

# JELLO JAY ADVOCATES ILLEGAL SPYING ON AMERICANS

*Thanks to Selise for making this YouTube.*

The most eye-popping moment from yesterday's FISA debate came when Jello Jay spoke against a Feingold amendment designed to ensure the government does not use US person information collected after the FISA Court has judged that that particular collection program does not adequately protect US persons from being spied on.

Feingold's amendment is modeled on one in the existing FISA law, which prohibits the government from using information gathered during an emergency 72-hour period of collection if the FISA Court later finds that there was not probable cause to justify the warrant itself. Feingold simply transfers that concept onto the collection programs of the new FISA bill, with the logic that, if the FISA Court rules that a program does not sufficiently protect Americans, then the government should not be able to use that information on Americans even after the Court has given the government 30 days to fix it.

Barring this amendment, the government can continue to use information collected on US persons, even if it gathered that information in defiance of a FISA Court ruling. Without this amendment, there is nothing preventing the government from simply ignoring one after another of the FISA Court's rulings. Which says that, without this amendment, there is nothing preventing the government from spying on Americans, because they will be able to disseminate information on Americans even if that information was improperly collected.

But Jello Jay doesn't think we should put those kind of restrictions on the government.

In a floor speech near the end of yesterday's debate, Jello Jay explains his logic (see also Bond's opposition to the amendment and Feingold's rebuttal of their arguments). He starts by emphasizing that he is speaking to establish a record of legislative intent for the eventual court challenges.

I want to add that what the Vice Chairman and I are doing, in that we both believe that all of this is going to be litigated in the Courts, for decades to come, that all that is said here, by us and by everybody else, becomes an important part of what that record, will become a part of it.

So understand—all of the language that follows is intended as a legal record to govern the interpretation of the law by Courts in the future.

Jello Jay goes on to explain why he opposes Feingold's amendment.

The Feingold amendment goes beyond requiring that collection be terminated or deficiencies be corrected. It restricts the use or disclosure of any information collected that concerns US persons with anyone unless the AG determines that it represents a threat of death or serious bodily harm or, the person consents.

[snip]

I can understand the appeal. Senator Feingold has said it ensures there are consequences when the government doesn't adequately develop its procedures. Hard to argue.

But looking at the consequences of this amendment in more detail makes it clear that the provision is impractical.

[snip]

It creates serious risks that we will lose valuable intelligence.

[snip]

In contrast to limiting the use of a small amount of information collected on one target during 72-hours of emergency procedures, Senator Feingold's amendment potentially limits the use of all information gathered through a new system of intelligence collection.

To understand why these are different situations, it's useful to consider the difference between traditional FISA applications and orders and the new Title VII provisions in which we have wrapped a number of parts. Unlike traditional FISA applications, which permits the collection of information on one target, the new FISA provision permits a system of collection. The Court's role in this system of collection is not to consider probable cause on individual targets, but to ensure that the procedures used to collect intelligence are adequate. The Court's determination of the adequacy of procedures, therefore, impacts all of the electronic communications gathered under the new mechanism, even if it involves thousands of targets.

[snip]

Senator Feingold's amendment relates to all of this intelligence collection.

[This is actually false, as Feingold went on to point out in his rebuttal.]

If the Court finds a deficiency that the government does not correct within thirty days, the Federal government could not disclose any information on US persons that was gathered as part of the new intelligence collection system without the consent of the person. Thus, unlike the existing emergency

procedures, which uses the, limits the uses of a small amount of intelligence gathered over a 72-hour period on one target, Senator Feingold's amendment will potentially restrict the use of large amounts of intelligence, without regard to the importance of the intelligence.

Rockefeller goes on to make further false assertions about Feingold's amendment, trying to claim that Feingold's provision, which only kicks in when an analyst realizes he has US person data, actually invites more invasion of privacy, not less.

Jello Jay's speech is eye-popping for several reasons. It reveals he simply does not care if the government abuses this collection program. For him, it's more important to make massive collection easy than to include safeguards against abuse. His speech amounts to legal sanction for the government to abuse this program.

As Feingold said in this rebuttal of Jello Jay's comments,

The notion that the government should have a complete free pass, and have no consequence whatsoever means that these oversight and these restrictions by the FISA Court have no meaning. It simply allows them to go and intrude on the private conversations of Americans with no consequences.

Also, Jello Jay's speech reveals just how false are all the claims that this program does not involving spying on Americans. The reason he falsely asserts that Feingold's program would cause the government to lose all of the information collected in a given program is because the US person data collected as part of these programs cannot be segregated out from the foreign data.

This program is, Jello Jay reveals, designed to spy on Americans.