

RETROACTIVE IMMUNITY FOR THE BANKSTERS, TOO?

On October 18, 2007, the Senate Intelligence Committee passed the first version of a bill that would grant corporations retroactive immunity for helping Bush spy on Americans.

The Senate intelligence committee yesterday produced a new bipartisan bill governing foreign intelligence surveillance conducted inside the United States, but objections by several Democratic lawmakers to some of its provisions raised questions about how quickly it might gain passage.

[snip]

It would further give some telecommunications companies immunity from about 40 pending lawsuits that charge them with violating Americans' privacy and constitutional rights by aiding a Bush administration's warrantless surveillance program instituted after September 2001. That provision is a key concession to the administration and companies, which lobbied heavily for the provision.

On October 22, 2007, right in the middle of the larger debate about retroactive immunity, FBI Deputy Director John Pistole gave a pep talk at a money laundering conference, cheering the work bankers had done to help pursue terrorists. He described the pattern analysis FBI was doing on financial transactions.

We established a specialized section in our Counterterrorism Division called the Terrorism Financing Operations Section, or TFOS.

The mission of our agents and analysts

in TFOS is to trace transactions and track patterns. This painstaking work helps us identify, disrupt, and prosecute terrorists, their associates, their leaders, and their assets.

[snip]

First and foremost, we're looking for basic personal information—addresses, birthdates, phone numbers, and employment. These help us understand day-to-day expenses and spending habits. This information then helps us uncover travel patterns, other accounts, important transactions, and financial histories. And these in turn may lead us to previously unknown business or personal associations, including other members of a network.

He lauded the al-Haramain indictment, without noting that the government—after apparently wiretapping al-Haramain illegally—dismissed the charges.

In 2000, the FBI discovered possible connections between Al Haramain and al Qaeda and began an investigation. We started where we often start—by following the money. And we uncovered criminal tax and money laundering violations.

Al Haramain claimed that money was intended to purchase a house of prayer in Missouri—but in reality, the money was sent to Chechnya to support al Qaeda fighters.

In 2004, the Treasury Department announced the designation of the U.S. branch of Al Haramain, as well as two of its leaders, and several other branch offices. In 2005, a federal grand jury indicted Al Haramain and two of its officers on charges of conspiring to defraud the U.S. government.

We relied on BSA information and cooperation with financial institutions for both the predication and fulfillment of the investigation. Because of reporting requirements carried out by banks, we were able to pursue leads and find rock-solid evidence.

Yes, we used other investigative tools—like records checks, surveillance, and interviews of various subjects. But it was the financial evidence that provided justification for the initial designation and then the criminal charges.

And, most of all, Pistole exhorted the bankers to fill out detailed data on certain kinds of clients so the FBI doesn't have to reconstruct "who, what, when, where, why, and how" information after it develops probable cause.

So when your bank's officers are conducting reportable transactions, there are some things they can do to help us glean even more information right off the bat. Let me just run through a few:

- 1. You can complete each applicable field.*
- 2. You can verify personal identifiers, where possible, and even complete the "description" narrative. When you fill out the "who, what, when, where, why, and how" on the front end, this saves us all time on the back end, because we don't have*

to come back to you with subpoenas, looking for specific information.

3. You can check all the violation types that apply and avoid checking the "other" box.

4. Finally, you can file the reports electronically, which will save all of us time.

5. And if a customer strikes you as especially suspicious, call us in addition to filing a SAR.

Believe me, we know that this creates a lot of work for you. We also know you don't necessarily see an obvious return on your investment.

Mind you, this kind of analysis undoubtedly will help the FBI track down criminals of all sorts, and with the FISA Amendment Act, the yoking of financial data to telecom data has probably been made legal. Heck, once the FBI dedicates some resources to Ponzi schemes and money laundering, such "who, what, when, where, why, how" information might help prevent the next Madoff scam. Maybe Congress will even ask some questions about why all this data analysis didn't alert the FBI to the massive fraud on Wall Street.

But I can't help but imagine that this speech was designed to reassure the bankers that they—like the telecoms that were being actively discussed—would be protected from legal

liability for their role in helping the government select targets for illegal wiretapping.

And I can't help but wonder whether the newly "accurate" information the government supplied to Vaughn Walker on Friday alerts him to the fact that banks—and not just telecom providers—would be in line for retroactive immunity, too.

Already, Vaughn Walker is assessing whether the retroactive immunity language was specific enough to be Constitutional. I wonder how he will feel about Congress granting immunity to an entire group of people without once admitting it publicly?