

# NED PRICE REBUTS HPSCI'S IGNORANCE ON UNMASKING WITH HIS OWN STUPID OBFUSCATION

Former Obama NSC staffer Ned Price has a piece on Section 702 at Lawfare that embodies the stupidity surrounding Section 702 reauthorization debate. He apparently doesn't realize it, but his post effectively argues, "the people in Congress who oversee FISA have no clue how it works but reauthorize it forever anyway."

Price's post features all the typical things that Section 702 boosterism does: the false pretense that the value of Section 702 means it must be passed without even the most obvious reforms, such as ensuring FISC uses an amicus during the annual recertification so they know more than Rosemary Collyer did in this year's go-around.

Administration officials privately concede that, in light of this conflation, Section 702 stands little chance for a clean reauthorization later this year.

[snip]

White House officials have vocally supported the clean reauthorization of Section 702 authorities.

Nor does Price admit that when he says "clean reauthorization" what he really means is "dramatic change to the norm, because it'd be permanent reauthorization."

Further, like most 702 booster pieces, Price dismisses the real complaints of those of us who've raised concerns about 702, without even

responding to them.

To be sure, several lawmakers from both parties have long voiced opposition to Section 702 over sincerely held, if misguided, concerns about privacy and civil liberties.

Instead of doing that, Price hauls out the old canard that this is not about “surveillance” of Americans.

All the while, law enforcement and intelligence officials—including former FBI director James Comey, Director of National Intelligence Dan Coats, and National Security Agency Director Mike Rogers—reminded lawmakers in hearing after hearing this year that the tool is not intended for surveillance of U.S. citizens,

In one of those hearings where, Price claims, these men offered reassurances about the surveillance of Americans, Coats lied about whether 702 will collect entirely domestic communications, after having just signed a certificate saying it could. And Rogers was less than forthcoming about NSA’s repeated and consistent failures to inform FISC of compliance problems in timely fashion. As I said after the key one, “given the dodgy testimony of the two men running that dragnet, Americans should have more worries than ever before.”

Worse, Price is engaged in the same old fiction: in spite of the fact that witnesses and members of Congress have made it clear for years that a key purpose of 702 is to learn what Americans are saying to 702 targets, he wields that word “target” as if it doesn’t affect Americans. It does. It permits the warrantless access to Americans’ communications, and is queried routinely by the FBI even before they open investigations on someone. If you won’t honestly deal with that, you’re unwilling to defend the

program as it exists.

But all that's just the typical 702 boosterism, which serves as backdrop for Price's central project: to explain how Devin Nunes' panic about unmasking this year threatens 702 reauthorization.

Within the pantheon of Trump administration scandals, the manufactured uproar over "unmasking" came and went quicker than most. It was last spring that White House officials, working in tandem with House intelligence committee Chairman Devin Nunes, laundered intelligence information in an effort to train Americans' sights on a practice that is routine—if highly regulated—within our national security establishment.

The effort blew up in their faces. The House Ethics Committee opened an investigation into Nunes, who partially recused himself from the Russia investigation. The White House staffer who oversaw the secret political operation has since been fired. Even prominent Republicans, including Richard Burr, the chairman of the Senate intelligence committee, have publicly distanced themselves from the affair.

Price is right that Nunes' stunt was a manufactured scandal. That's something I've been saying for months.

But along the way he engages in the same kind of stupidity as the hacks he criticizes. First, he suggests that unmasking is an entirely separate issue than 702.

Nevertheless, administration allies on Capitol Hill have repeatedly obscured those facts, publicly conflating Section 702 authorities with unmasking and leaking,

While I've long pointed out that back door searches Price ignores are the more common way Americans would have their communications exposed by 702 surveillance, it is nevertheless the case that Americans whose names appear in reports based off 702 are usually eventually unmasked.

ICTR provided better information on unmasked US person identities this year than last, revealing how many USP identities got released.

Section 702 – U.S. person (USP) information disseminated by NSA	CY2016
Total number of NSA disseminated §702 Reports containing USP identities	3,914
Of those NSA disseminated §702 Reports containing USP identities (from the first row in this chart), the USP identity was originally <i>masked</i> in this many reports	2,964*
Of those NSA disseminated §702 Reports containing USP identities (from the first row in this chart), the USP identity was originally <i>revealed</i> in this many reports	1,200*
Of those NSA disseminated §702 Reports containing USP identities where the USP identities was originally masked (from the second row in this chart), the number of USP identities that NSA later released in response to specific requests to unmask a USP identity**	1,934

\*A single report may contain both masked and unmasked U.S. person identities.

As I said last year, ICTR is not doing itself any favors by revealing what a tiny fraction of all 702 reports the 3,914 – it must be truly miniscule.

All that said if you do get reported in one of those rare 702 reports that includes a USP identity, chances are very good you'll be unmasked. In 30% of the reports with USP identities, last year, at least one USP identity was released in original form unmasked (as might happen, for example, if Carter Page or Mike Flynn's identity was crucial to understanding the report). Of the remainder, though, 65% had at least one more US person identity unmasked. I believe that means that only roughly 26% of the names originally masked remained masked in the reports.

You actually cannot separate 702 from questions about how Americans' communications get accessed without a warrant via the authority, and contrary to what Price suggests, unmasking is

one of those ways (albeit the less troubling and less common).

More importantly, Price ignores what the unmasking scandal proves. He cites both Trey Gowdy and Tom Rooney (whom he calls Tim) raising concerns about 702 because of the treatment of Title I intercepts targeting Sergey Kislyak. He specifically describes Gowdy's comments as being "impermeable to fact."

The political narrative, however, has thus far proven impermeable to fact. Rep. Trey Gowdy, a proponent of Section 702, last month summarized the zeitgeist of his caucus, telling Bloomberg: "A lot of my colleagues right now are very skeptical of reauthorizing this because of how little we know about unmasking."

But what Price doesn't tell you is that both Gowdy and Rooney (and Mike Lee, whose citation I think Price uses disingenuously) are the key overseers in Congress of FISA. As I noted in March when Gowdy and Rooney first started pursuing this hoax, these comments prove that the people purportedly closely overseeing NSA and FISA have no fucking clue how FISA works.

I mean, these two men who ostensibly provide oversight of FISA clearly didn't understand what the biggest risk to privacy is – back door searches of US person content – which at the FBI doesn't even require any evidence of wrong-doing. *That* is the biggest impediment to reauthorizing FISA.

And testimony about the intricacies of unmasking a US person identity – particularly when a discussion of traditional FISA serves as stand-in for Section 702 – does nothing more than expose that the men who supposedly oversee FISA closely have no fucking clue – and I mean really, not a single fucking clue – how it works. Devin

Nunes, too, has already expressed confusion on how access to incidentally collected US person content works.

Does anyone in the House Intelligence Committee understand how FISA works?  
Bueller?

So it's not just that Price misrepresents the risk to Americans (more often brown people, not top White House officials) from 702, or that he pretends unmasking is completely separate from 702, but he actually proves that the people overseeing the authority don't understand it.

And based on that argument, Price says we should reauthorize the authority forever.