

LIVEBLOG OF SJC REAUTHORIZATION OF PATRIOT ACT

You can watch the hearing [here](#).

Durbin joins Feingold in complaining that the substitute bill took out the Section 215 oversight.

Durbin: I'm especially concerned that the substitute removes one of the most important reforms from bill—the requirement that govt show some connection to terrorism. Real reason why that has been taken out has been cloaked in secrecy. I believe that each member of this committee seek a classified briefing to understand why this has been taken out.

Kyl asking for more time, and a classified briefing.

Kyl: Every time you include a sunset with a bill it provides bargaining leverage for those trying to cut back on authorities in the bill.

[Gee, you think?]

Kyl: Rowley warned of lone wolf problem with Moussaoui.

[Ignoring that they could have gotten a criminal warrant.]

Kyl: Why would we sunset the NSLs? Abuses that occurred are not continuing.

Franken: Yield for clarification. You said passed on recommendations of the 9/11 Commission?

Kyl: Yes, DiFi and I had a series of recommendations from terrorism subcommittee. For the most part acted on right after 9/11, but not in entirety. 9/11 Commission made series of recommendations, three different laws. My point was that in trying to respond to recommendations.

Cardin: If this gets delayed until December because of differing views, we'll do a disservice. Compliment you and DiFi. SJC and SSCI both have goal of protecting security and rights of people. Judiciary focused on rule of law.

Whitehouse: Compliments to Leahy and DiFi, and staffs of SSCI and SJC. With adoption of Leahy/DiFi substitute, I be added to cosponsor bill.

DiFi: Respond to two things. Roving wiretap. Has been suggested that roving wiretaps can be used against anyone. In fact roving wiretap can only be used after court order, probable cause that agent of foreign power. W/o that power, terrorist can thwart surveillance by switching phone. That has increasingly happened. Court must also find that target trying to avoid surveillance. NSLs: carefully targeted to make sure can't be used for highly sensitive information. Subscriber information. Name when phone number is known.

Feingold: As to issue of whether this bill will have to be passed by end of year. Record is when difficulty, extend sunset of bill. No one trying to have PATRIOT die. Never opposed having this in place. No rush to this. As to NSL issue. I am not seeking to have scenario where NSL authority dies. We proposed NSLs that does not have sunset. Notion that we're going to continue with "trust us" approach with FBI that has been demonstrated to be abusing its authority. Opportunity to fix it and make it permanent.

Durbin: Amendment?

Coburn: SJC and SSCI. Big difference between NSLs. DEA can issue NSL right away. We say we want to put it in law, but if we put it in law to limit it, we're goign to take away authority that we need. We need better oversight on this committee and SSCI. I believe in sunsets in all of these. We always ought to have to look at it again, protect rights of Americans. Don't agree with bill before us. Identify with Feingold. We

want it to come out 18-0 again, develops confidence in American people what we're doing. Need to restore confidence. Lack of confidence in govt.

Durbin: Amendment. Specter asked to be added as co-sponsor. Amendment, going back to point made by Senator from OK, puts in language appeared unanimously. Individualized suspicion for 215 order. Before PATRIOT, could only issue 215 for current terrorist or spy. Personal information on constitutionally protected activities of any American. Could lead to govt fishing expedition. Business groups: Chamber, and NAM: Should be required to show some tie to terrorism. Spent many hours negotiating 3-part standard.

Sessions: Not individual records. Owned by third party. Banks records or hospital's records. Have to be relevant to investigation of someone involved in terrorism or national security matters. Has to have been approved by FISA court. Could be manifest for Amtrak.

DiFi: FBI does not support this amendment. Would end several classified and critical investigations. Authorized investigations. Used in authorized investigations. Standard for me is this not interfere in existing investigations.

Feingold: Welcome comments about getting everyone to agree. As to administrative subpoenas, DEA not subject to mandatory secrecy, must be issued in criminal investigation, by definition narrower than intelligence investigation. Feinstein in 2006 said relevant standard would permit fishing expeditions. [Suggests Obama and Specter did too] In 2005 proponents said never been misused. That's not true, they have been misused, recommend my colleagues get classified briefing.

Kyl: Turns on its head whole point of investigation. To seek clues. You don't have proof when you first start investigation.

Whitehouse: Associate myself with Chairman Feinstein. Classified materials that support her concern that would interfere with investigation.

Earlier vote on related subject was unanimous, but this one not.

Feingold: Aware of that information. I strongly disagree that three-part standard would cause consequences that they say it would.

Cardin: Why two standards, one for library records. I understand outcry over library records.

Kyl: Unwarranted and irrational concern about library records as a result of blogs and so on. Important but not that important.

Cardin: Are you saying today we don't have an effective standard if we need library records.

Durbin: Kyl raised interesting question. Why aren't more people complaining about this. Most innocent Americans don't have a clue what is going on. Own records can be and may be investigated. One group, American Library Association, we'll stand up for everybody. You have characterized their efforts as unwarranted and irrational. Constitutional. Because they stood up for principle, we're going to "cut them loose." If all hospitals come together to say we're going to protect records of our patients, if they make enough noise we're going to cut them loose? It was passed unanimously four years ago, and should be passed. Reasonable grounds to believe activities of suspected agent foreign power, records would have to be produced. Standard consistent with Constitution.

Sessions: No particular legal justification, none, that librarians have more protection for holding records in their building than a bank. They got it in their heads that it was sort of religious thing for them, I think Ashcroft had it right.

[Apparently Sessions has never heard of the First Amendment]

Sessions: Individual subject computers are not subject to this. I don't think this is necessary, I think it's a mistake.

Feingold: Concerning sneak and peek. Would require that subjects of sneak and peak be notified within seven days. Makes no other change to current statutory scheme. Allows court to allow longer period. Creates important presumption that notification occur within seven days. In unanimous legislation in 2005. [Names all the people, including Feinstein and Obama, have supported before.] In years prior to PATRIOT, required that search without notifying. In some cases, would compromise subject of search. Sneak and peek could be authorized but must give notice within 7 days. [Reads from court opinion] Why shouldn't we at least presumptively allow notice within 7 days. Big difference between 7 days and a month. Use of sneak and peeks gone up considerably in last few years.

Leahy: Seek a roll call?

Sessions: We debated this at some length.

Amendment passes.

Kyl introduces amendment amending criminal identity theft statute.

Leahy: Haven't heard anything from govt. Concerned about adding new criminal offenses. We'd be amending federal statute.

Schumer: When documents can be emailed, it's become a real problem. This amendment would deal with that problem. People will go get their ticket on a false name, and go through clearance even if they're on watch list.

Cardin: Question. Currently, false identification covered. You want to add false travel documents. Is there a legal definition of travel document? Subway token to document that Schumer is talking about. If it's identification already covered.

Leahy: I'd be willing to consider and pass it as a separate bill.

Schumer: You may not want to put a new area of the bill, if you would help us get it through

the committee.

Kyl: Definition is in amendment. Also need statement from FBI.

Whitehouse: On that amendment, would like to work with them on that. This is a new definition of what a travel document is. Not entirely comfortable that a person printing out boarding pass on home computer, or if you make a copy of it. Not clear that the definition is as crisp as it needs to be.

Schumer: When you alter it for purposes of deceit. Would be happy to work with erudite Senator from Rhode Island.

Leahy: All Senators on this committee, regardless of party, are erudite.

[As if on cue]

Sessions: I do believe it would be a mistake to sunset NSL provision. Offer amendment to strike sunset. Essentially it would mean if we sunset this NSL provision and fails because of failure to reenact. Like to join with Kyl. Bog p system. End up refusing to pass it or asking for other bad provisions. Requirement previously kept FBI from using letters in early stages of investigation.

Leahy: Commend Inspector General Fine, we have found where there have been abuses of PATRIOT. Beauty of sunset, forces us to do oversight that otherwise hasn't been done. We are not changing the text. Simply putting in sunset.

Sessions: You're correct about that. Not changing underlying text. We'll be faced with this kind of circumstance down the road. Amendment would be to strike 2c for the record. Complaints about NSLs, under exigent circumstances, was supposed to file NSL document. I think FBI is taking it very seriously.

Kyl: Abuses found without sunset. We're talking about serious authorities that go away unless we pass a bill.

DiFi: I would oppose the amendment. Trying to put forward balanced bill. I do not believe there's a national security impact from sunset. Would occur at same time as rest of sunsets. Still remains concerns about NSLs. Have increased mightily in number. With the view that this does not impact national security, and the view that it does sunset at the same time as rest of bill. Oppose to motion.

Sessions: Fact that NSLs have been used that's a good thing.

Feingold: Oppose this amendment. Want to specifically agree with Kyl's statement that there have not been abuses, not true of 215. I believe 215 has been abused as well. If there's anything that should be sunsetted, it should be the one subject of embarrassing IG Report. Intend to offer an amendment that would make those changes. Will never forget when Director Mueller told me that this report was coming out. Not just of something FBI did wrong, but our failure.

Cardin: Oppose amendment. Two Congressional elections before this sunset will take effect. Formal mechanism in place, bring in administration. Part of our responsibility.

Coburn passes on sunset amendment.

Kyl: Introducing amendment to CIPA. Moussaoui sought access to enemy combatants. Govt refused on national security grounds. District court ordered production of witnesses. Would allow govt to get interlocutory appeal, wouldn't have to incur sanctions.

Kyl: But Feingold got to introduce amendment.

Feingold: It was Title 18, it was part of PATRIOT.

Leahy: This is such a sweeping change to CIPA statute.

Kyl: Very high profile case, simply granting interlocutory appeal.

Leahy: Sneak and peek we agreed to unanimously.
This is something different.

Feingold: We had a hearing last week on sneak
and peek.

Kyl: I've been involved in markup of health
bill.

Feingold: Pretty extensive conversation with
Kris about it.

Kyl: Three of my colleagues are where I'm
supposed to be here.

Leahy: 9:30 11-12 people here. How many
amendments on both sides?

Sessions: I'd hate for us to inadvertently pass
legislation that impacts their operations.

Leahy: Trying to get views is an exercise in
futility. If we could have an understanding that
we would vote on final passage of this within
one hour. Kohl has a bill he wishes to bring up.
That time does focus attention. We all know when
bill is finally on the floor managers package
anyway. Objection to final passage...

Feingold: Mr. Chairman. I have two or there more
amendments.

Leahy: Are there amendments that can be voted on
this morning.

Feingold: I'd be willing to offer one of mine
now.

Leahy: We'll meet next week, quickly.