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## Most Important Story of Day Involves Feinstein's Action on Senate Floor on Wiretapping and FISA

*By Robert Cruickshank*

The most important story in politics today isn't happening out on the campaign trail. Instead it is taking place on the floor of the U.S. Senate, as Senators debate whether to grant immunity to telecommunications companies that colluded with the Bush Administration to conduct illegal wiretapping on innocent Americans, in violation of the law and our basic rights. Like the presidential campaign, the fate of telecom immunity may hinge on California - specifically, on the actions of Senator Dianne Feinstein.

Last week I did some research on Feinstein's stance on the FISA and telecom immunity debate for the Courage Campaign. The report based on that research [can be found here](#). What follows is a summary of those conclusions, with added context to explain why this is such an important issue, and why Feinstein's role is so pivotal.

Currently the debate over the Foreign Intelligence Surveillance Act (FISA) and the illegal wiretapping that was done in contravention of FISA hinges upon whether to grant retroactive immunity to the telecoms that helped the Bush Administration conduct spying on unsuspecting, innocent Americans. Today the Senate is debating whether to close debate on an odious bill that would grant immunity. Most Democrats, including Hillary Clinton and Barack Obama, oppose the cloture vote, hoping that instead the Senate can amend the proposed bill to strengthen the FISA Court's oversight over wiretapping and to settle the immunity issue.

One of the proposed amendments comes from Feinstein. It would have the FISA court itself determine whether telecoms are eligible for immunity, and if the FISA court chooses to grant immunity, these telecoms would not be held liable for their clearly illegal actions. In a [statement last Friday](#), Feinstein's press officer, Scott Gerber, called Feinstein's amendment a "reasonable alternative," pointing to the provisions that would allow parties who have already filed suit to plead their case against immunity at the FISA court and that would prevent the government from using the "state secrets" privilege at such a hearing.

There are several reasons why Feinstein's proposal is unacceptable, and that ultimately she must stand with Americans and other Senate Democrats, like Chris Dodd and Russ Feingold, against immunity and for the rule of law.

The first is that the Feinstein proposal is not a "reasonable alternative." Even if her amendment allows outside parties (and even then only those who have already filed lawsuits, disempowering other Americans who have not yet filed and who may not even know their rights have been violated by telecoms), and even if their ruling can be appealed, that is still not the same as public, open courts handling this issue. And further, it would still potentially allow immunity and would still use a discredited "good faith" determination to grant such immunity. The deck would remain stacked against plaintiffs and against the rule of law.

By "good faith," I refer to provisions in Feinstein's amendment that would allow the FISA court to grant immunity to telecoms if they merely showed "good faith" in assisting the government's spying project. To demonstrate "good faith" the Attorney General - a Bush appointee - would merely have to indicate to the FISA court that the telecoms acted in good faith. This is not exactly a resounding defense of the Constitution or the rule of law - instead it gives the Bush Administration a back door through which it can retroactively legalize lawbreaking activity.

Second, it is wrong for the FISA court or the US Senate, directly or indirectly, to grant or make possible immunity for illegal activity. No matter how Feinstein dresses this up, this is fundamentally designed to give the appearance of protecting legal rights while setting up a process that is virtually certain to provide immunity anyway. In 1967, when the US Senate debated immunity for a series of bank mergers later held to have violated antitrust law, [Senator Robert F. Kennedy spoke eloquently against it](#), worrying that it set a precedent that could be "logically applied to murder or any other crime." In the 1970s, Congress refused to grant immunity to telecoms that had engaged in an earlier round of illegal spying - the FBI and NSA-led Project SHAMROCK. Out of these debates grew the 1978 FISA law that was supposed to provide the legal framework for foreign intelligence wiretapping. Telecom immunity as being debated today would represent a direct attack on the intent of the FISA law itself.

Finally, it seems very unlikely that the Bush Administration and their Senate Republican allies will accept anything short of outright telecom immunity. They have instead pushed for a cloture vote on the immunity-granting Senate Intelligence Committee bill, in order to forestall amendments. And in the event that this cloture vote fails, they prefer that the "Protect America Act," a bill passed in August that gives Bush expanded wiretapping powers, sunset as planned on February 1, merely to make Democrats look weak on national security. Bush will veto anything that does not include outright telecom immunity, and it is highly unlikely 17 Republicans will be willing to buck his demands and support even Feinstein's flawed "compromise."

**Feinstein will then be left with only two options - give Bush and the telecoms the immunity they seek, or stand with Senators Dodd and Feingold in defense of the Constitution, the rule of law, and fundamental American rights. Dodd has already taken the lead on this, and did so partly at the behest of the American public, [as he explained on the Senate floor last Friday](#):**

**"For several months now, I've listened to the building frustration over this immunity and this administration's campaign of lawlessness. I've seen it in person, in mail, online—the passion and eloquence of citizens who are just fed up. They've inspired me more than they know."**

**It is my hope that Senator Feinstein will listen to the passion and eloquence of Californians, and stand with us against this indefensible power grab and subordination of the rule of law. [Take action now and tell Senator Feinstein what you think!](#)**

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