

FISA: ON TO THE HOUSE

Sorry I missed all the misery on FISA votes today. Though I can't say I'm sorry to have missed the Senate committing collective hari kari again.

Which, of course, sends FISA back to the House. The Blue Dogs are no doubt ready to bend over for Bush. Again. But John Conyers isn't going to go quietly. He sent Fred Fielding a long "to do" list, some of it relating to requests going

First, please provide access to all Members of the House Judiciary Committee those briefings and materials you have made available to 19 Members as of now.

Currently, it is my understanding that the entire membership of the House Permanent Select Committee on Intelligence and the Senate Committee on the Judiciary and the Senate Select Committee on Intelligence has been permitted to be "read in" to the TSP program. The only Committee of jurisdiction that has not been offered the same access is the House Judiciary Committee. This is unacceptable and serves little purpose but to impede our Members review of the program and understanding of your request for retroactive amnesty.

Second, please provide the Memorandum for Alberto R. Gonzales, Counsel to the President, and William J. Haynes, II, General Counsel Department of Defense, from John C. Yoo, Deputy Assistant Attorney General and Robert J. Delahunty, Special Counsel, Office of Legal Counsel, Re: Authority for Use of Military Force to Combat Terrorist Activities Within the United States. It is believed that this Memorandum is dated either October 17, 2001, or October 23, 2001. Based on the title of this document, and based on the contents

of similar memoranda issued at roughly the same time, it appears that a substantial portion of this Memorandum provides a legal determination and analysis as to the nature and scope of the Presidential war powers to accomplish specific acts within the United States. Congress is entitled to know the executive branch's interpretation of its constitutional powers.

Third, please provide copies of filings, correspondence or transcripts of colloquies with the Foreign Intelligence Surveillance Court about TSP or other warrantless or other electronic surveillance programs, containing legal analysis, arguments, or decisions concerning the interpretation of FISA, the Fourth Amendment to the Constitution, the Authorization for the Use of Military Force enacted on September 18, 2001, or the President's authority under Article II of the Constitution.

In addition, as per our September 11, 2007, letter, we reiterate our requests for the following documents:

1. All documents from September 11, 2001, to the present, including e-mail, that reflect, discuss, or describe agreements or understandings between the White House, the Department of Justice, the National Security Agency, or any other entity of the Executive Branch and telecommunications companies, internet service providers, equipment manufacturers, or data processors regarding criminal or civil liability for assisting with or participating in warrantless electronic

surveillance program(s).

2. An unredacted copy of the notes or program log of FBI Director Mueller provided to the House Judiciary Committee on August 14, 2007, concerning the March 2004 hospital visit to former Attorney General John Ashcroft and other events that former Deputy Attorney General James Comey described in his May 15, 2007, testimony before the Senate Judiciary Committee.

3. All documents from December 1, 2005, to the present related to the investigation by the Department of Justice's Office of Professional Responsibility (OPR) into the role of Department of Justice attorneys in the authorization and oversight of the warrantless electronic surveillance program, which was opened on January 11, 2006, and closed approximately three months later after OPR investigators were denied the necessary security clearances (OPR Investigation) that reflect, discuss, or describe the following:

a) consideration of the request for security clearances;

b) communications between White House personnel, including the President or the Vice President, and Department of Justice personnel about the OPR investigation or consideration of the request for security

clearances; and

c) the reasons for suspending that investigation (since revived by the Attorney General).

4. Since September 11, 2001, all audits, reports, or evaluations of or concerning any warrantless surveillance program(s), whether conducted by government employees or private companies, including any reports as to the effectiveness of minimization standards to protect U.S. persons' communications.

I would also again ask that you ensure that the appropriate entity in the Administration immediately provide written responses to the following questions, which we have previously submitted last year:

1. Since September 11, 2001, has the Administration conducted any warrantless surveillance in the United States, other than through the warrantless electronic surveillance program the President acknowledged in late 2005 (known now as the Terrorist Surveillance Program), or as explicitly authorized by FISA, or any other warrantless surveillance techniques such as physical searches of home or offices or opening of mail? Are such activities continuing? Is the Administration currently conducting any foreign intelligence surveillance in the United States, other than that explicitly authorized by the

Foreign Intelligence
Surveillance Act (FISA)?

2. How many actionable leads
have been referred to
operational entities as a result
of acquisitions of U.S. persons'
conversations or communications?

a) Please break down the
response as follows: 1)
between September 11,
2001, and October 25,
2001; 2) between October
25, 2001, and January
10, 2007; 3) between
January 10, 2007, and
August 5, 2007; and 4)
since August 5, 2007.

b) Of the actionable
leads referred to
operational entities,
what have been the
results? Please
differentiate between
counter-terrorism,
criminal investigations
and prosecutions,
counter-espionage, and
in-theater combat
operations. Please
indicate with
specificity whether any
attacks have been
averted.

3. How many conversations or
communications (both incoming or
outgoing) monitored under the
programs have revealed a contact
between a U.S. person and
someone for whom there was
probable cause to believe they
were in or supporting al Qaeda?
How many people in the U.S. have
had email communications with

someone considered to be in al Qaeda? How many of these conversations or communications have actually involved terrorist activity, as opposed to other topics of conversation? How many people have been charged with any wrongdoing as a result of such interceptions? How many terrorist activities have been disrupted as a result of such interceptions? How many people have been subjected to surveillance but not charged with any crime or otherwise detained?

4. How many persons whose conversations or communications were monitored under the programs have been subjected to any other surveillance techniques or searches, such as physical searches of home or offices, opening of mail, etc, whether subject to a warrant or not?

5. Have any U.S. persons whose conversations or communications were monitored under the programs been detained within the United States? Have any U.S. or foreign persons been interrogated or detained outside of the United States, whether by the United States or any other government, in significant part as a result of such monitoring?

6. Have journalists, lawyers, lawmakers (whether federal, state, or local), or aides had their conversations or communications monitored under the programs? If so, how many?

7. How many U.S. persons had

conversations (voice or email content) or communications (call or email data) acquired through electronic surveillance programs? In how many of these acquisitions was the U.S. person the target of the acquisition? In how many of these acquisitions was the acquisition incidental? How many warrants for continued surveillance were sought after identification of someone as a U.S. person? How many such applications were denied? Please break down the response between warrantless and other electronic surveillance programs as to the following periods:

- a) between September 11, 2001, and October 25, 2001;
- b) between October 25, 2001, and January 10, 2007;
- c) between January 10, 2007, and August 5, 2007; and
- d) since August 5, 2007.

8. How many individuals have been targeted for surveillance under the Protect America Act that involved foreign intelligence generally, as opposed to terrorism or nuclear proliferation?

9. Please identify any telecommunication companies or internet service providers that refused to allow access to communication streams without Court sanction or questioned the terms of the requests or demands which were being made of them

and, to the extent that
discussions with such companies
were conducted orally rather
than through written dialogue,
please authorize the relevant
parties to discuss the content
of those discussions with
Committee staff and Members. [my
emphasis]

Now, Fred Fielding isn't exactly one for "to do"
lists. So I'm not holding my breath for this.
But I do wonder whether a coalition of HJC
Democrats, Progressives, and folks like Dingell
and Stupak can withstand Bush's harangues any
better than the Senate.