

FEINGOLD, DURBIN, AND WYDEN DEMAND THE OLC OPINION ON EXIGENT LETTERS

As I reported yesterday, the Dawn Johnsen-less OLC wrote an opinion on January 8 retroactively authorizing the FBI's inappropriate use of the exigent letters to snoop on Americans' telecomm records.

Now, Senators Feingold, Durbin, and Wyden, have demanded that opinion from Eric Holder. Of note, they tie their demand into DOJ IG Glenn Fine's comment that DOJ should notify Congress of the opinion and this use of exigent letters so it can consider legislation on that count.

We write specifically because we believe the Department should immediately provide to Congress a copy of the January 8, 2010, Office of Legal Counsel (OLC) opinion that is referenced in the OIG report and that apparently interprets the FBI's authority to obtain phone records. Although much of the information about the OLC opinion is redacted in the public version of the OIG report, the opinion appears to have important implications for the rights of Americans. The report states that "the OLC agreed with the FBI that under certain circumstances [REDACTED] allows the FBI to ask for and obtain these [phone] records on a voluntary basis from the providers, without legal process or a qualifying emergency." (p. 264) It further states that "we believe the FBI's potential use of [REDACTED] to obtain records has significant policy implications that need to be considered by the FBI, the Department, and the Congress." (p. 265) And finally, it states that the OIG recommends "that the

Department notify Congress of this issue and of the OLC opinion interpreting the scope of the FBI's authority under it, so that Congress can consider [REDACTED] and the implications of its potential use." (p. 268)

In light of the OIG's recommendation, please provide Congress with the January 8 OLC opinion immediately.

Remember, as members of the Senate Judiciary Committee, Feingold and Durbin (and probably Senate Intelligence Committee member Wyden) have seen the unredacted report, including a description of the OLC's agreement of the FBI's use of the letters. And now they're demanding the opinion itself.

Though, you'd think that, given Fine's recommendation that DOJ "notify Congress ... of the OLC opinion," the Senate wouldn't have had to ask.