DIANNE FEINSTEIN: I BELIEVE SPECIFIC SELECTION TERM IS CONFUSING

In the Senate Intelligence Committee hearing on HR 3361 — which I call the USA Freedumber Act because it makes the dragnet worse in several ways — Dianne Feinstein used her opening statement to talk about the role of "specific selection term" in the bill.

She says, in part,

> The problem comes with the definition of a "specific selection term," which is not clear on its face and I believe it's confusing.

I'm glad that Feinstein is concerned about the same thing I've been focusing on for a month.

The problem with trying to prevent "bulk collection" using the definition of selection term — even aside from the fact that the Intelligence Community understands "bulk collection" to mean something entirely different from what normal people understand it to mean — is that it will be abused.

We didn't even get out of the hearing without such cynicism. At the hearing, Deputy Attorney General James Cole assured Martin Heinrich and Mark Udall that statements in the legislative record indicating a desire to limit such collection would prevent any abuse. This is the same DAG whose DOJ argued — just the day before!!! — that the legislative record of FISA, which clearly indicates the congressional intent that some defendants will get to review their FISA applications, should be ignored in favor of the 36 year history during which no defendants got such review.

Cole's comments are all the proof we need that the Executive cannot be trusted to cede to Congress' wishes (not to mention that the legislative record is far more ambivalent than Cole pretended).

So I'm grateful Feinstein is trying to tighten the definition (though I don't think that is the workable way to improve the bill).

But I'm a bit confused by Feinstein's confusion.

You see, as I noted some weeks ago, the term "selection term" is already used for Section 215, and has been for at least a year. And at least in phone dragnet Primary Order standard references to FISA content orders (that is, to traditional FISA warrants and the like), they're using "selection term" as well.

The intelligence community and the FISA Court already have some common understanding of what "selection term" means — and Primary Orders appear to define the term in a classified-to-us-but-not-Feinstein footnote — and yet Feinstein is confused about what "specific selection term" might mean?

Granted, "selection term" is slightly different than "specific selection term." Still, given that the "selection term" appears to be defined — and used — in the existing program, I would hope that Senator Feinstein would have some clarity about what it means.

Perhaps the way to start this discussion is to publicly explain how the IC is currently using "selection term"?