



Department of Justice

FOR IMMEDIATE RELEASE
TUESDAY, AUGUST 7, 2007
WWW.USDOJ.GOV

OPA
(202) 514-2007
TDD (202) 514-1888

TRANSCRIPT OF CONFERENCE CALL WITH SENIOR ADMINISTRATION OFFICIALS REGARDING FISA MODERNIZATION LEGISLATION

3:33 P.M. EDT

OPERATOR: Welcome to the FISA background conference call. All participants are in a listen-only mode. There will be an opportunity for you to ask questions at the end of today's presentation. If you should need assistance during the conference, please signal the operator by pressing star, then zero, on your touchtone phone. At this time I would like to turn over the conference to Dean Boyd.

MR. BOYD: Hi. Good afternoon. Thanks for joining us. I just want to start out by saying this will be a background call, and you can attribute it to Senior Administration Official, and I'll introduce the participants. We've got one Senior Administration Official, who is the Acting Assistant Attorney General for the Office of Legal Policy. Senior Administration Official, the Acting Attorney General for National Security. I'm sorry. The Assistant Attorney General for National Security at the Justice Department. And Senior Administration Official, the General Counsel for the Office of the Director of National Intelligence. And with that, we'll start off with remarks from Senior Administration Official. Again, this is a background briefing only.

SENIOR ADMINISTRATION OFFICIAL: Thanks. This is Senior Administration Official. I'll make a few remarks about the bill that was passed by Congress and signed by the President on Sunday. First, there's been a lot of discussion that this was a rush, a short-term effort or those types of things.

For the past year and a half, we've been engaged in intensive discussions on modernizing FISA and the technology issues associated with the Foreign Intelligence Surveillance Act. In 2006, there were a number of bills in both the House and the Senate. And in fact, the House passed a bill. The Senate ended up not taking it up before the recess.

There were numerous hearings. General Hayden and General Alexander and Steve Bradbury from the Department of Justice testified in an open hearing before the Senate Judiciary Committee on FISA for the 21st Century. I believe there were two separate hearings before the House Judiciary Committee in open session. This was in addition to numbers of briefings and meetings with members and committees in classified sessions, and in individual meetings.

So, in April of this year, the Administration, at the request of the Congress, came forth with a

comprehensive FISA modernization bill. There was an opening that the DNI testified at along with other intelligence community officials in May. And there's been any number of additional briefings by the DNI in meetings with individual members of Congress. This has not been a short-term effort over the past few weeks by any stretch. There were a number of bills put forth this year. So there's been a lot of debate, a lot of hearings, a lot of meetings on this effort over the past year-and-a-half.

What does the bill do? I would say the best statement of what the bill does and what the problem is with FISA is the DNI's statement for the record that's posted up on the Intelligence, Senate Intelligence Committee website. There's a ten-page statement that goes through exactly what the problem is and what we're trying to solve.

To say it briefly, in 1978 when FISA was passed international communications were primarily radio or satellite. Because of that, FISA exempted certain of those communications from review, meaning that we did not have to go and seek a court order to get those types of communications. Since 1978, we've had the revolution in communications technology. Those things that once were carried on radio or satellite are now carried via different means, and this is laid out in the DNI statement. Because of that switch in transmission methods, it swept into the FISA court a number of things concerning activities directed at foreign targets overseas that were never meant to be included in the FISA bill -- or in the FISA Act.

That's the fundamental problem that we are seeking to solve, and that's the fundamental thing that this narrow fix addresses. That's the first point. We're trying to restore the balance that was struck in 1978 that we've operated under for over 30 years. No one has ever thought that we should have a court order for foreign targets located overseas that I'm aware of. Obviously, when I say no one, there's probably somebody out there, but generally not seen as part of the Fourth Amendment rights that we're trying to extend to foreigners located overseas.

Second, there's been a lot of discussion about the Terrorist Surveillance Program in that this legalizes what was done under the Terrorist Surveillance Program and much more. That would be incorrect. Under the Terrorist Surveillance Program, one end of the communication had to be international of a person who was a member or an agent of al Qaeda or its affiliates. You can get the precise standard from the President's radio address of I believe December 17th, but I'm paraphrasing, and I could get that exact standard for you when I have a minute.

This program, this bill -- excuse me, this bill -- does not authorize the targeting of Americans in the United States without a court order. Let me repeat that. This bill does not authorize the targeting of Americans in the United States without a court order. The Terrorist Surveillance Program was a different program which said if you were a member or agent of al Qaeda or its affiliates, your international communications may be intercepted. It did not require that it be directed at a target overseas, which is a difference with this bill. So there's been a lot of confusion that somehow this legalizes what the Terrorist Surveillance Program authorized under the President's constitutional power. That would be incorrect.

Third. There's been discussion about the limitation on the Terrorist Surveillance Program being limited to al Qaeda, and how come this bill was not limited similarly to al Qaeda or international terrorism? Again, let me take you back to 1978. The international activities carried out by certain

methods were exempted from FISA. That allowed us to go and seek and gather foreign intelligence about foreign targets located overseas.

That is what we were seeking to restore with this narrow fix. Obviously, we need to gather more foreign intelligence than just about al Qaeda. There are many other threats out there and many other things that we need to gather intelligence about, just as we did in 1978 when of course the Soviet Union was the primary focus of intelligence efforts.

Fourth. The discussion about U.S. persons and how are U.S. persons treated. Again, I would refer you to the DNI statement of May 1st. But as we operated in for over 30 years, we encounter in our activities in the intelligence community information to, from or about U.S. persons. And you can look at the definition of U.S. persons in FISA. It's not just a U.S. citizen. It's U.S. corporations, permanent resident aliens and others. We treat those according to minimization procedures. Minimization procedures are part of the FISA statute also. You'd want to refer to Section 101H of the FISA statute. Again, that's Section 101H of the FISA statute.

If we are targeting somebody overseas and we incidentally collect information to, from or about a U.S. person, that is treated under minimization procedures that we've now used for over 30 years. Again, to take you back to 1978, we dealt with the same situation, and the balance was struck there that we would use these minimization procedures. Under this bill -- this is very important -- those minimization procedures have to meet the criteria set out in Section 108H of the FISA statute. Let me quote from the bill. As one of the determinations that need to be made in Section 105B(a)(5), the minimization procedures to be used with respect to such acquisition activity meet the definition of minimization procedures under Section 101H of the FISA statute.

I've seen some things out there about that these procedures could just be made up anew or didn't have to meet any criteria or anything. That's incorrect, and I would refer you to the text of the bill. I'd also refer you to the fact that we have a workforce that goes through extensive training on minimization, and we do not retrain that workforce with different minimization procedures. We do not make up new minimization procedures, because we have an extensive training and compliance program dealing with those.

And with that, I think I've stored up for your questions.

OPERATOR: Thank you. At this time if you would like to ask a question, please press star then one on your touch tone phone. You will hear a tone to confirm that you've entered the list. If you decide you want to withdraw your question, please press star then two to remove yourself from the list.

The first question comes from Lara Jakes Jordan from the Associated Press. Please go ahead.

QUESTION: Hi. Thank you. Thanks to all of you for getting on the phone. First also I would just like to say that the Associated Press would like to make this call be put on the record. I'd like to register that first off. Is there any way we can do that?

MR. BOYD: No. We've clearly communicated to everyone that this is a background call only.

Sorry.

QUESTION: Okay. Well, my question is, the key word that we're talking about here is targeting, right? Because the fear is that, in listening to these conversations overseas, is that there will be calls to U.S. persons. And that you'd be listening to U.S. persons even though they hadn't been legally defined as quote/unquote "targets."

So my question is, what point -- and I don't have Section 101H or any of the minimization statutes in front of me. At what point do they become targets? Is there a number of calls, you know, that have to be made, or some information that you pick up? In other words, how long can you listen in before going back to the FISC for a warrant?

SENIOR ADMINISTRATION OFFICIAL: This is A Senior Administration Official. There have been cases on this issue, and it would be governed by the Fourth Amendment, of course, which of course says that all of activities have to be reasonable. We cannot target people in the United States by targeting people overseas.

I'd also note that this is not something that would make a lot of sense to us. If we have an interest in a person in the United States who poses a threat, we have every incentive in the world to pass that information through appropriate channels to the FBI, who would be interested in that person's activities beyond a single-stranded communication to somebody overseas. We might have -- Senior Administration Official could speak more to this, but we'd obviously want -- have greater interest in that person.

It would not make sense for us to carry out intelligence activities under this kind of -- I know there's this idea out there that we would do that. But it does not make sense from a foreign intelligence gathering perspective, nor does it make sense from an idea of protecting the country.

QUESTION: Well, it seems like there's some kind of gray area here where people can be -- there's this period of time or a number of calls where persons of interest or people in the United States can have their calls listened to or eavesdropped on before they're identified as targets. So what I'm asking is, is there a clear cut, black-and-white standard number of calls time that's been eavesdropped on before they're identified as targets? Or is that just subject to the case?

SENIOR ADMINISTRATION OFFICIAL: Yeah, I would say that there's very little in the Fourth Amendment area that is subject to, you know, number of calls or time period. I mean, everything in the Fourth Amendment of course is governed by reasonableness. And there's, you know, literally hundreds of Supreme Court cases. It's a bit like asking us about probable cause, which of course depends on all the facts and circumstances of the particular situation.

SENIOR ADMINISTRATION OFFICIAL: You know, if I could just follow on there, Laura, this is Senior Administration Official. As Senior Administration Official said, keep in mind, if there is somebody in the United States we really want to investigate, someone that we're quite concerned about, we're not going to want to be satisfied with just getting the calls that that person is engaged in with an overseas target. We'll want to go ahead and if we have probable cause that that person is an agent of foreign power, we'll want to get a FISA on that person so we get his or her calls to

everybody, or his or her e-mails to everybody.

So it's -- as a practical matter, the incentive here really isn't for us to do this pretextual targeting overseas in order to get evidence against somebody in the United States.

But also, on another level, think about this. I mean, I think there's this sort of a gut reaction that oh my gosh, you have authority to surveil somebody overseas, but you're actually getting communications from somebody in the United States, and this thought that therefore there must be a requirement that we go to the court to glean the information about the person in the United States.

Take it out of the intelligence side and look at the criminal side for a second. If we get a Title 3 wiretap authority against Person A under the, you know, regular Title 3 authorities in the criminal code, and we are surveilling that person and listening to that person's communications, and that person talks to Person B, we get and collect that information. We have not gotten any court authority to collect the information from the conversation from Person B. We've got it from Person A. So you have an American person, Person B, whose conversations are being intercepted based on authority to intercept Person A.

It's an analogous situation here where we're intercepting somebody overseas, perfectly authorized to do so. And if that person is communication with somebody in the United States, we can collect it and then minimize it as we've done for 30 years.

QUESTION: Haven't there been questions or problems about the FBI's use of the data once they collect it? About the access or the recordkeeping of it?

SENIOR ADMINISTRATION OFFICIAL: Are you talking about information from FISA?

QUESTION: FISA or even T 3's.

SENIOR ADMINISTRATION OFFICIAL: Yeah. I mean, that's not --

SENIOR ADMINISTRATION OFFICIAL: I don't know specifically what you're referring to, but it may be a question better directed to the Bureau, but I don't think that there have been those kind of concerns expressed about FISA authorities.

QUESTION: All right. Thank you.

OPERATOR: Our next question comes from Jim Engel from Fox News. Please go ahead.

QUESTION: Hey, guys, I just wanted to make sure, with the fix that we got over the weekend, does this fix all of the problems that you have with technology both foreign-to-foreign who may go through some U.S. infrastructure and also a foreign target who calls the U.S. and may also go through, or communicates with the U.S. and may also go through U.S. infrastructure?

SENIOR ADMINISTRATION OFFICIAL: I'm not sure I follow the example, Jim, but this fix does help us with the technology problem we have, but I would say that our April 1st bill did have

additional things in there that we feel are important. This obviously was -- what we got in this bill was a critical fix, but there were additional things that we feel are very important in our April 1st bill. It does leave it -- this bill helps us with the narrow term. It does not fix the overall fact that FISA is still kind of based on the technology in place in 1978.

QUESTION: But does it allow you now to collect on a foreign target regardless of whether it goes through U.S. infrastructure?

SENIOR ADMINISTRATION OFFICIAL: Yeah. Without getting into locations, Jim, I'd just say that it does allow us to collect -- it would not be considered electronic surveillance under FISA if we're doing something targeting somebody who is believed to be overseas.

QUESTION: Okay. All right. Good. Thanks.

Would you like to specify what the other things are that were in the April bill that you didn't get?

SENIOR ADMINISTRATION OFFICIAL: Sure. And Senior Administration Official can talk about some of this also, but -- Senior Administration Official, did you want to talk about the streamlining?

SENIOR ADMINISTRATION OFFICIAL: Yeah. That's one of the pieces we were hoping to get and I think that sort of got dropped over the last couple weeks. But in order to go to the FISA court to get FISA authority to surveil an individual target, we have to submit a package which is many pages long, maybe 50 pages long, detailing probable cause, et cetera, and it's a very time-consuming process. We do it sometimes. If we go up on a surveillance by emergency authorization, we then have to put this package together within 72 hours. It takes a lot of person hours to do it. And some of that boilerplate and some of the language that goes into those pleadings is semi sort of repetitive and requires detailed explanations of recitations of facts that really can be provided or conveyed to the FISA court by summary, and so there are some provisions in the April bill that streamlines the packages that we have to provide the FISA court in order to reduce the amount of time that we and the FISA court spend reviewing and authorizing the particular FISA interceptions. And that's one piece that we didn't proceed with in this recent provision -- recent bill.

QUESTION: One clarification if I may, Senator Bond on the floor read a message from the DNI, a communication from the FISA Court judges expressing their desire for Congress to take them out of the foreign collection business. What can you tell us about that?

SENIOR ADMINISTRATION OFFICIAL: We really can't comment at all about anything from the FISA court because anything from them on this would be classified.

QUESTION: Well, was Senator Bond authorized to read that on the floor?

SENIOR ADMINISTRATION OFFICIAL: I can't comment on what Senator Bond spoke about.

QUESTION: Did the DNI intend it to be publicly distributed since the FISA judges were asking Congress to do something?

SENIOR ADMINISTRATION OFFICIAL: You know, at this point, all I can say is that we can't comment on proceedings with the FISA court because they're classified.

QUESTION: But it's not a proceeding. It was a communication that they obviously intended for Congress I thought. Am I wrong?

SENIOR ADMINISTRATION OFFICIAL: We've got no comment for you.

QUESTION: Okay.

OPERATOR: Our next question comes from Kevin Perez from the Wall Street Journal.

QUESTION: I don't know who covers this, but this is Evan at the Wall Street Journal. So -- just kidding. Listen, the question of what -- of how this entire disagreement or what you guys think is a misunderstanding of the debate over the FISA modernization, as you called it, I think is one that arises because, you know, I think people still don't understand, and perhaps you can address it here, why is it that it's such an imposition on you guys to have to go through the court, to have to go to the FISA court, to get approvals for some of these things.

I guess, you know, the question -- even at the end of the debate, there still was an attempt to try to make sure that the FISA court could review what the DNI and what the Attorney General were approving as far as minimization procedures and so on. And I think that all arises from the fact that I think people still don't understand why is it such an imposition on the operation if you have 72 hours to come back, and, know you can start something.

It's not like it's delaying what the intelligence analysts have to do or what the investigators have to do if you really need to do something, you can do it and within 72 hours, you know, come back to the court. And I think Judge Lambreth in his discussion in June, you know, asserted that, you know, it's not like, you know, the court is overloaded.

So can you address that as to why it is that it's such an imposition?

SENIOR ADMINISTRATION OFFICIAL: Yeah. This is an excellent, excellent question and a subject of great misunderstanding out there. And we talked about this in the open hearing before the Senate on May 1st. The issue is not 72 hours or what the timeframe is. The FISA court has done incredible things and they work incredible hours, and do incredible things on an emergency basis at all hours, and they're available and do a great service to this country in agreeing to do this and review the FISA applications.

However, again, thinking back to 1978, the issue is not one of attorney time or more attorneys at DOJ or just simply a bureaucratic process. The issue is, and those who cover the intelligence community beat are very familiar with the critical language skills that we have. We have a great number of people who have considerable expertise on terrorist organizations, who's affiliated with them, what their links are. The same thing with foreign powers. We only have so many people who speak the language, who understand the culture, who understand the membership, who understand maybe the leadership.

What you are talking about doing is taking those people who speak the languages, understand these organizations, you're talking about taking them off an analytical path and putting them -- having them put together what in many cases resemble finished intelligence products, and submitting them to a court for review for probable cause to determine something about somebody, a foreigner located overseas. That is a massive understanding in some cases, and you're talking about taking some of our most critical resources, the people who understand the organizations, who speak the languages, off task to put these things together, to do something that wasn't required in 1978, but simply because of the change in technology is sweeping these things into the FISA Court. That is a harm to our intelligence community and our ability to gather current foreign intelligence. It's the type of people that you have to take offline to do these things. It's not a matter of DOJ hiring more attorneys to simply process applications or forms or that type of thing. The key thing is, is the substance of these applications requires that I take -- that the IC heads take off their most critical resources to do these things off of current task.

QUESTION: Well, that is understood. I mean, I can see that. But the problem here is, you know, given the repeated abuses that we've learned about in other parts -- I'm not saying on the FISA, but I'm saying in other things -- and given that, you know, people want to know that what is being done is being done in the right way, what's so wrong with having the FISA Court look over the shoulder perhaps, you know, on particular requests as opposed to just, you know, coming in, you know, what is -- I forget the specific timeframe that there might be some review on the general rules I guess that is under the bill that was approved. What's so wrong with perhaps getting some kind of double checking to make sure that this is being done the right way?

SENIOR ADMINISTRATION OFFICIAL: Well, first, there is a lot of double checking at the agencies that engage in this. They have huge training programs, huge compliance programs, IGs, and that's in addition to things that DOJ does in terms of compliance. I would not compare this to some of the other things that you may be referring about. I think there are ff circumstances and different situations where those things were not done under the extensive regime that we've had for 30 years.

In 1978 it was not felt that it was appropriate to have the judges of the FISA court taking their time making probable cause determination about the targeting of people located overseas. Simply because of technology, we don't think that it's appropriate for them to do it today. What you are talking about in fact if it were to be carried out is a massive task, and the harm is what I laid out. Do you want to take these people who speak the languages, understand the organizations, understand the culture, do you want them to be putting together these packages, taking them off task in a time when we're under heavy criticism for having not enough people who speak the languages, not enough people who understand the cultures, do you want them to be putting together probable cause justification to carry out surveillance activities directed at people located overseas? I mean, that's a fundamental policy question. Certainly the DNI feel very strongly that that is not the way we should be using our people, kind of our scarce analytical resources.

SENIOR ADMINISTRATION OFFICIAL: If I can just sort of add onto that, your question about sort of having a second look or a check or whatever, I wouldn't discount the review by the FISA Court here. Keep in mind what it is that they're going to be doing. If we're going to draft

procedures by which we are going to determine that the target is overseas, and the court is going to take a look at that. So in essence, what they're looking at is, they're looking at the procedures that we use to ensure that our surveillance that we're conducting is outside their jurisdiction. And they're going to be looking at that very carefully. The FISA Court is a very careful court, and they do everything -- they scrutinize everything very carefully.

So that is going to be a serious review. And then keep in mind also that this legislation also requires Congressional oversight. We have to report to Congress every six months, go through -- tell them about all examples of noncompliance where we've made mistakes. I think Congress is going to be looking very carefully at this, and honestly over the next six months, since there's a sunset provision here, they're going to be looking particularly carefully at our track record.

So I think that the oversight is going to be sort of many-fold here between the Court, Congress, here in the National Security Division and also in NSA.

QUESTION: Thanks for taking some of your beach time to be with us today.

OPERATOR: Our next question comes from Katherine Schrader from the AP. Please go ahead.

QUESTION: Hi, gentlemen. I'm wondering if we can start, since you're on background here and you won't go on the record, we do need to explain why you don't want to be identified. So I'm wondering if we can just start with that quick basic question.

SENIOR ADMINISTRATION OFFICIAL: In many cases, we're dealing with classified information here, and it's very difficult to get into some of those specifics and walk this tightrope, given the sensitivity of the information involved.

QUESTION: Okay. And then I have sort of three substantive questions. There's intelligence collection and then there's targeting. With regard to broad collection rather than targeting an individual, does this -- does the provisions approved this weekend allow the government to camp on to U.S. networks and fiber optic lines, or do you still have to do narrow targeting of individuals when you're dealing with an American who is party to the communication?

SENIOR ADMINISTRATION OFFICIAL: Yeah. This is Senior Administration Official. I mean, we're trying to restore it to the regime we've operated under since 1978. I don't want to talk about any kind of sources and methods about how we do things. I would say that any type of targeting of Americans and those types of things is obviously going to be subject to the Fourth Amendment. I've certainly seen things about drift net surveillance and these types of things of Americans or American cities and those types of things that present very different Fourth Amendment issues to the extent you're talking about broad targeting of the contents of American communications. So, I mean, you know, we do have the Fourth Amendment and the extensive case law in that area. I mean, we're only talking about targeting people, directed targeting at people located overseas.

QUESTION: So it will be directed targeting of people overseas? There's not going to be some sort of broader drift net, to use your word, that Americans could get caught up in if they happen to be

talking on the phone with a foreigner, as millions of Americans do probably each day?

SENIOR ADMINISTRATION OFFICIAL: Well, you know, we're -- we have limited resources and are extremely busy and have limited resources of people who speak languages and can review things and do those things. We gather foreign intelligence from valid foreign intelligence targets. So, you know, that's -- and so any type of program that's really aimed at just sweeping up, you know, American's communications would have to be looked at very closely from a Fourth Amendment perspective.

QUESTION: Are you suggesting the assurance then is because you can't translate and read everything? Or is the assurance of the law?

SENIOR ADMINISTRATION OFFICIAL: Well, I'm saying the assurance is, is anything we do has to meet the Fourth Amendment test of reasonableness, of course, obviously warrants, you know, what the Fourth Amendment says, that all searches and seizures have to be reasonable, and there's a lot of Supreme Court case law on that subject. So anything we do in that area certainly has to meet the Fourth Amendment test.

QUESTION: Okay.

SENIOR ADMINISTRATION OFFICIAL: We need to do things that are -- what we're interested in is gathering needed foreign intelligence, not things that are not needed of foreign intelligence. So we're looking at valid foreign intelligence targets. We're not, you know, doing things to see what would turn up or something like that.

QUESTION: Okay. I'm not quite sure you're answering my question. Is there a way to kind of get at this a little more directly?

SENIOR ADMINISTRATION OFFICIAL: I think our view is you can't direct surveillance at a person in the United States without using the FISA regime, and we also don't think you could direct surveillance at a large number of persons in the United States without using the FISA regime. So, if that's what you're concerned about, the answer is we don't think we could do that without a court under the current law.

QUESTION: And is the key word in that sentence "direct?" I mean, if you're -- you know, obviously, you know, you said that if the target is a foreigner, you know, and the top people have said minimization procedures will be applied to any Americans caught up in the call. So is the key word in that sentence you just said you can't direct surveillance at a person in the United States?

SENIOR ADMINISTRATION OFFICIAL: Well, the key focus of this entire proposal is, the question is where is the target. And if the target is overseas, you don't need a court order, and if the target is in the United States, you do.

QUESTION: Is there any chance you can say that on the record?

MR. BOYD: Look, we'll get back to you.

QUESTION: Okay.

MR. BOYD: Again, this call is on background, please.

QUESTION: Okay. And then in terms of the sunset, obviously this law expires in February. If there are orders in place the day before the expiration, do they last a year then? In other words, really this law could -- surveillance ordered under this law could be in effect through the end of the Bush Administration. Is that right?

SENIOR ADMINISTRATION OFFICIAL: Yes. The statute would allow surveillances that are authorized prior to the period of expiration to remain in effect until the end of their duration under the item, the dates of that.

QUESTION: Okay. And then lastly, what if an America is overseas and their communications are caught up in this and surveillance under these provisions, is a warrant necessary?

SENIOR ADMINISTRATION OFFICIAL: Well, going back, as Senior Administration Official has mentioned, to 1978, when FISA was enacted in 1978, it did not draw distinctions between non-U.S. persons and U.S. persons overseas. So if the target was overseas in 1978, you generally didn't need a court order even if the target was a U.S. person. The way we have for over 25 years handled U.S. persons overseas is a robust executive branch process set forth in Executive Order 12 triple 3 which requires individualized probable cause determinations to be made. Nothing in the new FISA legislation would alter this practice in any way.

QUESTION: Thanks.

OPERATOR: Our next question comes from Walter Pincus from the Washington Post. Please go ahead.

QUESTION: Thank you. Let me do two different things. One is on 105B3, you're talking about obtaining foreign intelligence from -- or with the assistance of communication service providers. That's what I think gives custodians and people with home records, that's what gives people the impression there's a net involved. Are you going to those providers with a specified target, or are you getting information from them and then trying to determine who's overseas and are they targetable?

SENIOR ADMINISTRATION OFFICIAL: Well, anything that we have to do at this is surveillance directed at a person reasonably believed to be located outside the United States. And then we have to develop procedures determining that, and then we have to submit those procedures to FISA Court review. So we have to, you know, assure the court that our procedures are -- that we're following the people located outside the United States. And how things would be done with providers or those type of things probably gets a little bit too close to sources and methods for our comfort.

QUESTION: And let me go back to a series of questions just on how this thing is going to be

overseen. You talk about the DNI and the Attorney General certifying based on information provided them. Who's going to provide them with the information?

SENIOR ADMINISTRATION OFFICIAL: Well, in the statute says shall be a written certification supported as appropriate by affidavit of appropriate officials --

QUESTION: Right.

SENIOR ADMINISTRATION OFFICIAL: -- of security field occupying positions appointed by the President with the consent of the Senate or the head of any agency of the intelligence community. So, obviously, you know, folks who do this for a living and who are skilled in this area are going to have to certify the DNI and the Attorney General signing up to these procedures. It's going to be critical to have their written assurance that the procedures and compliance programs follow these procedures.

So I would contemplate that, you know, we're just developing this. Obviously, it was just signed yesterday, but it's going to rely on those people who do this for a living to give us the information and also sign up to it.

QUESTION: But we've been told really since 2005 that people are already doing this. In other words, you already have experts deciding in the terrorist TSP program.

SENIOR ADMINISTRATION OFFICIAL: Right. Well, that's a different program. There is not anything necessarily only directed at people reasonably located outside the United States.

QUESTION: So this is -- okay. I understand the difference then. So you're broadening out that technique?

SENIOR ADMINISTRATION OFFICIAL: No. No, no. Remember --

QUESTION: To collect foreign intelligence as against collecting information on terrorists, which is also foreign intelligence.

SENIOR ADMINISTRATION OFFICIAL: Right. No, that would be incorrect. We are not broadening the terrorist -- you're talking about two different things. Again, the Terrorist Surveillance Program authorized by the President involved intercepting international communications of people with known links to al Qaeda and related terrorists organizations.

QUESTION: Right.

SENIOR ADMINISTRATION OFFICIAL: Okay. One end of those communications must be foreign. That is different than saying we can only target people who are located outside the United States. That's different from the Terrorist Surveillance Program, which potentially could have involved targeting people who were in the United States, their international communications if they were a member or agent of al Qaeda or an affiliated organization. But this bill is not broader than the TSP. It does not authorize any targeting inside the United States. That's a key difference.

QUESTION: I wasn't talking about inside.

SENIOR ADMINISTRATION OFFICIAL: Right.

QUESTION: I'm talking about targeting people outside who are not associated with al Qaeda.

SENIOR ADMINISTRATION OFFICIAL: That's correct. Because we're returning to, again, 1978, they exempted these international communications to gather foreign intelligence. We're trying to get back to where we were in 1978, correct.

QUESTION: And then you mentioned the Attorney General and the DNI are going to transmit these certifications. But the certifications go to the Chief Justice of the United States and the Attorney General. And they'll remain sealed unless it's necessary for the legality of an acquisition, which I gather is a problem in case some person who is -- has these things doesn't want to turn them over.

Does that sealed document, can that be made -- is that going to be made available to Congressional committees, or does that provision only for legality of the acquisition block the House, Senate intelligence committees or judiciary from seeing those certifications?

SENIOR ADMINISTRATION OFFICIAL: I don't know of anything that blocks them or speaks to that in the statute. You know, you're kind of asking us -- you know, the bill was signed on Sunday. Today is Monday. I think we're going to want to make sure that we keep the committee fully and currently informed, but I just don't know that I -- I certainly haven't spoken to the DNI about that matter, and I don't know if Senior Administration Official can speak to whether he's spoken to the AG about that matter. But you're asking about something that doesn't exist yet about whether or not it will be given to the committees. That decision is not for me to make ultimately.

QUESTION: And who within the process is going to carry out the oversight on behalf of the DNI and the Attorney General? In other words, in the House bill they said the Inspector General of Justice. Who is going to be the person to see if the acquisitions are in compliance or not in compliance?

SENIOR ADMINISTRATION OFFICIAL: Well, I would say I don't know what organizations are carrying out what activities, but all of the agencies of the intelligence community, their departments have Senate confirmed Inspector Generals, I believe. Certainly DOD has an Inspector General office, NSA, NRO, all have Inspector Generals.

In addition, many of these organizations have separate and apart from IG's offices, I mean, afterwards in review and audit, they also though have real time compliance audit capabilities and query capabilities and rules in place to protect information.

The interest is not just in getting a report a year later finding problems, but having compliance organizations that are involved on a daily basis with ensuring that the rules are followed. So it's not just a matter of having an IG come in after the fact and do those. It's very important and critical that

we have compliance organizations making sure that things are going the way they should, and certain of these organizations have had those for a long time.

So it's not just an IG afterward to come in. there's also the ongoing training, ongoing compliance audit.

QUESTION: Those are all internal. Can the House and Senate committees send people in to review certifications and directives and then how they're being carried out?

SENIOR ADMINISTRATION OFFICIAL: I'd say that the House and Senate has spent a tremendous amount of time overseeing certain programs for the past year and a half. They've been furnished with all kinds of very specific information and had all types of files made available to them, not just briefings, but specific files made available to them for their oversight. Certainly they're going to be able to come and see and do their oversight on our operations, just as they have for a long time, and certainly in the past year and a half.

SENIOR ADMINISTRATION OFFICIAL: Walter, also keep in mind that under Subsection B of 105B, that the DNI and the Attorney General have to assess compliance with the procedures and report those assessments to the intel committees of both the House and the Senate.

QUESTION: But that's investigating themselves in a way.

SENIOR ADMINISTRATION OFFICIAL: Right. But those assessments will be heavily scrutinized, I'm sure.

QUESTION: Thank you.

OPERATOR: Our next question comes from Eric Lichtfall of the New York Times.

QUESTION: Hi. I have a couple of points that were touched on earlier, but I'm not sure really answered. On the drift net question, you talked about both the legal requirements for reasonableness under the Fourth Amendment and also just the operational logistics of using your time efficiently. Are you -- were you speaking only of surveillance where you are acquiring content, or it's your belief that those same restrictions apply to call data and tracing of call records?

SENIOR ADMINISTRATION OFFICIAL: Well, the Fourth Amendment will apply to any of our activities. I mean, nothing is exempt from the reasonableness requirement of the Fourth Amendment.

QUESTION: So is that to say that you have to meet a standard somewhere below probable cause in order to get what we once would have thought of as a pen register? Or does this allow you to -- in establishing a foreign link, to place calls without meeting any court-approved standard?

SENIOR ADMINISTRATION OFFICIAL: Well, the probable cause was not something that was a part of this in 1978 to gather foreign intelligence from targets located overseas, and we're trying to restore what we had in 1978. There was not thought to be a probable cause requirement for

terrorists located overseas for us to target than at terrorists located overseas in 1978. We don't think there should be one today. We don't think that there's a judicial probable cause finding should be a part of that. And there certainly is no Fourth Amendment requirement for that.

QUESTION: Okay. On the question earlier about U.S. citizens overseas, if the purpose of this is primarily or exclusively targeting foreigners, why not build an exemption to the law that would specifically make it off limits to target businesspeople, government employees, journalists, et cetera, who happen to be overseas? And is that being done? Or are those people fair game?

SENIOR ADMINISTRATION OFFICIAL: Well, again, going back to 1978, it's never been required to go to a court with respect to -- in 1978, it was not -- there was no distinction drawn between U.S. persons and non-U.S. persons overseas. We do have this process in the executive branch under the executive order that governs that. We generally had not heard many criticisms of that process, and those robust practices remain in place, so.

QUESTION: So in practice, is it possible that U.S. citizens overseas are being caught up in this, either by design or otherwise?

SENIOR ADMINISTRATION OFFICIAL: Well, I guess I'd say that we collect foreign intelligence from valid targets overseas according to what the law allows, which is both, you know, the statutory law and Executive Order 12 triple 3 that's been in place since 1981, which speaks to this exact -- that's spoken to this I think since 1981.

QUESTION: But the Administration was opposed to the idea of clarifying or asserting that U.S. citizens overseas are not a target of this. Why? I mean, if the goal is really to get foreign intelligence, why not exempt them? You're obviously revising everything that's been in the FISA law for 30 years. Why not put that on the table if the goal is really foreign intelligence?

SENIOR ADMINISTRATION OFFICIAL: Well, we were actually -- well, I guess I was more focused -- we were more focused on making the statute, fixing the technology problems that had swept into FISA, and not address this kind of -- if there's something that needs to be clarified, it's been in existence in Executive Order 12 trip 3 since 1981, so I don't think there was any lack of clarity, nor did we see an issue there that we needed to address I guess. I'm not -- I've not ever heard that there was a lack of clarity on that. It's certainly been in the executive orders and the legal framework for 25 years now.

QUESTION: Okay. And then the last issue on the FISA Court ruling on the foreign-to-foreign that transit through U.S. switches, there's been a fair amount of confusion about what exactly the court did and how much that handcuffed you or perhaps did not handcuff you. Can you address that at all. I understand you're saying that this is clarified, but the fact is that that became obviously a main argument in the passage of the legislation over this weekend. It became the real rallying cry for the Republicans. And there seems -- there's some suggestion from people that whatever the court decided was in some way distorted for political purposes. It would help to clarify what limitations that really placed on your intelligence collection capabilities.

And the second question there is, as far as Congressman Boehner's comments on that on Fox, there

was a request put in by a citizens watchdog group crew to investigate those comments. Is the Justice Department going to be moving ahead on that?

SENIOR ADMINISTRATION OFFICIAL: Yeah. This is Senior Administration Official. I -- we just can't comment publicly on the proceedings before the FISA Court and on any opinions or rulings that they issue. And in terms of your last question there, I'm not familiar with that at all.

QUESTION: Is there any thought to an investigation into whether or not classified material was divulged on TV?

SENIOR ADMINISTRATION OFFICIAL: We're just not going to comment. We have nothing for you on that right now.

SENIOR ADMINISTRATION OFFICIAL: But I would say -- you made the claim that the FISA Court was somehow mischaracterized or used for political purposes. I would say that our committees are fully and currently informed about this matter, and I'll just leave it there. And I would not agree with any charge that anything that they may or may not have said was mischaracterized or used for political purposes.

QUESTION: You just had this unusual situation where the Administration in an e-mail to Republican leaders was claiming to speak for the court. I mean, I'm not aware of any situation like that that's arisen before, you know, in the midst of a heated political debate.

SENIOR ADMINISTRATION OFFICIAL: I would say members of the committees are fully and currently informed on both sides of the aisle.

MR. BOYD: There's time for one last question.

OPERATOR: Okay. That question comes from Shevon Gordon from the Baltimore Sun. Please go ahead.

QUESTION: Hi. Thanks so much for talking with us. I had a question that someone on the Hill raised regarding physical searches, because obviously, this amendment or change to the law applies to electronic surveillance and what this person was saying was that it is possible or the government may be allowed to do physical searches of, you know, homes or businesses if the investigation concerns a foreign target of an intelligence investigation. I was just wondering what your read is on that.

SENIOR ADMINISTRATION OFFICIAL: I'm not quite sure what those people would be referring to, because the provision -- I can't think of a provision in the statute that would allow you to do that. The acquisitions here are acquisitions made from a communication service provider.

QUESTION: I guess it was in the idea that FISA does specifically address physical versus, and I think it was in the change to the document. But, I mean, do you not see that this -- the way this law is written now that it would permit I guess in some circumstances physical searches if it concerns the foreign target of an intelligence investigation?

SENIOR ADMINISTRATION OFFICIAL: Well, you'd have to go through and check to see whether all the statutory requirements are met, and those requirements are that -- and I'm looking at 105B here -- that the acquisition does not constitute electronic surveillance, that involves obtaining foreign intelligence information with the assistance of a communication service provider. So it's difficult to see the hypothetical that you raised.

QUESTION: Well, I think that it was -- if you're talking about a communication service provider, that maybe you could go and you could get communications data records and things like that. Is that not accurate or not a fair interpretation?

SENIOR ADMINISTRATION OFFICIAL: Well, I think it's probably best not to comment on that, but -- and just because it gets into highly technical questions. But this provision as I read it to you requires it to not be electronic surveillance and to involve the assistance of communication service providers. So it's hard to see how that relates to search the home or other things like that.

QUESTION: Okay. Thank you.

SENIOR ADMINISTRATION OFFICIAL: Yeah. This is Senior Administration Official. I would also just -- I just want to return to something. I know there was a question about why on background and why not on the record, and I just wanted to clarify that we're not discussing classified info here.

The reason that I think we do background information, according to my press folks, is that it enables us to be -- to talk more freely and provide greater context, not -- I didn't want anybody to think that we were discussing classified information here that somehow because we're on background, we can describe classified information. But we're on the record. We couldn't. So I just wanted to clarify that.

I'm not an expert in these matters, but certainly background briefings are done outside the intelligence community. There's Health and Human Services and other agencies that have nothing at all to do with classified information, so I just wanted to clarify that.

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