

A FISA Learning Minute on the Constitution.

The FISA reapplication debate rages in a very strange way, and it shouldn't. Everyone is talking about the pros, a few about the cons.

No red-blooded American should hesitate supporting defensive measures against foreigners who want to harm us. FISC is a definition of those measures and the debate now, is on how they are used.

The underpinning of FISA was birthed because of the terrorist attack on September 11th. The Patriot Act, was supported by both houses and President Bush and a huge swath of the populus caught up in the moment. It served its purpose addressing the needs of surveillance of foreigners. The act was to sunset in five years. It didn't. In subsequent years we blindly renewed the FISC. We were blind, because we weren't looking as we needed to. FISC gave us a contemporaneous tool that should have replaced the CIA. But that is a different discussion for a different day.

The current problem with FISA warrant is the recent abuses, which we no longer have to assume, because there is proof. Let me paint the picture.

At the center of the debate is the FICA court and the use of warrantless searches. The focus is how "the FICA tool" identifies that a possible threat exists, is developing and may be formulating, in the foreign theater. The underpinning is the gathering and assimilating of "information" by surveillance.

The lynchpin is if a Foreign person is involved, no warrant required. That inbred approval encompasses any communications between a foreigner and a US citizen, on US soil. That is the first concern of the debate. The US citizen must be afforded his due process 4th amendment protection against a warrantless search by surveillance.

The second concern is the subsequent abuse when the tool seeks a surveillance warrant from the FISA court because a 3rd person was discovered because of the original surveillance. The FISA warrant is

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unjointed from the original players of the original surveillance. It permitted surveillance of the 3rd person, once removed. The abuse metastasizes when that 3rd person, now being surveilled, had a conversation with a 4th, unrelated person. The FISA tool used to leap frog and get a warrant against the 4th person unassociated from the original surveillance. This is exactly what happened to President Trump and many of those associated with him.

So, the rub is the justification between the investigated FICA tool powers and the 4th amendment. Nancy Pelosi said it perfectly, wrong. *“You would have to have evidence of a crime that is occurring in order to get that warrant...”*. That is so wrong. The exception to the protection of the 4th amendment is not evidence, or even probable cause. It is “reasonable belief”.

We also discovered that the sworn “reasonable belief” facts told the FISA court in the warrant application were false in more than 23,000 applications. As of yesterday, the unchanged FISA act has been reauthorized for 2-years rather than four.

The argument for continuing FISA is moot. What is needed is a legal jurisdiction handoff between the CIA off soil warrantless surveillance and a contemporaneous timed FBI “on soil” surveillance under an approved warrant.

1. The roll of where the CIA starts and FBI ends, needs perfection.
 - a. Initial surveillance between an off-soil foreigner and a US citizen by the CIA must be permitted, provided the perceived threat is an informed belief of those actors doing the surveillance.
 - b. Once surveillance becomes an on-soil activity the FBI takes jurisdiction. However, that change of jurisdiction must be approved by a judge after reviewing a joint application by the CIA and FBI that informed belief exists and a warrant application with probable cause.

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- c. A jurisdiction application or its associated warrant application made under false pretense to be a crime and conspiracy to commit a crime. Minimum prison 5-years prison, \$500,000 fine, removal from employment and retainment of compensation and civil liability.

But it continues.

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