

Cooney, Joseph (USADC) 10:41 PM: **AUTHORIZED FOR PUBLIC RELEASE BY CHAIRMEN GRASSLEY AND JOHNSON**

bottom line: we should not run away from our s/d analysis. we have this right--you have this right. and i'm not shy about it. you can count on two hands the number of people in the department who have litigated under the clause, and most of them are involved in this case. olc is a bunch of law professors whose job it is to advance executive authority. i'm an advocate for repealing the clause but absent that, we're stuck with it and the way it's been interpreted.

From: "Gaston, Molly (USADC)" [REDACTED]

To: "Gaston, Molly (USADC)" [REDACTED], "Cooney, Joseph (USADC)" [REDACTED]

Subject: Conversation with Gaston, Molly (USADC)

Date: Sun, 14 Feb 2021 12:12:37 -0500

Importance: Normal

Gaston, Molly (USADC) 2:08 PM:

I'm trying to run down the issue with the rider that Senate Counsel slipped into the last NDAA re: cloud services. ok with you if i reach out to olc?

Cooney, Joseph (USADC) 2:08 PM:

go right ahead
would it be olc though?
ola?

Gaston, Molly (USADC) 2:09 PM:

olc is supposed to review every bill that is coming to the president for signing and make determinations about the constitutionality of various provisions.
in this case, it happened very quickly and it was an enormous christmas tree, so this provision may not have gotten a look
but if it did, someone may already have done work on it.

Cooney, Joseph (USADC) 2:10 PM:

ah -- i see
who are you going to reach out to?

Gaston, Molly (USADC) 2:10 PM:

good question. i was going to reach out to someone i know there from long ago, but figure he will just get me to the right person.

Cooney, Joseph (USADC) 2:10 PM:

perfect

Gaston, Molly (USADC) 2:11 PM:

i could also reach out to the woman who trashed my work on burr, but i figure that would be a little on the nose

Cooney, Joseph (USADC) 2:11 PM:

ha!

Cooney, Joseph (USADC) 2:14 PM:

please just keep me posted -- because a reach out could get bounced up; depending on who you end up talking to, i might try to third wheel your call, largely out of interest in this
frankly, i totally forgot about this until you brought it up
i'm re reading this statutory language
this is ridiculous

Gaston, Molly (USADC) 2:15 PM:

yes. i went back to read it because i wanted to see if they were sweeping in phone records.
that's the only reason i remembered it.
it's also only the senate. ha!

Cooney, Joseph (USADC) 2:18 PM:

i was just about to write that to you
i find many things amazing
only senate

Gaston, Molly (USADC) 2:19 PM:

it is 100% a reaction to burr.
which is funny since we did not get his cloud.

Cooney, Joseph (USADC) 2:19 PM:

the notification provision starts with "notwithstanding any other provision of law ..."
then notes at the end that this preempts all other provisions
that no one is paying attention to this is really disturbing
i agree that it must be a reaction to burr -- which means i think they contemplate toll records
but i don't get it burr is not the first time we've ever subpoenaed member records before
i actually think that this is not just personal -- i think many members didn't trust the administration

Gaston, Molly (USADC) 2:21 PM:

i think what they're worried about is a circumstance in which we execute a SW on a cloud and they never know.

Cooney, Joseph (USADC) 2:22 PM:

yeah -- that is how it is written

maybe they assume we did that because we took burr's phone

Gaston, Molly (USADC) 2:22 PM:

alice did ask. we never answered.

Cooney, Joseph (USADC) 2:23 PM:

well, she should know the answer

in dc, rayburn would apply to that

Gaston, Molly (USADC) 2:23 PM:

funny thing is, i don't think he used the cloud. they have an easy way of fixing this.

Cooney, Joseph (USADC) 2:23 PM:

so she would have gotten the notice

Gaston, Molly (USADC) 2:23 PM:

so is the difference between tolls and the cloud content?

because we're not compelling production from burr in the case of the cloud

Cooney, Joseph (USADC) 2:23 PM:

oh

my bad; my bad

you're right

please forget what i said

i was connecting it to the phone itself forget what i said

the easy fix is just to create their own cloud

Gaston, Molly (USADC) 2:24 PM:

or not to use it

i think under rayburn, we could get the cloud, not notify, and do the search without consulting the member.

Cooney, Joseph (USADC) 2:25 PM:

but if they're really doing senate business on their phones, they have every reason to use a cloud

Gaston, Molly (USADC) 2:25 PM:

whether we would want to do that is a different call

Cooney, Joseph (USADC) 2:25 PM:

i completely agree

on rayburn

i just misspoke before

or miswrote

Gaston, Molly (USADC) 2:25 PM:

i think it would be a bad idea though.

i would rather go through litigation on tolls first

Cooney, Joseph (USADC) 2:25 PM:

yeah me too

Gaston, Molly (USADC) 2:27 PM:

btw, on derrick evans (resigned WV delegate)

i need to do a debrief of him.

i was about to ask if i could do it in person but i just don't think i can spare the time driving out there.

nevermind.

Cooney, Joseph (USADC) 2:30 PM:

total waste of your time

to drive there

is the debrief essential enough to your bigger investigation that it is worth your time in the first place

i wanted to discuss evans with you