

WYDEN: WE PROVED THAT “UNIQUE” AND “VITAL” INFORMATION WASN’T IN 2011

I should have some analysis on the documents James Clapper released yesterday.

But it’s worth pointing to Ron Wyden’s analysis. He notes that the two documents on bulk collection programs – one from 2009 and one from 2011, both of which covered the Internet and phone metadata programs – both boasted of how unique and valuable the information was.

The briefing documents that were provided to Congress in December 2009 and February 2011 clearly stated that both the bulk email records and bulk phone records collection programs were “unique in that they can produce intelligence not otherwise available to NSA.” The 2009 briefing document went on to state that the two programs “provide a vital capability to the Intelligence Community,” and the 2011 briefing document stated that they provided “an important capability.”

The problem is, by the end of 2011, Wyden and Mark Udall had been able to prove that the Intelligence Community had oversold the value of the Internet metadata program, which led to its termination.

Senator Mark Udall and I have long been concerned about the impact of bulk collection on Americans’ privacy and civil liberties, and we spent a significant portion of 2011 pressing the Intelligence Community to provide evidence to support the claims that they had made about the bulk email records program. They were unable to do so, and

the program was shut down due to a lack of operational value, as senior intelligence officials have now publicly confirmed.

This experience demonstrated that intelligence agencies' assessments of the usefulness of particular collection programs – even significant ones – are not always accurate.

So while the government thought these documents would prove how controlled these programs are (aspects of them don't), Wyden demonstrates that they show the IC lies about the usefulness of programs when they talk to Congress about them.

Which is, Patrick Leahy suggested in yesterday's hearing, what the IC appears to be doing when invoking 54 plots to justify the 215 phone dragnet, which has only been tied to 12 plots.

Which is an interesting dynamic to proceed today's meeting between Obama, Wyden, Udall, Dianne Feinstein, Saxby Chambliss, Bob Goodlatte, James Sensenbrenner, Dutch Ruppersberger, and Mike Rogers.

The presence of Sensenbrenner is key: to the extent they still exist, he's a mainstream Republican. And he's furious about the 215 program that he himself shepherded through Congress in 2006. So I would assume today's meeting is an effort to develop the White House's plan to phase out the dragnet.

All that said, Obama has clearly gamed the results, by inviting more of the surveillance champions than he did critics (and apparently House Democrats don't count anymore).

Obama probably won't see this through his bubble, but the day before this meeting Wyden demonstrated that the basis for the rosy tales DiFi and the other Gang of Four members are telling are claims from the IC that have since been discredited.