

# FISA DEBATE LIVEBLOG

Three amendments up, no votes today. The first two Feingold amendments prohibit bulk collection and reverse targeting. The third, with Dodd, is immunity.

## **Feingold on Reverse Targeting**

Director of Intelligence has testified that reverse targeting is violation of 4th amendment.

Notes Senator from GA has said reverse targeting is possible.

[Placing declassified documents in record]

This confirms that when FBI has interest in American, up to FBI whether to seek a warrant.

A recent DOJ IG report says surveillance disrupted bc telephone bill not paid on time.

Of course, FBI might choose not to seek a warrant because it doesn't really have a case against that American. I'm afraid to say, the answer appears to be yes. Once FBI gets US identity, the FBI can choose whether or not to follow up.

Even as Administration brought broad new authorities the Administration refused to figure out whether they were violating the Constitution.

I hope my colleagues will support this amendment, it appears there's no opposition to it (no Republicans present).

## **Feingold prohibiting bulk collection**

This bill allows surveillance of people who are not suspected of any wrongdoing.

Allows govt to capture all international communications, to or from this country, in bulk, for no reason. That kind of communications dragnet would offend anyone who has communicated with friends, family or professional associates overseas. There would be no court oversight

whatsoever. Wyden, Whitehouse and I have fought hard to make sure Americans overseas not collected. Imagine Americans' communications with other Americans being collected in bulk. Nothing, nothing would prevent their communications from being collected and retained.

**At what point do we draw the line. At what point does the Constitution mean SOMETHING?**

DNI has testified that while bulk collection is not needed, but he did say it would nice. Not a short term bill. Congress needs to act now. DNI has put us on notice that bulk collection authorized and desirable. Legislative silence is consent. We can't avoid this question. Govt has to certify that it is collecting information from people from whom it expects to collect foreign intelligence.

Opponents say this would prevent collection of intell into or out of enemy city they're about to invade. But then it would have a foreign intelligence purpose. The reason that absurd scenarios have been raised is because they don't want to talk about the consequences. DNI testified that if possible, bulk collection would be desirable. Govt would listen in on every international phone call made by its citizens. That's a police state, Mr. President, not the United States of America.

DNI said it was surgical. Said they had to make up territory with those thinking they're doing stuff they're not doing. DNI can't have it both ways.

Finally, would help resolve serious Constitutional question. Bulk collection in which govt has no interest could be unreasonable under the Constitution. I challenge anyone to explain why the govt should have the authority to engage in bulk collection. Explain why this modest protection cannot be granted. This amendment brings this bill into line with its actual intent. Protects civil liberties of Americans.

**Kit Bond, admitting that he hasn't heard what Feingold said**

These issues have been dealt with. We're not collecting all their communications that they're sending overseas.

[Uh huh, so you won't mind if we have this amendment?]

Reverse targeting. All acquisitions must comply with Fourth Amendment.

May not intentionally target a person reasonably believed to be outside of the United States, except in accordance with Title I.

[Jeebus he's such a sophist.]

Now if somebody is calling a suspected terrorist overseas, one on whom we have initiated collection because intelligence sources certified by AG, this person has significant intell information, then if one were to call that number, it is possible, likely, and we would expect they would find out what is in this call. It is immediately suppressed.

Goddamnit, I lost a bunch because Macs SUCK!!

Dodd is presenting his immunity. I'd love to have it for you, but Macs suck.

In the interim, Feingold pointed out that Dodd wants us to not legislate solely because Bond has assured us we shouldn't worry.

Anyway, I also have a copy of **Mukasey/McConnell's letter to Reid**, et al. It's basically a list of amendments and their thoughts.

Amendments that would merit a veto:

- [no number] no communication collected if the govt knows beforehand that it is to or from a person believed to be in the US

- 3913: Significant purpose test
- 3912: Specific Individual Target test
- 3915: Limits disseminating foreign intelligence information
- 3907: Straight immunity
- 3927: Substitution of govt for defendants
- 3919: FISC review on immunity

Amendments it doesn't like but that wouldn't merit a veto:

- 3930: 4-year sunset
- 3920: Court review of compliance with minimization

Amendments it very much likes (surprise! They're both Bond amendments)

- 3941: Expedited FISA review
- 3938: Add language on WMD

A pre-emptive signing statement on exclusivity

We understand that the amendment relating to the exclusive means provision in S.2248 is undergoing additional revision. As a result, we are withholding comment on this amendment and its text at this time. We note, however, that we support the provision currently contained in S. 2248 and **to support its modification, we would have to conclude that the amendment provides for sufficient flexibility to permit the President to protect the Nation adequately in times of national emergency.**

**Bond**

Shorter Bond: It was bad that Qwest refused to comply with an illegal order.

Shorter Bond: SJC just isn't as intelligent as the Senate Intelligence Committee.