

NOT JUST IMMUNITY

Home now! More details on my trip over the day. And thanks to bmaz for holding down the fort yesterday (though I will pester him to do his part two).

This is the video Matt Stoller took of Russ Feingold speaking to a bunch of us DFH bloggers yesterday, mostly about FISA. Feingold argued that immunity was just one part of the SSCI version of the FISA bill that sucks: just as importantly, the SSCI has inadequate protection for the privacy of Americans, particularly when they communicate with people in other countries.

Now, Feingold suggested no one had been blogging about these other topics—to which I complained that I had (and McJoan from DailyKos pretty much agreed I won't shut up about them). Here are some highlights:

Minimization (the process by which the government segregates out US person data and eventually destroys it):

- Showing that McConnell seems to have abandoned the Senate Dem bill in August because it had weak minimization oversight
- Noting that a bunch of wingnut House Republicans at least said they support sound minimization procedures
- Analyzing Whitehouse's push for a review of whether the Administration conducts the minimization it says it will conduct
- Showing that DNI McConnell based his opposition to real

oversight on minimization on E.O. 12333, rather than FISA, which would subject minimization to Bush's "Pixie Dust" treatment

Overseas Spying (addressing the fact that through the use of Pixie Dust, Bush appears to have made it legal to spy on Americans overseas)

- Examining Ron Wyden's amendment to the SSCI bill, adding oversight on spying on Americans overseas
- Analyzing Whitehouse's explanation of how Bush used "Pixie Dust" to authorize spying on Americans overseas
- Posting Whitehouse's repeated call for FISA to protect Americans overseas

Mass Collection (the FISA program aims to allow basket warrants, which will provide the legal justification to do data mining)

- Suggesting that the Administration's intransigence on basket warrants and minimization reveals its plan to use FISA to legalize data mining

Now, I included all these links not just to prove that I'm almost as sharp as Russ Feingold (though I'm admittedly missing a few of his speeches where he made it clear that this fight is about spying on Americans). I did so to illustrate that, on several other key areas, Bush has threatened to veto a bill that fixes the problems with PAA. In fact, Bush has even threatened to veto the bill if it includes

DiFi's exclusivity provision!

That may become useful. I'm pessimistic that we're going to be able to win on the immunity provision, though I'm looking forward to Dodd's filibuster of it. Though I do wonder whether we can "win" via other means.

The latest story is that the Senate will consider some of these amendments (hopefully all of them), and some will be allowed to pass with 50 votes. Depending on which amendments get to pass with 50 votes, we may be able to include a poison pill in the bill, one that appears innocuous (like DiFi's exclusivity provision), but which would make Bush's real plan on this spying illegal. If that happens, Bush will either be forced to veto the bill, try to "signing statement" his way out of the prohibition on activities he's doubtless already authorized, or have key parts of his program declared illegal again. Given the stakes on this issue, I think he may well veto the bill.

Which would put us in a much stronger position. Bush has said he wants FISA plus immunity, but if he vetoed it even if it had immunity in it, he'd be forced to admit that he's asking for much much more than he has publicly admitted. That would allow us to have the debate we should be having right now: how much privacy do Americans give up—indeed, how much privacy have they **already given up**—in the WOT?

A central thrust of the immunity fight is an attempt to make the Bush Administration admit what they've done in the past. But if we manage to include some poison pills in the final bill, we may force them to admit what they're doing in the present, even while getting a second opportunity to deny Dick Cheney his immunity.

Update: Didn't see this Glenn Greenwald post before I did this, but Glenn hits all the same points.

Realistically, there are really only two possible ways for all of this to be derailed: (1) the Senate passes one or

more pending amendments which is unacceptable to the White House and thus provokes a veto of the bill Congress passes (the most likely candidates: Sen. Feinstein's amendment declaring (again) that FISA is the "exclusive means" for eavesdropping and/or Sen. Feingold's amendment compelling the disclosure to Congress of the secret FISA court rulings which the White House claimed prompted the need for changes to FISA in the first place); or,

(2) the House stands firm with the bill it already passed and refuses to provide telecom amnesty and new warrantless eavesdropping powers, even once the Senate does so. At this point, option (1) seems far more likely, as the Blue Dogs can single-handedly fulfill all the President's demands by voting (along with the Republicans) in favor of the Senate bill.