

MINIMIZATION, THE WHITEHOUSE WAY

Back from my pancake and sausage-inducted coma! Mmm pancakes. I've got just two more points about this SSCI report, then I'll let it drop and go clean the house.

A lot of people have been asking why Sheldon Whitehouse voted for the SSCI bill on FISA, even though it offers the telecoms retroactive immunity. While I can't answer that, I do suspect Whitehouse (who, after all, is the only rookie on the SSCI team) is picking his battles. And Whitehouse is fighting a battle that matters **going forward**: minimization. Minimization is the process by which the government makes sure that any information on non-targeted US persons collected in the course of wiretapping someone else gets hidden and, eventually, destroyed. Minimization is actually something Republicans at least say they back. But it's one of the big things that Mike McConnell found intolerable in the House version of FISA back in August.

What McConnell found intolerable in August basically amounted to giving the FISC the power to review the government's compliance with its own minimization requirements. Rather than having court review, the Administration insisted on a bill that had minimization requirements, but no way to enforce them. The current bill is better—it requires the Inspectors General of DOJ and any relevant Intelligence Community agencies to review their own compliance with minimization requirements.

The Inspectors General of the Department of Justice and of any element of the intelligence community authorized to collect foreign intelligence under subsection (a)—

(A) are authorized to review the compliance of their agency or element with the targeting and

minimization procedures as
required by (e) and (f)

And then, presumably using those reviews, the Director of National Intelligence and the Attorney General report semi-annually on that compliance to the FISC and Congress. That's better than what we've got.

But Whitehouse believes (and I agree) that's not good enough. Whitehouse aims to amend this bill in SJC to give FISC—not the IGs of the respective agencies—the review authority.