Wolff@who.eop.gov> <mailto:Candida_P._Wolff@who.eop.gov> ; Joel_D._Kaplan@who.eop.gov <Joel_D._Kaplan@who.eop.gov> <mailto:Joel_D._Kaplan@who.eop.gov> ; Kenneth.Wainstein@usdoj.gov <Kenneth.Wainstein@usdoj.gov> <mailto:Kenneth.Wainstein@usdoj.gov> ; [redacted]
Sent: Thu Jul 26 22:28:15 2007

b2/b6

[redacted]

Subject: Re: Meeting

all is fine with us, including any offers of cake and coffee.

1. See you in Senate Intel spaces (hearing room or your offices?) I suspect we will have a number of folks as I want to bring the usual FISA team if I can get them together to handle technical issues.

2. No objection to the additional invites. Will just need to know clearances when we start meeting so we can adjust discussion as appropriate.

Johnson, A (Intelligence) wrote:

Ben: I apologize for continuing to pepper you (and everyone else) with late night emails. Two additional things: 1) I wasn't sure if it was ever explicitly stated but we are meeting in Senate Intell spaces, correct? and 2) in order to facilitate the discussion and resolution of this matter, I thought it might be wise to bring other relevant players into the mix for the meeting. Any objection if I invite staffers from the House side -- Pelosi and Reyes -- and from the Senator Reid's and Leahy offices for the discussion? Mike Davidson can bake his famous coffee cake and I can brew some Peet's French Roast. Sound good? (okay, the coffee cake is a hollow promise; Mike doesn't bake) -- Andy

---

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Ben Powell [redacted]

To: Johnson, A (Intelligence)
Cc: [redacted] ; [redacted] ; Davidson, M (Intelligence); Healey, C (Intelligence); Brett.Gerry@usdoj.gov <Brett.Gerry@usdoj.gov> <mailto:Brett.Gerry@usdoj.gov> <mailto:Brett.Gerry@usdoj.gov> ; Steve.Bradbury@usdoj.gov <Steve.Bradbury@usdoj.gov> <mailto:Steve.Bradbury@usdoj.gov> <mailto:Steve.Bradbury@usdoj.gov> ; Matthew.Olsen@usdoj.gov <Matthew.Olsen@usdoj.gov> <mailto:Matthew.Olsen@usdoj.gov> <mailto:Matthew.Olsen@usdoj.gov> ; [redacted] ; Candida_P._Wolff@who.eop.gov <Candida_P._Wolff@who.eop.gov> <mailto:Candida_P._Wolff@who.eop.gov> <mailto:Candida_P._Wolff@who.eop.gov> ; Joel_D._Kaplan@who.eop.gov <Joel_D._Kaplan@who.eop.gov> <mailto:Joel_D._Kaplan@who.eop.gov> <mailto:Joel_D._Kaplan@who.eop.gov> ; Kenneth.Wainstein@usdoj.gov <Kenneth.Wainstein@usdoj.gov> <mailto:Kenneth.Wainstein@usdoj.gov> <mailto:Kenneth.Wainstein@usdoj.gov>
Sent: Thu Jul 26 21:21:12 2007
Subject: Re: Meeting

b2/b6

[redacted]

See you at 10am. will reconfirm in morning to ensure there is not a major scheduling problem with others that I am not aware of.

Johnson, A (Intelligence) wrote:

Ben: let's go with 10 am and if you have to leave before we finish to go to the House we can reconvene after the Levin meeting. Thanks, Andy

---

Sent from my BlackBerry Wireless Handheld

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

From: Ben Powell [redacted]

To: Johnson, A (Intelligence)

Cc: [redacted] ;

Davidson, M (Intelligence); Healey, C (Intelligence); Brett.Gerry@usdoj.gov <Brett.Gerry@usdoj.gov> <mailto:Brett.Gerry@usdoj.gov> <mailto:Brett.Gerry@usdoj.gov> ; Steve.Bradbury@usdoj.gov <Steve.Bradbury@usdoj.gov> <mailto:Steve.Bradbury@usdoj.gov> <mailto:Steve.Bradbury@usdoj.gov> ; Matthew.Olsen@usdoj.gov <Matthew.Olsen@usdoj.gov> <mailto:Matthew.Olsen@usdoj.gov> <mailto:Matthew.Olsen@usdoj.gov> ; [redacted] ; Candida_P._Wolff@who.eop.gov <Candida_P._Wolff@who.eop.gov> <mailto:Candida_P._Wolff@who.eop.gov> <mailto:Candida_P._Wolff@who.eop.gov> ; Joel_D._Kaplan@who.eop.gov <Joel_D._Kaplan@who.eop.gov> <mailto:Joel_D._Kaplan@who.eop.gov> <mailto:Joel_D._Kaplan@who.eop.gov> ; Wainstein, Kenneth (NSD) <Kenneth.Wainstein@usdoj.gov> <mailto:Kenneth.Wainstein@usdoj.gov> <mailto:Kenneth.Wainstein@usdoj.gov>

Sent: Thu Jul 26 20:53:58 2007

Subject: Re: Meeting

Andy -- Can make meeting anytime before 11am or after 2pm. Just let us know what works.

Johnson, A (Intelligence) wrote:

All right. Why don't you call me if you can do it before the Levin meeting. If not we will try for afterwards. To answer your earlier question, we did receive the classified letter. Thanks, Andy.

---

b2/b6

[redacted]

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Ben Powell [redacted]

To: Johnson, A (Intelligence)
Cc: [redacted]; Davidson, M (Intelligence); Healey, C (Intelligence); Brett.Gerry@usdoj.gov <Brett.Gerry@usdoj.gov> <mailto:Brett.Gerry@usdoj.gov> <mailto:Brett.Gerry@usdoj.gov> <mailto:Brett.Gerry@usdoj.gov> ; Steve.Bradbury@usdoj.gov <Steve.Bradbury@usdoj.gov> <mailto:Steve.Bradbury@usdoj.gov> <mailto:Steve.Bradbury@usdoj.gov> <mailto:Steve.Bradbury@usdoj.gov> ; Matthew.Olsen@usdoj.gov <Matthew.Olsen@usdoj.gov> <mailto:Matthew.Olsen@usdoj.gov> <mailto:Matthew.Olsen@usdoj.gov> <mailto:Matthew.Olsen@usdoj.gov> ; [redacted]; Wolff, Candida P. <Candida_P._Wolff@who.eop.gov> <mailto:Candida_P._Wolff@who.eop.gov> <mailto:Candida_P._Wolff@who.eop.gov> <mailto:Candida_P._Wolff@who.eop.gov> ; Kaplan, Joel <Joel_D._Kaplan@who.eop.gov> <mailto:Joel_D._Kaplan@who.eop.gov> <mailto:Joel_D._Kaplan@who.eop.gov> <mailto:Joel_D._Kaplan@who.eop.gov>
Sent: Thu Jul 26 20:31:02 2007
Subject: Re: Meeting

Not exactly, but we certainly are interested in discussing an interim fix and exploring such an idea. We are ready to discuss that issue and put forth ideas.

Johnson, A (Intelligence) wrote:

Ben: I just listened to your phone message after I sent this reply and I think there may be some confusion about the purpose of the meeting tomorrow. Mr. Bolton spoke about some ideas you and others had about interim or temporary fixes to bridge the present to when a more permanent fix could be passed. They spoke about us sitting down and exploring ideas for a limited remedy that could be passed quickly and would cover us over August. Does this comport with what you understood? Thanks, Andy

---

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Johnson, A (Intelligence)
To: 'Ben Powell' [redacted]

b2/b6

[redacted]

Cc: Gerry, Brett (OLP) <Brett.Gerry@usdoj.gov>
<mailto:Brett.Gerry@usdoj.gov> <mailto:Brett.Gerry@usdoj.gov>
<mailto:Brett.Gerry@usdoj.gov> <mailto:Brett.Gerry@usdoj.gov>
<mailto:Brett.Gerry@usdoj.gov> ; Steve.Bradbury@usdoj.gov
<Steve.Bradbury@usdoj.gov> <mailto:Steve.Bradbury@usdoj.gov>
<mailto:Steve.Bradbury@usdoj.gov> <mailto:Steve.Bradbury@usdoj.gov>
<mailto:Steve.Bradbury@usdoj.gov> <mailto:Steve.Bradbury@usdoj.gov> ; Olsen,
Matthew (NSD) <Matthew.Olsen@usdoj.gov> <mailto:Matthew.Olsen@usdoj.gov>
<mailto:Matthew.Olsen@usdoj.gov> <mailto:Matthew.Olsen@usdoj.gov>
<mailto:Matthew.Olsen@usdoj.gov> <mailto:Matthew.Olsen@usdoj.gov>
[redacted]

Sent: Thu Jul 26 20:14:12 2007
Subject: RE: Meeting

Ben: I communicated to Candi Wolfe after the Rockefeller-Bolten discussion the request to have you, Joel Kaplan and others you may want to bring to sit down with us tomorrow to discuss the items you outlined. I think she working the timing of the meeting but I have not heard back. I was proposing late morning. Does that not work? Andy

-----Original Message-----
From: Ben Powell [redacted]
Sent: Thursday, July 26, 2007 6:55 PM
To: Johnson, A (Intelligence); [redacted]
Cc: Gerry, Brett (OLP); Steve.Bradbury@usdoj.gov; Olsen, Matthew (NSD); Potenza, Vito; [redacted]
Subject: Meeting

Andy -- Understand there was a conversation between Chairman Rockefeller and the Chief of Staff this afternoon. I was passed an action item to reach out to you to meet with you, along with DOJ/NSA, and discuss possible FISA court options in relation to the current situation. For reasons we can discuss, we think there are very limited options in that area.

I have not checked DOJ or NSA availability, but Vito and I will of course see you at 1pm tomorrow on another issue. If you are free at 2pm or later in the afternoon to discuss, please let me know.

b2/b6

[redacted]

Also, wanted to check to ensure Sen. Rockefeller received the classified attachment to the DNI letter.

thanks,
Ben

Attachments:
mime

[redacted]

Out of Scope

From: [redacted]
Sent: Wednesday, February 13, 2008 11:50 AM
To: [redacted]@mail.house.gov; "Johnnie Kaberle"; [redacted]@mail.house.gov; "Chris Donesa"; [redacted]@mail.house.gov; [redacted]@mail.house.gov; [redacted]@mail.house.gov
Subject: FISA-related Information

As you know, the President will not support any additional extensions of the Protect America Act (PAA). I assume your Members will have questions about this matter so I am attaching a few things that might be of help. Let me know if there is anything we can do.

Feb 5, 2008 DNI-AG Views Letter (see especially pages 10-11 ref Importance of Acting Quickly for our carriers/partners)
Fact Sheet--some useful info
DNI Letter to Sen Bond with Unclassified PAA Collection Examples

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

2/15/6

b2/b6

[redacted]

From: "Livingston,J (Intelligence)" <[redacted]@ssci.senate.gov>
To: "Davidson,M (Intelligence)" <[redacted]@ssci.senate.gov>, "Ben Powell" <[redacted], "Demers,John (NSD)" <John.Demers@usdoj.gov>, "Eisenberg,John" <John.Eisenberg@usdoj.gov>, <Carl.Nichols@usdoj.gov>, "Potenza,Vito" <[redacted]> "Rice,K (Intelligence)" <[redacted]@ssci.senate.gov>, "DeRosa,Mary (Judiciary-Dem)" <[redacted]@Judiciary-dem.senate.gov>, "Rossi,Nick (Judiciary-Rep)" <[redacted]@judiciary-rep.senate.gov>, "Espinel,Zulima (Judiciary-Dem)" <[redacted]@Judiciary-dem.senate.gov>, "Solomon,Matthew (Judiciary-Dem)" <[redacted]@Judiciary-dem.senate.gov>
cc: "Healey,C (Intelligence)" <[redacted]@ssci.senate.gov>, "Starzak,Alissa (Intelligence)" <[redacted]@ssci.senate.gov>

Date: Friday, April 04, 2008 01:16PM
Subject: RE: On the return of H.R. 3773 to the Senate

History: This message has been replied to.

Mike,

Consistent with our earlier discussion this morning, I just spoke with Louis and I need to keep Monday free to help out with the Minority Report to the Committee's Phase II reports. Louis has authorized me to participate in bipartisan negotiations on Friday, April 11. My schedule is pretty open that day, so if you want to go with the 2:00 meeting time, or perhaps something earlier, that's fine with me. Thanks.

Jack

From: Davidson, M (Intelligence)
Sent: Friday, March 28, 2008 4:54 PM
To: 'Ben Powell'; 'Demers, John (NSD)'; 'Eisenberg, John'; 'Carl.Nichols@usdoj.gov'; 'Potenza, Vito'; '[redacted] Livingston, J (Intelligence); Rice, K (Intelligence); DeRosa, Mary (Judiciary-Dem); Rossi, Nick (Judiciary-Rep); Espinel, Zulima (Judiciary-Dem); Solomon, Matthew (Judiciary-Dem)
Cc: Healey, C (Intelligence); Starzak, Alissa (Intelligence)
Subject: RE: On the return of H.R. 3773 to the Senate

After consulting with Ben about a date and time, let's plan to meet on Monday, April 7, at 2, for a full afternoon, bipartisan Senate-side discussion (Intelligence and Judiciary) with

b2/b6

[redacted]

ODNI/DOJ/NSA to help set us on a path that enables the branches to reach agreement on a good law.

I've reserved both our hearing room, SH-219, and a conference room in SH-211, depending on the number of participants. Let's assume for now that we'll meet in 219.

Looking forward to seeing all.

Mike

From: Davidson, M (Intelligence)
Sent: Friday, March 14, 2008 5:43 PM
To: 'Ben Powell'; Demers, John (NSD); 'Eisenberg, John'; Carl.Nichols@usdoj.gov; Potenza, Vito; [redacted]; Livingston, J (Intelligence); Rice, K (Intelligence); DeRosa, Mary (Judiciary-Dem); Rossi, Nick (Judiciary-Rep); Espinel, Zulima (Judiciary-Dem); Solomon, Matthew (Judiciary-Dem)
Cc: Healey, C (Intelligence); Starzak, Alissa (Intelligence)
Subject: On the return of H.R. 3773 to the Senate

Dear ODNI/DOJ/NSA and Senate Intelligence and Judiciary colleagues:

Given the possibility, as is now occurring, that the FISA bill would come back to the Senate, over the last day or so Chris, Alissa, and I have prepared a draft for discussion. It is not a formal Rockefeller draft, but something that we hope advances the discussion, together with ideas that all of you might put on the table. It will, of course, be important to begin a discussion that also includes House colleagues, and we will share this with them. Still, it will be good to get our mutual bearings on the Senate side, and we hope this will make a contribution to that end.

The underlying document begins with the Senate amendment to H.R. 3773. The strike outs and insertions represent a combination of matters (additions, deletions, or modifications) in the House amendment that we would propose for acceptance, or matters that we would propose be amended in some way. There are a number of items in the House amendment that are not included (e.g., the Commission and statute of limitations amendment). The matters taken or modified from the House amendment include both substantive matters and drafting recommendations from the House Legislative Counsel, some of which, such as much of Title III, the two Legislative Counsel offices worked on together.

All of the proposed changes are in Titles I and III. The attached makes no changes to Title II.

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Principal items are:

The proposed sunset, which is in Title III (in accordance with a Legislative Counsel placement recommendation), is December 2011, in order to provide more time for experience than the 2009 date would allow while making clear the expectation that the permanent system should be settled on during the term of the President who will be elected this November.

The Feinstein exclusivity amendment is included. For ourselves, we have not foreclosed the possibility of including some form of the additional text that David Grannis had been exchanging with Jack and John D. on collection following an attack on the United States, particularly one for which the Congress enacts an AUMF. That could very well be a subject of discussion.

The IG review provision is included -- as the text had been developed by Senator Leahy, with the House modification that the IGs should select one of them who is presidentially appointed and Senate confirmed to coordinate the review. Not to mix up legislative issues, but we would be happy if that turned out to be an Inspector General for the Intelligence Community.

Our proposed alternative to the electronic surveillance definition carve-out, which we believe achieves everything that may have been sought in the carve-out, is in section 702(c)(2) on page 4: "Nothing in the definition of electronic surveillance shall be construed to require an application under section 104 for an acquisition that is targeted in accordance with this section at a person reasonably believe to be located outside the United States." If there is any need to have anything that achieves the purpose of a carve-out (to confess, we're doubters about that in light of the "notwithstanding any" preface to section 702 (old 703)), new 702(c)(2) does that by making clear that nothing in the definition of e.s. produces the consequence to be avoided, namely, a requirement of proceeding under Title I. And because, that can be achieved without a change in the definition of e.s., there is no need for any of the anti-carve-out provisions in the bill. We've placed a substantially identical provision in section 703 (old 704).

A key aspect of the attached is a solution, which we believe works, to the timing of judicial review debate.

Whatever the practical or theoretical significance of the prior approval/pre-approval debate may have been before enactment of the PAA when every authorization under the PAA would be a first-time authorization, the fact is that a large part of what occurs in the future will be an annual cycle of reauthorizations.

702(i)(5), on page 11, is designed to encourage orderliness in that annual process by

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providing, to the extent practicable, a schedule of synchronized handoffs from one year's authorizations to the next, while making it absolutely clear in 5(E) that the AG/DNI are free to submit certifications for additional authorizations at other times during the year as necessary.

Building on this, as a matter of both administrative and judicial efficiency, the AG/DNI should be able to submit, in advance of the expiration of an annual authorization (or set of them) the certification and procedures for the new authorization year. That, as a practical matter, will allow for approval by the beginning of the new authorization year. But the attached makes perfectly clear that at any time, without characterizing it as an emergency, the AG/DNI may provide for immediate action.

There is a goal or expectation, but not a mandate, that accompanies this. Approval by the beginning of a new authorization year (subject to the AG/DNI's immediate implementation power) serves valuable interests, none of which involves any solicitude toward foreign targets. It will mean that directives which are issued come with the strength, that may be important someday to a doubtful carrier, that the U.S. person protections (i.e., the completeness of certifications and adequacy of targeting and minimization procedures) have been approved. It will also increase the opportunity to be able (note, not mandated, but be able) to make corrections before collection begins. The same goal, when possible, exists for new authorizations.

But to underscore the point again, the attached is written to give the AG/DNI the full authority to begin when needed, and to continue until directed otherwise by the Court of Review.

One other topic – guidelines. You'll see that we propose, in 702(f) on pages 4-5 a general provision for guidelines, applicable to all the limitations in 702(b), without any required detail, the existence of which the AG/DNI must certify, but which are submitted to committees here, not to the FISC for review.

These are highlights. There are other items, all of which we should discuss.

Chris and Alissa are here next week; I'll be away. We'll reverse that during the second week of the recess. Please don't hesitate to begin an exchange of thoughts with whomever may be here. Let's definitely plan to sit down together as early as possible during the first week back.

And a Happy Easter and start of spring to all.

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Mike