

FISA UPDATE

Apparently, Reid has brokered a Unanimous Consent agreement that everyone, from Feingold and Dodd to Jeff "Mutual Defense" Sessions, have bought off on.

cboldt's description is, not surprisingly, the best description of what we're looking at. What the UC sets up is the following:

- Four uncontroversial amendments that will pass with the UC. These cover getting the FISC rulings for the past five years, emphasizing prohibitions on domestic targeting, and eliminating a 7-day deadline.
- Two Bond amendments that will receive very little debate (20 minutes) and will pass—and I do believe they will pass—with a 50 vote margin. One of these permits wiretapping those proliferating in WMDs without a warrant. From CQ:

One by the vice-chairman of the Intelligence panel, Christopher S. Bond, R-Mo., would change definitions in the law to allow surveillance without a warrant in cases that involve the proliferation of weapons of mass destruction. Its adoption would require a simple majority vote.

- Three Feingold amendments that **shouldn't** be controversial—basically two just raising the bar on whether nor not the government is really after foreign intelligence or not, and another allowing FISC to require the government to stop wiretapping if their application sucks (though via a Bond amendment, they still get to tap for 90 days). I assume they're accorded a 50 vote margin because the Republicans don't find them controversial.
- Two of the three immunity provisions—both the one striking immunity altogether, and the one substituting the government for the telecoms. I assume they've been subject to a 50 vote margin because the Republicans know they won't win 50 votes. In other words, our chances of using the courts to learn what Bush did will almost certainly lose.
- One Feingold/Whitehouse amendment on sequestration—probably a better guarantee on minimization than is in the

bill. I'm guessing the Republicans have wagered this won't get the votes to pass, since they've agreed to a 50 vote margin.

- Two bills which will almost certainly gain majority support, but may not get the 60 votes that will be required to pass them. These are Whitehouse's amendment requiring the FISC to determine whether the government is meeting the minimization procedures they say they're meeting, and DiFi's amendment making FISA the exclusive means of foreign surveillance. It appears that the Republicans, recognizing that these should be uncontroversial, but are probably poison pills that will draw a Bush veto, just raised the bar with these to avoid having them pass and having Bush veto the whole mess.
- Two more amendments that probably fall in the same category: Cardin's amendment making the sunset on this 4 years, and DiFi's amendment allowing FISC to review the AG's declaration that the telecoms acted in good faith

before they get their immunity. These may not be poison pills, like exclusivity and minimization, but they may well get majority, but not super-majority, support.

So what should we do? IMO, there are three votes that we may be able to affect in the limited time we've got:

Get the votes for exclusivity

While it seems innocuous, this amendment is fundamentally a fight for basic separation of powers. If there are any real limits put on wiretapping, Bush will be inclined to go his own route, declare that under Article II he can do whatever he wants, and declare his ability to wiretap outside of FISA. **This amendment basically says, "George Bush, this is the law, and you have to follow it."** Many Republicans see this amendment as an assault on their little unitary executive theory. So it needs to be a priority.

The amendment already has three Republican co-sponsors (Hagel, Snowe, and Specter), plus Jello Jay. We need to keep the Dem turncoats (Ben Nelson, Mary Landrieu, Mark Pryor, in particular), get Lieberman, and get several more Republicans to make sure this passes. Some Republicans to focus on are Sununu, Voinovich, Smith, Coleman, Dole, and Collins.

Pressure for minimization

I'm not sure yet what the 50-vote sequestration amendment is, but Whitehouse's minimization amendment very simply gives a court the ability to make sure the government does what they say they're doing. **This is the amendment that will prevent them from saving your data until such time as they decide that they want to use it--and the amendment that will prevent them from spying on journalists because they speak to people associated with terrorism.** It is the amendment

that would do the most to prevent the government from abusing its ability to wiretap going forward.

You'd want to call the same people as you would for the DiFi exclusivity amendment, as well as anyone with a libertarian streak. Republicans always support minimization in theory (because it's the only thing reining big government), we need to press them to do it in fact.

Lobby for immunity

I am absolutely pessimistic that we'll be able to reject immunity outright. We're almost certainly at least 5 votes short of doing that, and probably about 5 votes short of passing DiFi's much more conservative FISC option. But if we do our job well enough on immunity proper, than we might generate more votes in favor of DiFi's amendment, and we might pull votes off the vote for the overall bill.

Plus, we need to make this a costly vote for the authoritarians. **This is about whether the rule of law takes precedence over covering up for Dick Cheney.** That line might be useful in defeating people like John McCain and Norm Coleman come November.