

THE GOVERNMENT'S PATRIOTIC DATABASES ON INNOCENT AMERICANS

As I reported yesterday, one of the amendments to the PATRIOT Act Harry Reid made sure wouldn't get a vote pertained to making it clear how the government interprets the PATRIOT Act. Mark Udall and Ron Wyden wanted to force the government to at least explain **how** they were interpreting the law so constituents would know how lame their Senators were for voting in favor of it.

Spencer took the time to go ask some folks what this was about.

Among other things, Wyden explained that Section 215, as I suspected, was one of the concerns.

"It is fair to say that the business records provision is a part of the Patriot Act that I am extremely interested in reforming," Wyden says. "I know a fair amount about how it's interpreted, and I am going to keep pushing, as I have, to get more information about how the Patriot Act is being interpreted declassified. I think the public has a right to public debate about it."

And Wyden notes that the government is increasingly using such secret interpretations.

"I'm talking about instances where the government is relying on secret interpretations of what the law says without telling the public what those interpretations are," Wyden says, "and the reliance on secret interpretations of the law is growing."

Which seems consistent with the February 2, 2011 briefing on **yet another** new use of PATRIOT.

DOJ didn't want to answer Spencer's questions. They sent him to some old Todd Hinnen testimony admitting to using it to get things like drivers licenses, as well as secret programs of indistinct number (I'm pretty sure there were just two a year ago) he won't tell us about.

Section 215 has been used to obtain driver's license records, hotel records, car rental records, apartment leasing records, credit card records, and the like. It has never been used against a library to obtain circulation records. Some orders have also been used to support important and highly sensitive intelligence collection operations, on which this committee and others have been separately briefed.

In other words, DOJ chose not to send Spencer to Robert Mueller's testimony where he admitted it had been used to collect information on hydrogen peroxide purchasers. Note that at Mueller's earlier testimony—which took place just a couple of weeks after the government briefed the intelligence committees on this new use of Section 215—Wyden went on a bit of a rant on this same topic.

"I believe that the American people would be absolutely stunned, I think members of Congress, many of them, would be stunned, if they knew how the PATRIOT Act was being interpreted and applied in practice," Wyden declared heatedly. "I'm going to insist in significant reform in this area. We're not talking about operations and methods. There is a huge gap today between how you all are interpreting the PATRIOT Act and what the American people think the PATRIOT Act is all about and it's going to need to be resolved....Right now with respect to the executive branch's official

interpretation of what the law means, we're not getting it."

Wyden said the Justice Department should release Office of Legal Counsel opinions about what kinds of investigative activities are authorized under the PATRIOT Act. Intelligence committee members have seen those classified opinions, most other members of Congress and the general public have not.

Finally, though, Spencer pointed to Mark Udall's speech in the Senate yesterday. His comments make it clear that the wider collection programs—like, presumably the hydrogen peroxide one—are targeted at all Americans, not just those suspected of terrorist ties.

For example, currently, the intelligence community can (1) place wide-ranging wiretaps on Americans without even identifying the target or location of such surveillance, (2) **target individuals who have no connection to terrorist organizations**, and (3) **collect business records on law-abiding Americans, without any connection to terrorism**. We ought to be able to at least agree that the source of an investigation under PATRIOT Act powers should have a terrorist-related focus. If we can't limit investigations to terrorism, where do they end? Is there no amount of information that our government can collect that should be off limits? I know Coloradans are demanding that we at least place common-sense limits on government investigations and link data collection to terrorist-related activities.

If Congress passes this bill to extend the PATRIOT Act until 2015, it would mean that for four more years, **the federal government will continue to have unrestrained access to private**

information about Americans who have no connection to terrorism – with little to no accountability about how these powers are used. Again, we all agree the intelligence community needs effective tools to combat terrorism, but we must provide those tools in a way that protects the constitutional freedoms of our people and lives up to the standard of transparency that democracy demands.

[snip]

Finally, I was joined by Senator Wyden in filing an amendment designed to narrow the scope of “business record” materials that can be collected under Section 215 of the PATRIOT Act. This amendment would still allow law enforcement agencies to use the PATRIOT Act to obtain such records, but **would require those entities to demonstrate that the records are in some way connected to terrorism or clandestine intelligence activities.**

Law enforcement currently can obtain any kind of records. In fact, the PATRIOT Act’s only limitation states that such information has to be related to “any tangible thing.” That’s right – **as long as these business records are related to “any tangible thing,” the U.S. government can require businesses to turn over information on all of their customers, whether or not there is any link to terrorism.** I don’t think it’s unreasonable to ask our law enforcement agencies to identify a terrorism investigation before seizing the private information of law-abiding American citizens. [my emphasis]

It’s clear they’re using Section 215 to just collect data—things like beauty supply purchases and geolocation data—to dump into government databases.

And something in the neighborhood of 85 Senators are about to give them the green light to continue doing so, all by lying to us that it's about terrorism.