

PATRIOTS AND STATE SECRETS LIVE BLOG

Go here to watch the live stream of the House Judiciary Committee mark-up of the PATRIOT Act renewal and a new bill on State Secrets. Right now they're in a quorum call, with very few Dems present. (16 members present—I guess no one much cares about this stuff??)

Conyers starting out attacking abuses, mentions hospital confrontation, hundreds of thousands of NSLs against innocent Americans. IG reports criticizing NSL letters. Expect a new report on exigent letters, even more abusive. Executive shield its actions behind veil of secrecy and over classification. Important that power to classify not be used to hide government abuses. Fine lines that we're working between collectively. Real opportunity to bring about better balance. PATRIOT bill before us accomplishes that, preserves govt power where it's needed most, reins in most problematic aspects of existing law. 3 critical changes. Overbroad standards on NSLs and business records. Govt no longer be able to demand information by claiming relevant to nat security. Instead govt must have concrete facts showing it is connected to terrorist or terrorist activity, or foreign agent. If govt lacks such evidence, can still seek for info needed to protect national security, but under supervision of a judge. Allows lone wolf provision to expire.

Lamar Smith: Misguided criticisms of these provisions have continued. PATRIOT Acts Amendment Act introduced. Obama Admin has asked for renewal. Upset no public hearing. [Um, there WAS a hearing, you moron.] Republicans had a forum yesterday and invited security experts to attend. One of our witnesses said we cannot connect the dots unless we first collect the dots. If you get rid of lone wolf, all AQ has to do is disavow AQ and then we can't detect him. [So why'd you tell them, moron?] Prohibits

obtaining records of libraries or book sellers. Safe haven to study bomb-making. PATRIOT already provides protection for library records. Also makes changes to NSLs. Only used in national security investigations to protect American lives. Not a coincidence that we have not had another attack. Direct result of using tools Congress gave. Rather than alter legislation that has proved successful at saving lives. That's what the President wants, that's what DOJ wants, that's what FBI wants.

Nadler: Vital that law enforcement have tools it needs. PATRIOT went too far. As is often case, passion get the better of Congress. Too much unchecked power. Bill will strength PATRIOT, allowing us to protect civil liberties and national security. NSLs existed before PATRIOT. PATRIOT increased unchecked ability to use NSLs, use and misuse rose dramatically. FBI collected personal information. Lost records that were collected. Gag orders, have been declared unconstitutional. Have introduced leg to curb abuses. Would raise standards on NSLs, specific and articulable facts. Only pertaining to terrorists. Not for fishing expeditions. Burden on govt on nondisclosure. This bill would require minimization. No reason for govt to amass information about millions of innocent people. With enactment Americans remain safe.

Sensenbrenner: Here we go again. Lot of hyperbole and very little fact. I was author of PATRIOT in 2001. And also reauthorization in 2005. In 2001 PATRIOT gave law enforcement 16 expanded authorities. I had 13 hearings, contrasted to none before this hearing. Reauthorization had a lot of protections, other side of the aisle voted against those measures. Many of those complaining loudly today voted against that amendment. White House and AG have called for extension. That's YOUR Administration, not our Administration. [Funny, I thought Obama was President of all Americans] Not one of them found unconstitutional. Unconstitutional holding has been around for a long time. This has not been gross assault on

civil liberties that people have claimed to be. 8 years to litigate. We should not arrogate to ourselves position of judges, while discussing whether to extend it.

Conyers: Managers amendment. Strike 102, insert following: 101: Roving wiretaps,

Conyers interrupts.

Conyers: One small piece of history. Many who were not on the committee. Amendment that PATRIOT that we passed out unanimously thanks to Sensenbrenner, me, and Smith, early hours of morning in rules committee, entire measure was substituted. This measure of this importance, left us dumbfounded, only two copies present when it was debated on floor. More than two weeks have passed. Discussions ad nauseum. Discussed with Admin, DOJ, and other outside authority. A small number of clarifications and adjustments. This is not a repeal of the PATRIOT Act. Several respond to issues identified by Admin and others on this committee. 3 major considerations. NSLs. It is time that we think through this and tighten the standards for issuance of NSLs requiring for the first time concrete connection to terrorist suspects or foreign agents. I don't think this is asking too much. Amendment clarifies and better specifies types of connections. Also includes requirement for detailed annual reporting on use of NSLs. Other large considerations libraries and booksellers. Cannot use PATRIOT to fish through library and bookseller accounts. Clarify case of companies that sell books and much more—WalMart is classic example. They sell books, other things, and guns as well. Only books protected. Address concern that providing heightened protection for libraries safe haven for those who would do harm to us. Can obtain protected information if it can make case for heightened showing connected to terrorism or foreign agent. A few technical clarifications. Include **adjustments to provision on minimizing information** regarding US Persons collected under FISA and rules for using NSL

info in criminal cases.

Smith: For each problem this managers amendment solves, corrects a new one. Corrects drafting error in provision. Underlying limits all FISA to single target. Unworkable bc FISA allows foreign powers. Amendment corrects just wiretap provision and not all electronic surveillance. Bill as introduced prohibition for library and book seller business records. Specific and articulable facts, but no evidence of abuse. Neither change are warranted or good policy. All Al Qaeda needs to do now is open a bookstore. Local police regularly use trap and trace in criminal cases. Minimization unworkable and impracticable. Pen registers and trap and trace merely request phone numbers. Because no content, minimization makes no sense. What is there to oppose?

[That's totally disingenuous. They're using this data for network analysis]

Quigley: I would ask members of committee to consider as a freshman, we don't have institutional memory that ranking member, Nadler, have. Critical importance, which is our job. Justice Department has, besides references of concerns on this matter. Hasn't spoken specifically about how they would support or not support this. Concerns besides general fear or litigation. Makes reasonable decision about this difficult. It makes it more difficult. On other hand, Sensenbrenner express some concerns with problems with NSLs. I'd love to hear what you perceive those problems were. That makes the decisions we make today all the more difficult. Final point. Much of what we were briefed in some sessions was in executive session. I'm not sure what I can share with my staff.

Smith: Good questions. We should have had a hearing.

Quigley: Justice and others and agencies channeling concerns through, I know we've had discussions. I'm expressing my concern that after the fact review of what we've done.

Sensenbrenner: Chair in favor of amendment gave history lesson. Here's the rest of the lesson. Substitute amendment was result of negotiations with other body. Controlled by Democrats. It's somewhat of an anomaly that Republican controlled house more sympathetic to civil liberties. This amendment ends up hamstringing local law enforcement on pen register and trap and trace to figure out who is using both telephones and other devices. Not something that impacts only federal law enforcement. Ought to think twice about doing that bc we don't like the word "PATRIOT." Not one finding of unconstitutionality.

Nadler: Don't want to trace history of PATRIOT. Suffice it to say people on this side of the aisle who were never happy with what we did. 2005 improved, but did not improve sufficiently. I will say that the judiciary committee has followed thorough process. 2 weeks available. 2 hearings on PATRIOT, September senior DOJ. Last Congress 8 hearings. At least four bipartisan briefings. 13 highly detailed on uses and misuses of expiring provisions. Amendments seeks to make balanced amendments. They don't open up the libraries to say AQ can do anything it wants if it opens up a bookstore. Managed ability to do two things. Privacy in what you read, exception when national security requires it. Relevant to authorized investigation and relevant to specific terrorist or organization.

Conyers: I've heard at least two members talk about AQ buying a bookstore and being exempt from PATRIOT. How amusing. It's against the law for any AQ person to engage in any activity, period. Not just buying bookstore but opening fruit market. Go to FISA court and bust them immediately. Don't have to buy bookstore for them to operate openly. Let's have a serious, not a comic description. If you know an illegal terrorist, let's turn him in, we don't have to wait for him to buy a bookstore.

Smith: It's also illegal for a terrorist to fly into tall buildings. Could use bookstore to get

literature and computers.

Nadler: Anybody can do anything. The question is what level of knowledge or suspicion for govt to invade your privacy if they think you're AQ? Proper debate is appropriate level.

Boo.

Yeah.

Chaffetz (?): As a freshman, concern taht we didn't have a legislative committee hearing on this. At subcommittee. It would have been appropriate to have legislative hearing. I'd like to know where Admin stands formally. It is an important part to understand how we got to this position. I would associate myself with Quigley. I do think it, it doesn't take that long to go through it.

Nadler: The second point. Hearing in subcommittee. I'd say for your info, as far as I know, Admin has not taken formal position pro or con.

Chaffetz: It would be helpful if Admin had taken formal position.

Nadler: Will inform gentleman that I asked Admin over months to give us opinions. They were not prepared to do so. Until two weeks ago, DAG Whitten who testified at SC on this. Talked about pros and cons.

Watt: Most salient recollection, what led to PATRIOT in first place. You talk about flying by seat of your pants. Predicament that members of judiciary were in. "It was teh finest hour because Bob Barr was on the committee, ... a libertarian, someone on your side that pays attention to constitutional prerogatives." We couldn't get the Administration then to take positions. This admin has followed the last Admin. They wanted us to give them more power, as soon as they got as much as they could get from us, they went to Rules and Senate and asked for more. Well, if AG Ashcroft is protecting me from terrorists, who's protecting me from AG

Ashcroft?

Chaffetz (?): The Bob Barr you're talking about is the ACLU lawyer?

Watt: He wasn't an ACLU lawyer then. I long for the day that somebody on your side of the aisle and remember that it was you that stood for individual rights at one point in your party's history.

Gallegly: 215, FISA may issue order for library and bookstore records only in limited circumstances. The mgrs amendment is an improvement over original bill. Still imposes heightened standards for attaining library records. Why amending use of business records for libraries. Is this authority being abused? Is DOJ using it to monitor activities to innocent Americans. Answer is no.

Nadler: Oppose this amendment, urge all members to oppose. Would remove protections of privacy of people that go to bookstores, govt can still get info when they really need it. If it's not tied to terrorism or foreign power, then it's a fishing expedition and frankly they have no business getting it. There's no legitimate reason that the govt needs that information.

Gallegly: Don't have benefit of longstanding legal credentials. Requires order by court, makes based on request from FBI or NSA.

Nadler: Requiring an order of the court is not the key. Key is what you have to show the court, if you have to show court very little, it doesn't protect you. If there are no reasonable facts to believe it has to do with authorized investigation, no reason to get it.

Gallegly: Still requires what it would require in GJ subpoena.

Nadler: GJ you don't normally subpoena what somebody was reading. The question is should the govt have to show some reason to believe relevant to authorized investigation. We say yes, your amendment says no.

Smith: Support amendment. These records already have additional protections under existing law. No such heightened standard for GJ. Why should terrorist receive greater protections.

[You asshole, if you KNOW they're terrorists, then you've reached Nadler's standard!!!]

Good for Schiff and DWS—I was worried that they might vote against civil liberties and they voted in favor of them.

[Recess for votes on the House floor]