

# EFF FOIA WORKING THREAD, THREE

*Note: EFF has added one more set of documents—from the Civil Division. So if you think you're done, you might not be, yet.*

This will be another working thread on the EFF FOIA Documents—I'll be focusing on the Office of Legal Counsel documents. Here was the first working thread (National Security Division documents) and the second working thread (Office of Information Policy documents).

The two sets of documents are:

- Draft legislation to amend FISA
- Correspondence about amending FISA

And here's the Vaughn Indices DOJ earlier submitted on these documents to help you figure out what they said they had.

For more on what's in the EFF docs, MadDog and Jim White have a bunch of comments on the documents in this thread.

## **FISC Orders from 2007, 2006, and 2004**

Shortly after the Bush Administration worked out a way to do its surveillance program through FISC, House Intelligence Committee staffer started working with Steven Bradbury to get permission for the committee to see the "recent FISA order." During the negotiations for that, Bash noted that the committee should have been able to see the other FISA orders.

Ben Powell had indicated to me that were supposed to have been granted access to the previous orders/applications ('04 and '06).

This tells us the program was already working

with some FISC approval—presumably solicited after the hospital confrontation in 2004 and after the exposure of the program in 2005.

### **Steven Bradbury's NSA email?**

I'm not sure, but the email address on page 55 appears to indicate that Steven Bradbury had his own NSA email address.

### **Bradbury's Emergency**

On March 13, 2007, Steven Bradbury sent a telecom (page 12) a description of the emergency that precipitated Bush's illegal wiretapping (he doesn't call it that of course). It starts like this:

On September 11, 2001, the al Qaeda terrorist network launched a set of coordinated attacks along the East Coast of the United States.

Presumably, that was language for a court filing—so we may be able to figure out which telecom it was by checking filings. First place to check would be Verizon in the Maine Public Utilities case.

### **More on Foreign/Domestic Surveillance**

I've been tracking some curious comments about foreign/domestic surveillance. Here's what DOJ said (page 18) they were trying to do with FISA reform on April 13, 2007.

Adding an additional definition of an agent of a foreign power for non-U.S. persons whom the Government believes possess significant intelligence information, but whose relationship to a foreign power is unclear.

This proposed change would apply only to non-United States persons in the United States, and collection of information from such an individual would be subject to the approval of the FISA Court.

The reference is significant given the Administration's insistence on keeping the Lone Wolf in the PATRIOT Act.

### **SSCI cooperating on bypassing FISA Court**

On July 27, 2007, Jack Livingston, a Republican staffer on SSCI claimed (page 28) people on both sides of the aisle wanted to get the FISA Court out of some of the surveillance.

As Louis stated, members on both sides of our committee have expressed a desire to get this out of the FISA court's jurisdiction.

This was just days before Protect America Act passed.

### **Specter's July 30 briefing**

As you recall, Arlen Specter kept pushing Alberto Gonzales on his lies about Administration disagreement on "TSP."

Which is what makes this sequence (page 81 to 82) so interesting.

I've attached the statement released by Sen. Spencer after today's briefing. It conforms to the edits you made to his original.

Thank you for all the work that went into today's briefing. I think Sen. Specter was persuaded of the need to change FISA to address the concerns highlighted by the DNI.

I am happy to help coordinate a less detailed but still classified briefing for other Judiciary Committee Members at your earliest convenience.

You'd have no idea what they were talking about—but they were talking about the briefing that Specter demanded to reassure himself that Gonzales had not perjured himself.

## STATEMENT OF SENATOR ARLEN SPECTER

I have received a briefing this afternoon by the Director of National Intelligence and others from the Administration which included matters relating to whether Attorney General Gonzales testified accurately that there was no disagreement in the Administration about the Terrorist Surveillance Program as public described by the President. Given the difficulty of discussing classified matters in public, I think it is preferable to have a letter addressing that question from the Administration to Senator Leahy and me by noon tomorrow which will be made available to the news media. The Administration has committed to producing such a letter.

As we know, Gonzales was basically parsing carefully, speaking of the artificially named "TSP" as a way to bracket off things like the dragnet collection and data mining of communications. So it's likely that the briefing was about those data mining activities. If so, though, note that the briefing convinced Specter to expand the authorities available under FISA.

### **Steny Hoyer's failure**

One of the most remarkable aspects (one I hope to do a post on) is to see the panic surrounding the August 2007 passage of the PAA.

Such as this tidbit (page 120), from August 4, 2007, the day this got pushed through, in response to whether the legislation was going to be voted on that day.

As far as we know it is, but we hear that Hoyer is so angry about not getting his way that he refuses to acknowledge right now that a bill is even going to be brought up. A lot of standing by to stand by ...

Steny—and Pelosi—got absolutely skunked on this legislation. Its nice to see the Republicans laughing about badly they skunked Steny. FWIW, before the passage of the FAA in 2008, Steny forced both parties and both committees to meet in his office to try to craft a compromise. It's interesting to know that that came after he had been skunked earlier in the process.

### **Wooing the Blue Dogs**

Between February 28 and March 6, 2008, DOJ—including Attorney General Michael Mukasey) spent a lot of time individually wooing Blue Dogs for support on their legislation (pages 33 to XX). Those Blue Dogs include:

- Lincoln Davis (2/28)
- Earl Pomeroy (2/28)
- Allen Boyd (2/29)
- Chet Edwards (2/29)
- Artur Davis (2/29)
- Mike Ross (2/29)
- Jim Marshall (2/29)
- Chris Carney (3/5)
- Ike Skelton (3/5)
- Joe Donnelly (3/5)

This is obviously an attempt to get support from Blue Dogs for the Senate legislation.

It's not surprising that the calls were made—but it is interesting to see who needed some hand-holding from Michael Mukasey for screwing their party.