

FISA: FBI OVERRIDES CONSTITUTIONAL OBJECTIONS

Democrats just defeated (with 217 votes) an effort by Republicans to consider the Senate FISA bill before the House considers the House bill today.

While we're watching lots of bloviating on FISA in the House, I thought I'd call attention to something Mary found yesterday.

The FBI twice disregarded a secret court's constitutional objections and obtained private records for national-security probes, a U.S. inspector reported on Thursday.

The Justice Department's Inspector General made the disclosure in reviews of the FBI's powers to obtain information such as phone records or credit-card data in terrorism probes or other security investigations.

[snip]

The report took particular note of two occasions in which a secret court that oversees electronic surveillance rejected FBI requests to obtain records.

The court was concerned that doing so could interfere with rights protected by the First Amendment of the Constitution which guarantees freedom of speech, religion and association and the right to petition the government.

After the rejections, the FBI used separate authority to get the information without the court's approval, relying on so-called National Security Letters – even though that authority also had First Amendment guidelines.

Unfortunately, this is a detail I've only seen highlighted in Reuters' coverage of the IG report on PATRIOT Act provisions. It's an example that really proves the necessity of the additional protections included in the House bill—without FISC reviewing what DOJ is doing, we're going to see DOJ override Constitutional concerns more and more often.

Update: nolo has the passage from the OIG report on this here.

Conyers introducing the bill: [PAA] transferred power of independent review from courts to AG.

The Administration tells us they have nothing to hide. If that's true, they should have no problem with the enactment of this Blue Ribbon Commission. We learned yesterday that FBI continuing to misuse PATRIOT Act provisions. We learned four days ago NSA using massive net.

Lamar Smith starts off by lying through his teeth, again claiming that wiretapping on the kidnapers in Iraq was held up because of FISA—rather than because Paul Clement had left work early.

Feeney makes up stuff about the bill.

Jim Marshall engages in colloquy with Conyers and Reyes clarifying how the FISA suits would go forward.

Nadler we have heard false and misleading statements from our colleagues. By solving the State Secrets problem, if they need it and if they obeyed the law.

Pence war war war unilateral disarmed fail fail war war.

Boswell (who was one of the Blue Dogs who wrote in support of the Senate bill but has flipped to support the Dems). So yes, I signed a letter. It was not a Blue Dog position. An acceptable solution has been found that makes FISA, supports FISA, and gives protection to those who assist within the law. Those who feel their Civil Rights have been violated and those who

cooperated, a judge will decide. This means that Constitution is protected. I urge everyone who signed the letter with me to support this bill.

Conyers the reason we're not taking up the Senate provision is that we've got a better idea. We're coequal.

Bobby Scott anything the govt wants will be legal. The warrant procedure is a modest protection of civil liberties. This bill just provides oversight.

Gomert We're an even more important branch bc we're more accountable. The difference between this and the Senate bill, Senate Republicans got input. We can only point out problems. I've read the bill, we're still not there. We haven't heard input.

Anna Eshoo Two highest responsibilities: to preserve nation, but protect civil liberties.

Conyers wanted to let Gomert know that the reason we didn't get the bipartisanship is because you boycotted our meetings. Now you're complaining.

Blackburn trial lawyers trial lawyers trial lawyers liberal elite. \$72 million thank you to trial lawyers. Earmark.

Speaker Pelosi hammering on the Administration's refusal to accept exclusivity. Chairman Rockefeller agrees that many of the provisions improve his bill. The President knows that this provides the Administration the tools it needs. [Applause as she finishes]

[Pelosi ought to spend the next 6 months saying, "The President knows it" over and over]

Lamar Smith (sounds like he's getting worried about losing big here, reading from McConnell Mukasey letter again—which seems to have lost its power).

Blunt we were told.