

# MITCH MCCONNELL JUST MADE THE COUNTRY LESS SAFE IN BID TO ENSURE FISC CONTINUES TO BE RUBBER STAMP

I predicted back in April that Mitch McConnell would use the threat of straight reauthorization of a program that doesn't do what the Intelligence Community wants to demand changes to USA F-ReDux.

And a data retention mandate – presented in the guise of a requirement that providers give notice if they plan not to retain data at least 18 months – is one the things McConnell will try to push through today.

(k) PROSPECTIVE CHANGES TO EXISTING PRACTICES RELATED TO CALL DETAIL RECORDS.—

(1) IN GENERAL.—Consistent with subsection (c)(2)(F), an electronic communication service provider that has been issued an order to produce call detail records pursuant to an order under subsection (c) shall notify the Attorney General if that service provider intends to retain its call detail records for a period less than 18 months.

(2) TIMING OF NOTICE.—A notification under paragraph (1) shall be made not less than 180 days prior to the date such electronic communications service provider intends to implement a policy to retain such records for a period less than 18 months.''.

McConnell repeated his justification for a

retention mandate last night by pointing to a provider that refused to agree to keep *documents* for a call record program, as he did last week. Why is Mitch worried about *document* retention for a call record program?

Remarkably, McConnell's data mandate is for a shorter period of time than the 2 year data handshake the major telecoms have agreed to, according to Dianne Feinstein.

McConnell also submitted standalone amendments, the first requiring certification from James Clapper that the dragnet works before existing dragnet authorities expire, with the second one extending the expiration of the dragnet to a year.

McConnell submitted an amicus provision that simply codifies the status quo, which already permits a court to name an amicus. Significantly, McConnell's amicus provision eliminates the reporting to Congress that Richard Burr's bill at least had. But McConnell's bill does include FISCR fast-track review, which I believe may actually be counterproductive. So McConnell's amicus amendment permits the FISC to go on making shit up without any notice that's what they're doing.

Finally, there's one other provision in one of two substitute bills Mitch put forward this month: an elimination of the reporting requirement of any significant FISC decisions (Section 402 is removed entirely).

Now, frankly, even in the existing USA F-ReDux, the reporting requirement permits the Executive too much discretion about what kind of details they'll release. Even in FOIA suits, where a judge gets to weigh in, the government has been able to withhold even information that is almost certainly in the public record. Their summaries of important decisions would surely look like useless Vaughn Index summaries.

But that's too much for Mitch McConnell – and the Intelligence Community folks whose demands he is serving. And, of course, elimination of

this weak reporting requirement eliminates the only check against ongoing bulk or bulky collection, because the language surrounding Specific Selection Term includes big potential loopholes.

So consider what this means.

Over the last two weeks, Mitch McConnell has pursued policies that have led to a lapse in the phone (and CIA money transfer) dragnets. He didn't even try to bring USA F-ReDux for an immediate vote last night; he only tried to bring up Lone Wolf and Roving Wiretap.

And his goal, for letting the dragnet expire, is to ensure the FISA Court continues to be dysfunctional.

Mitch McConnell has – according to his claims, not mine – made the country less safe with this lapse in the dragnet. All in a bid to ensure the FISC continues to operate as a rubber stamp.