

SENATOR DODD TRIES TO SAVE THE CONSTITUTION

Senator Dodd is on the Senate floor, explaining why, later today, he will filibuster immunity for the telecoms. Via email, here he is knocking down the claim that AT&T will go out of business if the suits go forward.

"State secrets," "patriotic duty"—those, as weak as they are, are the arguments the president's allies use when they're feeling high-minded! When their thoughts turn baser, they make their arguments in dollar signs.

Here's how Mike McConnell put it:

"If you play out the suits at the value they're claimed, it would bankrupt these companies. So...we have to provide liability protection to these private sector entities."

Mike McConnell is quickly becoming an accidental truth-teller! Notice how the president's own Director of National Intelligence concedes that if the cases went to trial, the telecoms would lose. I don't know if that's true, Mr. President—but we can thank Adm. McConnell for telling us how he really feels.

Of course, it's an exaggeration to claim that that these companies would surely go bankrupt, even if they did lose.

We are talking about some of the wealthiest, most successful companies in America. Let me quote an article from Dow Jones MarketWatch. The date is October 23, 2007. The headline reads:

"AT&T's third-quarter profit rises 41.5%."

Quote: "AT&T Inc. on Tuesday said third-quarter earnings rose 41.5%, boosted by the acquisition of BellSouth and the addition of 2 million net wireless customers...Net income totaled \$3.06 billion...compared with \$2.17 billion...a year ago." Note that AT&T has posted these record profits at a time of very public litigation.

A company with more than \$3 billion in profits one quarter—only the most exorbitant and unlikely judgment could completely wipe it out. To assume that the telecoms would lose, and that their judges would then hand down such backbreaking penalties, is already to take several leaps.

The point, after all, has never been to financially cripple our telecommunications industry. The point is to bring checks and balances back to domestic spying. Setting that precedent would hardly require a crippling judgment.

It's much more troubling, though, that the Director of National Intelligence even feels the need to pronounce on "liability protection for private sector entities." Since when were our spies in the business of economics? Since when did they put protecting AT&T or Verizon ahead of protecting the American people? Since when did the amount a defendant stands to lose have any bearing on whether a suit should go forward? I learned in law school that guilty was guilty—no matter how rich or how poor.

Lean on this logic, and you'll sink to its venal core: Certain corporations are

too rich to be sued. Forget what they owe; forget what's just; forget judges setting the penalty.

If there's even a chance of the judgment being high, throw the suit out—it endangers the Republic!

This administration has equated corporations' bottom lines with our nation's security. Follow that reasoning honestly to its end, and you come to the conclusion: The larger the corporation, the more lawless it can be. If we accept Mr. McConnell's premises, we could conceive of a corporation so wealthy, so integral to our economy, that its riches place it outside the law altogether. And if the administration's thinking even admits that possibility, we know instinctively how flawed it is.