

UNITED STATES
FOREIGN INTELLIGENCE SURVEILLANCE COURT
WASHINGTON, D.C.

IN RE [REDACTED]

Docket Number:

EXHIBIT F

MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR AUTHORITY TO
CONDUCT ELECTRONIC SURVEILLANCE OF [REDACTED]

Derived from Application of the United States to the Foreign
Intelligence Surveillance Court in the above-captioned
matter
Declassify only upon the determination of the President

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The Government submits this memorandum of law in support of its application for authority to conduct electronic surveillance of [REDACTED]

[REDACTED] This memorandum addresses the collection of a particular type of electronic communications, i.e., "abouts" or "referred to" communications. These are communications that relate to a targeted e-mail facility used by the foreign power targets of this surveillance where the targeted e-mail address does not appear in the "to" or "from" fields of the communications.¹ In the Court's previous Order and Memorandum Opinion related to this surveillance, the Court instructed that, if "the government continues to seek authority for [this] type of surveillance . . . its further submissions shall include an analysis of the extent to which such surveillance is directed at selector e-mail addresses, and the extent to which it is directed at e-mail addresses that send or receive communications that are acquired because they refer to a selector e-mail address." Order and Memorandum Opinion, *In re*: [REDACTED]

[REDACTED], No. [REDACTED] (Apr. 3, 2007), at 21-22. The Government does seek authority to continue such surveillance, which was requested in the first application in No. [REDACTED] and is currently conducted under the authority granted in No. [REDACTED]. The collection of this information is critical to the continued success of the "early warning" system.²

Types of "Abouts"

Before analyzing the collection of this type of communications under the electronic surveillance provisions of the Foreign Intelligence Surveillance Act (FISA), 50 U.S.C. §§ 1801-1811, it is necessary to set forth the different categories of communications that fall within the


¹ Although the Government's application seeks to conduct surveillance of e-mail addresses and telephone numbers used by the foreign power targets of this surveillance, the type of authority addressed in this memorandum is relevant only to e-mail addresses.

² The National Security Agency has reviewed this memorandum of law for accuracy.

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general category of "abouts" or "referred to" collection, i.e., the acquisition of communications where the targeted e-mail address does not appear in the "to" or "from" fields.



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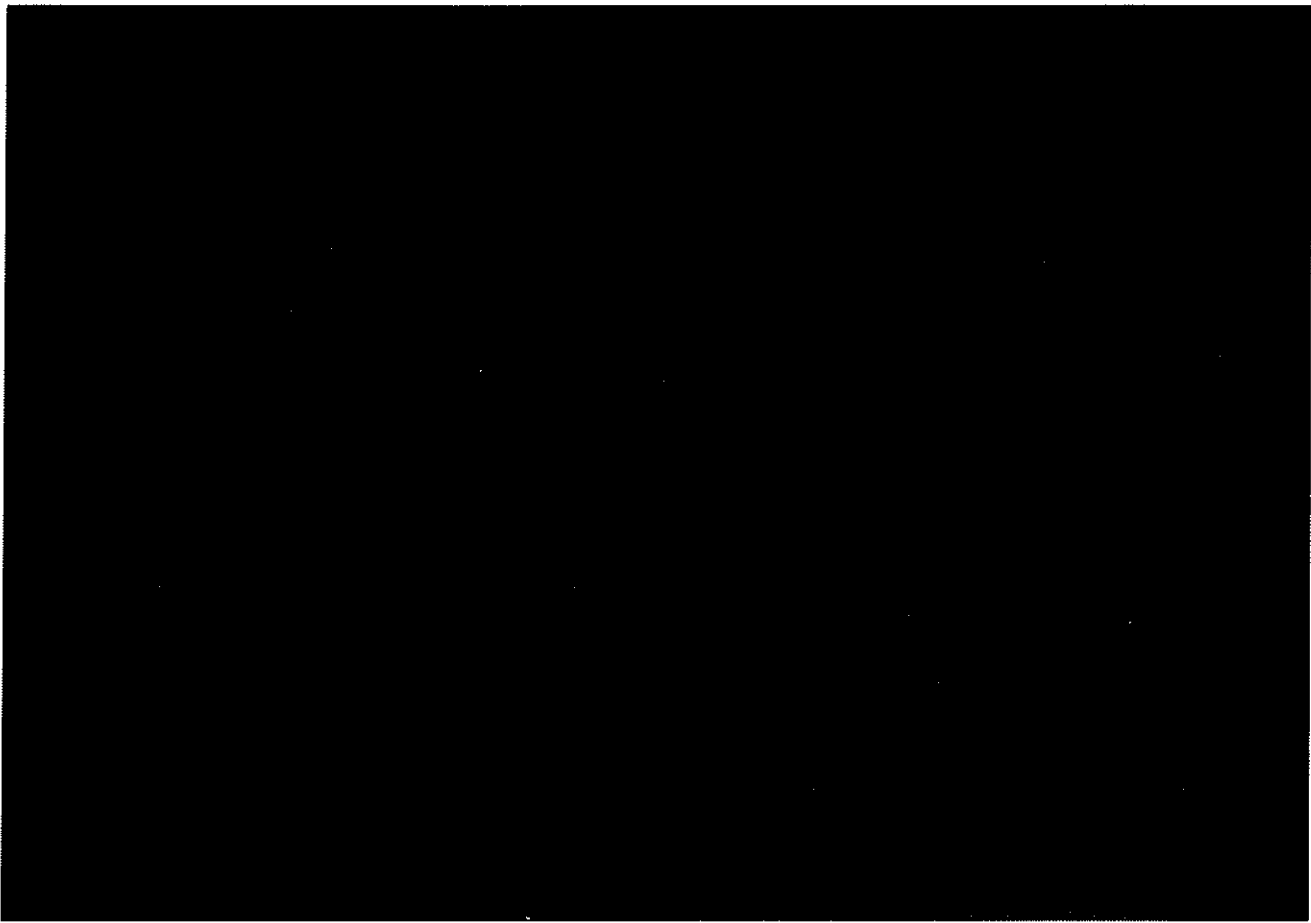
Third-party "abouts"

Third-party "abouts" are communications relating to a facility at which NSA is not directing surveillance that contain a targeted [REDACTED] Capturing these communications would not only provide the Government with the information contained in the text of the communication itself, but would also help to identify previously unknown terrorist associates and accounts. Third-party "abouts" include electronic communications between two


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third-party, non-targeted facilities that contain the targeted e-mail address in the substantive contents of that communication. Thus, even when an e-mail is not to or from the targeted e-mail address, NSA would collect the communication as long as the contents of the communication contain the e-mail address. For example, [REDACTED]

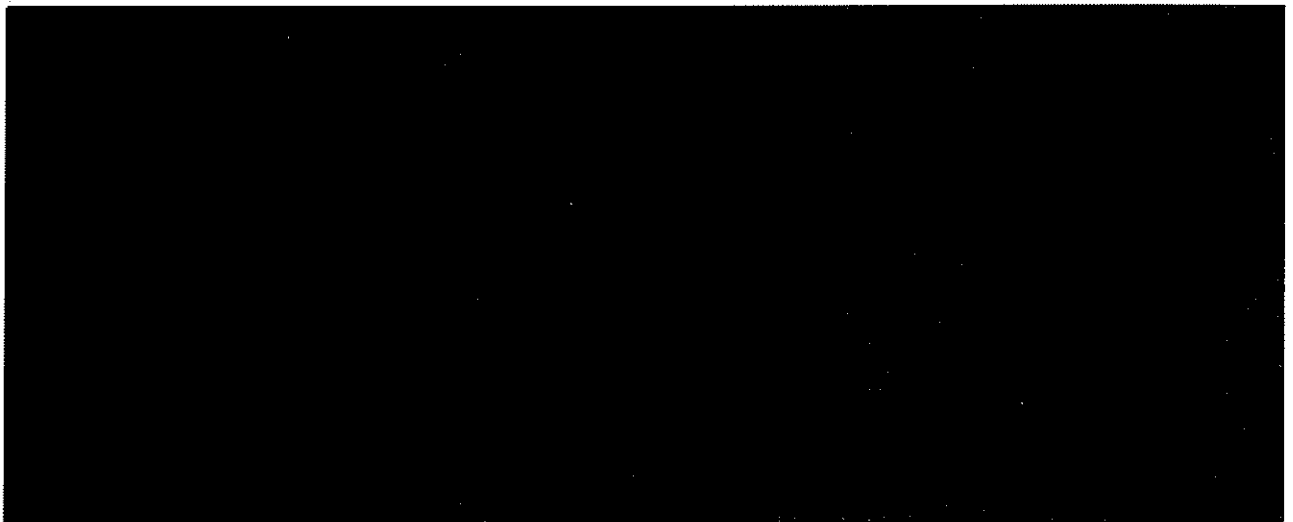
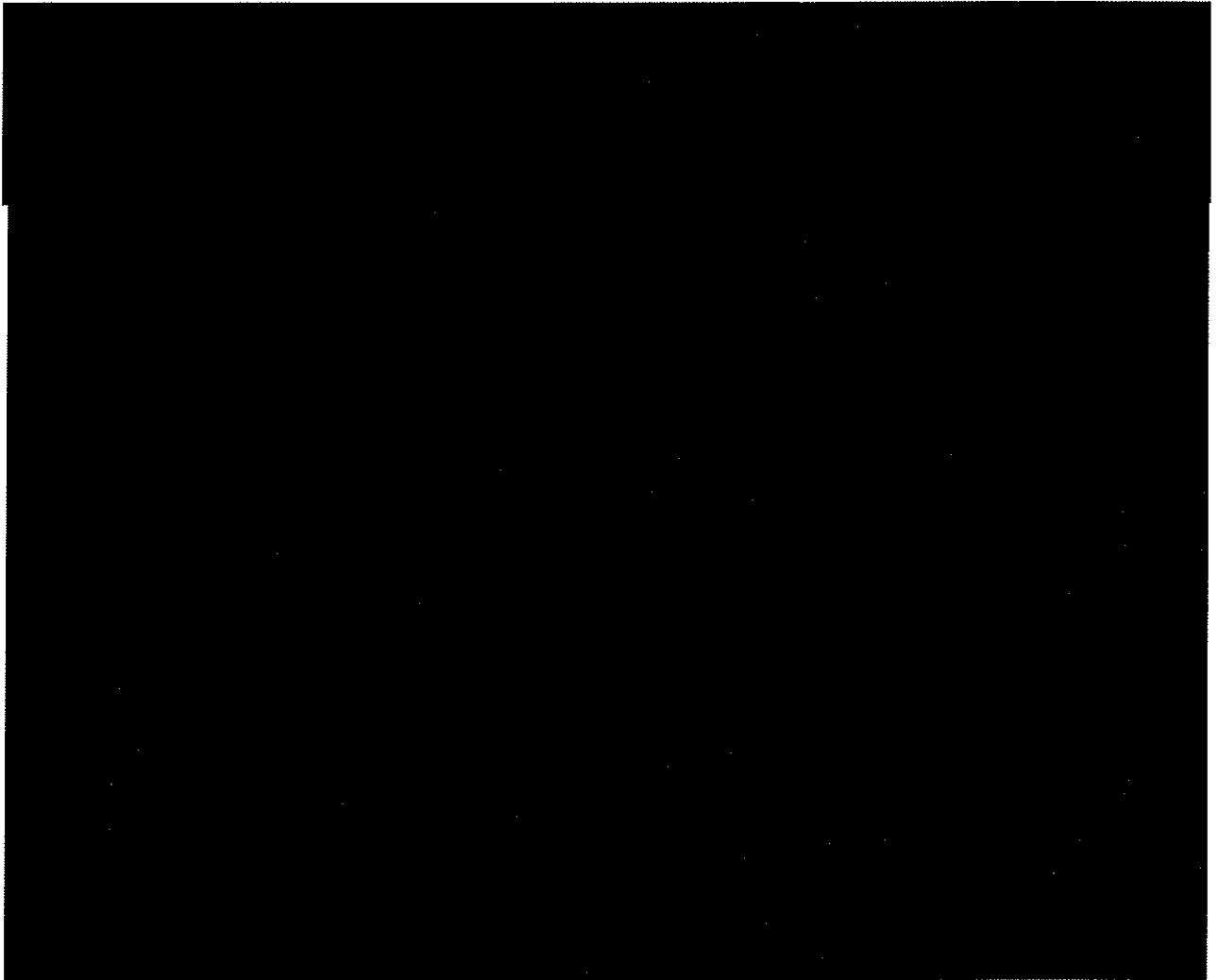


Legal Analysis



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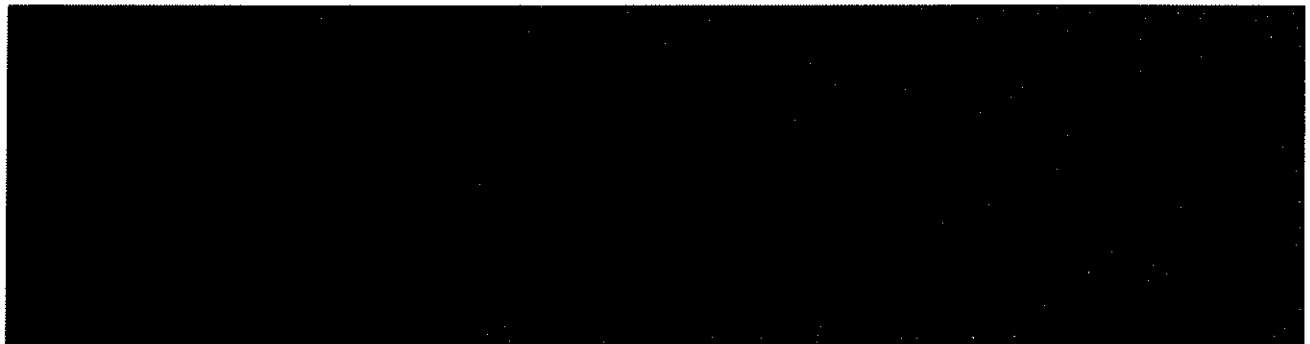
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Third-party "abouts"

A [REDACTED] legal issue is raised by the acquisition of communications that fall within the category of third-party "abouts," i.e., where the e-mail [REDACTED] appears in the



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body of an e-mail neither sent nor received by an account at which surveillance is already directed [REDACTED]

[REDACTED] the communication is captured because it contains the [REDACTED] but it cannot be said that the surveillance is "directed at" the targeted account because, with respect to that particular communication, the targeted account is not "being used or about to be used" by the foreign power target. Rather, for the purposes of FISA, the surveillance is "directed at" the facilities that sent and received the communication. Nevertheless, acquisition of the communication is consistent with the statute because, at the time of acquisition, NSA has probable cause to believe that the facilities at which NSA is directing the surveillance (i.e., the previously unknown e-mail accounts) are being used by the foreign power target.

The NSA conducts this surveillance by [REDACTED]

[REDACTED]

⁷ See Memorandum of law in support of application for authority to conduct electronic surveillance of [REDACTED]

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[REDACTED]

[REDACTED] forwarding an e-mail from that account to a third account provides probable cause to believe that either the account that is forwarding the e-mail from the targeted address or that which is receiving it is also being used by the foreign power target. And there is probable cause to believe that at least one party to a communication that mentions the e-mail address used by the target (as opposed to simply using the name of the target or of an individual associated with the target, [REDACTED]) is himself a member or agent of the target. [REDACTED]

[REDACTED] 8

It is important to note, however, the limits of such surveillance. NSA will not rely on the fact that it acquired the one communication, to begin automatically to monitor all communications of the facilities from which it acquired the communication. Rather, it will determine whether, [REDACTED]

[REDACTED] there is still probable cause to believe that the facilities are being used or are about to be used by the target of this surveillance. To be sure, regardless of whether NSA continues to collect communications of the facilities which sent and

[REDACTED]

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received the acquired communication containing the targeted [REDACTED] NSA will have directed surveillance at facilities whose "nature and location . . . [are] unknown" at the time of the application. For this reason, NSA will include those facilities as part of the reporting scheme described in the application.

Accordingly, the authority the Government seeks in the application includes the authority to conduct the surveillance described above, and the acquisition of such communications is consistent with FISA.

Respectfully submitted,

Dated: May 24, 2007



Matthew G. Olsen
Deputy Assistant Attorney General

(b)(6)
Senior Counsel to the
Assistant Attorney General

(b)(6)
Attorney Advisor

National Security Division
U.S. Department of Justice

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