

# HOT AND COLD RUNNING CLASSIFICATION

According to the NYT, the White House has very generously allowed the entire SJC to view the documents justifying the domestic wiretapping program—at least that's what Tony Fratto says.

The White House on Thursday offered to share secret documents on the National Security Agency's domestic surveillance program with the Senate Judiciary Committee, a step toward possible compromise on eavesdropping legislation.Â Â Â Â

Fred F. Fielding, the White House counsel, offered to show the documents to Senator Patrick J. Leahy, Democrat of Vermont, the committee's chairman; Senator Arlen Specter of Pennsylvania, the ranking Republican on the committee; and staff members with the necessary security clearances, said Tony Fratto, a White House spokesman.

**Mr. Fratto said that if Mr. Leahy and Mr. Specter so wished, other committee members would be granted clearances for the N.S.A. program and permitted to see the documents.** A spokeswoman for Mr. Leahy, Erica Chabot, said he would make sure the entire committee had access. [my emphasis]

If Chris Dodd's stance on FISA has succeeded in one thing, it has been to ratchet up the pressure on the Administration to negotiate ... or at least as close as it comes to negotiating. But that negotiation does not extend to the House, which won't get to see the family jewels until it agrees to negotiate on retroactive immunity.

Neither the House Intelligence Committee nor the House Judiciary Committee has been shown the documents. Mr. Fratto noted that a bill pending in the House contained no provision for immunity from lawsuits and suggested that unless that changed, the House committees would not see the documents.

“If the committees say they have no interest in legislating on the issue of liability protection, we have no reason to accommodate them,” he said.

Now, this is particularly troubling, since those on HPSCI do have clearances to see lots of secret stuff, and since before the August 4 debacle of a FISA amendment, the House side was getting all the briefings, whereas SJC received none, as a committee. As Marty Lederman notes, this is proof—as if you needed any after Dick Cheney declared himself Fourth Branch—that this Administration is playing big fat games with classification.