

# DEVIN NUNES WILL LET DRAGNET LAPSE SO MITCH MCCONNELL CAN SAVE FACE?!?!

NYT has a remarkable article describing how a number of hawks are willing to risk letting PATRIOT Act authorities lapse so Mitch McConnell can save face.

Senior lawmakers are scrambling this week in rare recess negotiations to agree on a face-saving change to legislation that would rein in the National Security Agency's dragnet of phone records, with time running out on some of the government's domestic surveillance authority.

[snip]

If negotiators accept minor changes to the House bill, it will mark a significant retreat for Senator Mitch McConnell of Kentucky, the majority leader, and Senator Richard M. Burr of North Carolina, the chairman of the Senate Intelligence Committee.

Sadly, the NYT continues the typically credulous mainstream reporting on this topic. For example, Mitch McConnell never really wanted a straight reauthorization.

Mr. McConnell and Mr. Burr wanted a straight extension of the existing surveillance authority, although an appeals court judge ruled this month that such authority was illegal.

False. Burr revealed what they want Friday night. They want to move bulky Internet production back to NSLs. They want to expand the current dragnet to include Internet calls and

even straight IP (and, oddly, documents!), and they want to expand it well beyond its counterterrorism focus to include all foreign intelligence. They want to criminalize whistleblowing about this law in particular. They want to eliminate all special privacy protections – over the standard NSA ones – for US persons.

And very importantly, they want to use the claim to need a 2-year transition period to finally obtain the authorities for NSA to conduct the bulk collection they actually want to do, in which place they'll be well positioned to claim having the government retain the data is most efficient.

I could go on. But after Friday night no journalists with any self-respect should propagate Mitch's "straight reauthorization" canard, which – it was clear over a month ago – was only ever a negotiating tactic.

NYT also falsely claims Burr wants *just* Lone Wolf and Roving Wiretap made permanent.

Mr. Burr wants the so-called lone wolf and roving authorities to be made permanent to avoid cliffhangers like the one Congress finds itself in now. The House bill would extend them to December 2019.

The title to that section of Burr's bill reads,

PERMANENT AUTHORITY FOR ACCESS TO BUSINESS RECORDS, ROVING SURVEILLANCE, AND INDIVIDUAL TERRORISTS AS AGENTS OF FOREIGN POWERS UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978  
[my emphasis]

And the language of it repeals both parts of both laws that include a sunset.

But the really absurd part of this story – and to be fair, NYT has to report these arguments as if they're serious, and I should be grateful

they have been recorded in all their absurdity – is that Burr and Nunes are now claiming that the largest phone companies in the US don't know how to 1) store data, or 2) "search stored phone data after a warrant [actually, a Reasonable Articulate Suspicion order, not a warrant] is issued, then communicate the results to the government."

The two men have said phone companies, which would collect the data instead of the N.S.A. under the USA Freedom Act, are not equipped to handle the task.

[snip]

Leaders of the House Intelligence and Judiciary Committees from both parties, along with supporters in the Senate, said they could assuage the concerns of Senate Republicans by adding a certification process to ensure that telephone companies had developed the technology they needed to store the reams of data that were now gathered by the government. If the technology could not be certified, a longer transition period would kick in.

Mr. Burr said he would like that period to be two years, a proposal not very likely to be accepted by the House.

"The question is whether the technology can be developed in time, over a six-month window," Mr. Nunes said in an interview. "I think it can be. I was at N.S.A. reviewing this 10 days ago."

He added: "We believe six months works, but it wouldn't be bad to have a little longer."

But even that change has irked lawmakers, who worked for months on the compromise that passed the House. Representative Adam B. Schiff of California, the ranking Democrat on the House Intelligence Committee, said the

technology in question – the ability to search stored phone data after a warrant is issued, then communicate the results to the government – was “a pretty minor deal” that could easily meet a certification deadline.

The men overseeing our intelligence community claim to not understand that phone companies store this information – and respond to lawful government requests for it – every day.

In truth, this is likely another ploy to expand the role of providers down the road (as happened under PRISM), after we’ve all become less vigilant – beyond simply providing phone records (as these silly Congressmen claim) to doing far more analysis.

After all, the only way these claims make sense, is if the government expects to get real pushback from providers going forward – and that’s not going to happen if *all* they want is call records delivered to the government, which telecoms have been doing forever.

So that’s the likely play: to set up some mechanism whereby the hawks can claim – in 6 months time – that telecoms are unwilling or unable (the same standard they use for drones killing!) to do what the government will ask. At which point we’ll be fighting to get the government out of an expanded dragnet business.

One more thing.

The Republicans also claim that the telecoms have been harassed by privacy advocates.

Republicans have also expressed a desire to protect the phone companies against harassment from privacy activists over their participation in a new surveillance program.

This is likely a bid to do something to shroud the dragnets (it won’t be just telecom going forward) in secrecy from here on out. Probably

not the act-specific Espionage Act, like Burr wants, but probably some other means to ensure that no one ever gets standing to challenge what will still be an unconstitutional program going forward.

I guess they hope we won't notice because we're laughing at their other batty excuses so hard?