

WHY DO THEY NEED TO SPY ON AMERICANS OVERSEAS WITHOUT A WARRANT?

Mr. emptywheel has started on the pancakes, finally, but I've got time for one more post.

According to public reports, Bush has threatened to veto SSCI's FISA bill as written. That's because of an amendment submitted by Ron Wyden which requires the Administration to obtain a FISA warrant if they want to wiretap an American overseas. The additional views in the SSCI report on the bill reveals some of what we can expect as we go forward with this debate.

In his description of the amendment, Wyden (writing with Russ Feingold) makes it clear that the Attorney General should not be able to determine, by himself, that someone is an agent of a foreign power.

One amendment, which we offered along with Senator Whitehouse, ensures that whenever the government wants to target an American overseas, the FISA Court "and not just the Attorney General" must determine that there is probable cause that the American is an agent of a foreign power. Americans' rights should not diminish when they cross the border, nor should the extent of those rights be subject to the whim of the executive branch without the checks and balances provided by the court.

Sheldon Whitehouse, in his longer description of the amendment, also emphasizes judicial review of who is an agent of a foreign power.

I cosponsored and strongly supported an amendment, proposed by Senator Wyden, and approved by the Committee, that

requires the Government to obtain a traditional warrant from the Foreign Intelligence Surveillance Court (FISC) if the Government wants to collect, from a source within the United States, against an American overseas. The amendment also requires that, in order to collect surveillance overseas on a U.S. citizen traveling or living overseas, the Government obtain a determination from the FISC that the targeted U.S. citizen is a foreign power or the agent of a foreign power. Furthermore, the FISC must issue an ex parte order approving this surveillance. These changes are critical to ensuring that the new warrantless surveillance authority enacted under the Protect America Act does not allow the Government to intrude inappropriately upon the privacy of U.S. citizens. Nonetheless, the Administration has already signaled that this amendment may create certain challenges that need to be resolved. If the Administration intends to propose an alternative, it must preserve the Court's role in determining whether there is probable cause to believe the U.S. citizen is a foreign power or an agent of a foreign power. U.S. citizens do not, and should not be expected to, leave their privacy rights behind every time they leave the United States.

But that judicial review is apparently a problem for Republicans (or at least Bond, Hatch, Chambliss, and Warner), who think we should just trust in the good intentions of the intelligence community and the Attorney General.