

MINIMIZATION

In this post, I compare what Director of National Intelligence Mike McConnell revealed yesterday about why Democratic bills amending FISA were unacceptable with the content of those bills. The comparison shows that DNI McConnell found it unacceptable to require the government to:

- *List what the minimization procedures were that protect data collected from Americans*
- *Allow either a FISA judge or Congress to review its compliance with its own minimization procedures*

In short, the government promises it will protect American persons' data, but it refused to allow any meaningful oversight of that promise.

McConnell Reveals that Democratic Requirements on Minimization Are Too Harsh

Along with blabbing about the fictional "surgical" precision of the Administration's warrantless wiretap program yesterday, Mike McConnell also revealed why the Administration found the Democrats' bills to amend FISA unacceptable: because of some restrictions their bills made on minimization procedures.

So I walked over to the chamber and as I walked into the office just off the chamber, it's the vice president's office, somebody gave me a copy. So I looked at the version and said, 'Can't do it. The same language was back in there.'

Q: What was it?

A: Just let me leave it, not too much detail, there were things with regard to our authorities some language around minimization.

Minimization refers to what the Administration does with information that they collect on people in the United States when they get that information incidentally while tapping someone purportedly outside of the US. This matters to you, because it determines how the Administration will ensure that, if they collect your end of the phone call when you call Pakistan, they don't get to keep or use any part of your end of the phone call that isn't absolutely necessary for the spooks to interpret the wiretap.

McConnell Tries to Deny Withdrawing Support from the House Bill

Helpfully, McConnell also specified how he responded to the bills the Democrats and Republicans proposed leading up to August 4. McConnell is basically trying to dismiss Democratic claims that he reneged on his support for their bill and in the end sided with the Administration's harsher bill.

So we kept going back and forth, so we sent up a version like Monday, we sent up a version on Wednesday, we sent up a version on Thursday. The House leadership, or the Democratic leadership on Thursday took that bill and we talked about it. And my response was there are some things I can't live with in this bill and they said alright we're going to fix them. Now, here's the issue. I never then had a chance to read it for the fix because, again, it's so complex, if you change a word or phrase, or even a paragraph reference, you can cause unintended ...

Q: You have to make sure it's all consistent?

A: Right. So I can't agree to it until it's in writing and my 20 lawyers, who have been doing this for two years, can work through it. So in the final analysis, I was put in the position of making a call on something I hadn't read. So when it came down to crunch time, we got a copy and it had some of the offending language back in it. So I said, 'I can't support it.' And it played out in the House the way it played out in the House. Meantime on the Senate side, there were two versions being looked at. The Wednesday version and the Thursday version. And one side took one version and the other side took the other version. The Thursday version, we had some help, and I didn't get a chance to review it. So now, it's Friday night, the Senate's voting. They were having their debate and I still had not had a chance to review it. So, I walked over, I was up visiting some senators trying to explain some of the background. So I walked over to the chamber and as I walked into the office just off the chamber, it's the vice president's office, somebody gave me a copy. So I looked at the version and said, 'Can't do it. The same language was back in there.'

Q: What was it?

A: Just let me leave it, not too much detail, there were things with regard to our authorities some language around minimization. So it put us in an untenable position. So then I had another version to take a look at, which was our Wednesday version, which basically was unchanged. So I said, well certainly, I'm going to support that Wednesday version. So that's what I said and the vote happened in the Senate and that was on Friday. So now it rolled to the House on Saturday.

McConnell talks about three bills:

- The House version, which failed as H3356.
- The Thursday Senate version, S2911.
- The Wednesday version, which eventually passed as S1927.

From McConnell's description, we know that he found several things about H3356 unacceptable, probably minimization and some other things. And we know that his primary complaint with S2911 was its requirements on minimization. By comparing what each of these bills require in terms of minimization, we can figure out what was unacceptable to the Administration—and therefore what we can presume they're doing with data on US citizens and permanent residents.