

## **Congressional Closeup** by Carl Osgood

### **Senate Panel Considers Weakening FISA Standards**

On July 31, the Senate Intelligence Committee held a hearing on two bills ostensibly intended to facilitate anti-terrorism investigations by loosening the standards in the 1978 Foreign Intelligence Surveillance Act.

One bill, sponsored by Charles Schumer (D-N.Y.) and Jon Kyl (R-Ariz.), would remove the requirement that the government show that a non-resident alien under investigation be an agent of a foreign power, or a known terrorist group, in order to get wiretap authority from a court.

The second bill, sponsored by Mike Dewine (R-Ohio), would reduce the standard of proof under FISA from "probable cause" to "reasonable suspicion."

Schumer, Kyl, and Dewine say that their bills are needed because today's environment is very different from that when FISA was passed, and the law has to be updated to reflect that changed reality. They all claim that their bills are aimed at narrowly defined non-resident aliens contemplating terrorist attacks on the United States, and that they pose no threat to the liberties of American citizens or resident immigrants.

Jerry Berman, executive director of the Center for Democracy and Technology, presented an opposing viewpoint. He told the committee that both bills "raise significant constitutional questions," and "questions about whether they will improve or hinder or make any difference in our intelligence mission." He suggested that there are factors which argue that the current FISA "may have been sufficient but that there are problems elsewhere."

These problems, Berman said, include not bringing together all of the intelligence information that is available, and other problems within the Justice Department. "Nothing that you

change in terms of standards," he said, is "going to do anything about that."

### **Byrd: Homeland Security Threatens Constitution**

Senate Appropriations Committee Chairman Robert Byrd (D-W.V.) warned that the powers granted to the Bush Administration under the bill to create a Department of Homeland Security, could weaken our Constitutional form of government. Byrd's opposition has temporarily stalled efforts to railroad the bill through Congress.

Byrd delivered a blistering speech on July 30, denouncing Congress for being unwilling "to resist the stampede moving it toward creation of this new department." He said that the proposal was crafted in secret by four White House staffers, and released during a week in which President George Bush was under fire for supposed lapses in intelligence prior to the Sept. 11 attacks. "If there ever was a need for the Senate to throw a bucket of cold water on an overheated legislative process that is spinning out of control," he said, "it is now."

Byrd said that in rushing to pass the bill, some Senators are trying to avoid looking like "obstructionists." In doing so, he said, "we must not be willing to ignore even the most pertinent questions about the proposal, such as, will a new Homeland Security Department actually make the public safer from terrorists?" He warned that "if we take this giant step, our homeland defense system will likely be in a state of chaos for the next few years, and amid this upheaval, we run the risk of creating gaps in our homeland defenses." He warned that "the greatest risk in moving too quickly is that we will grant unprecedented powers to this administration that would weaken our constitutional system of government."

### **Trade Bill Clears Senate, White House**

In its final act before departing for the August recess, the Senate passed the conference report on the trade bill by a vote of 64 to 34. President George Bush signed the bill on Aug. 6. The bill folds into a single package three pieces of legislation: trade promotion authority for the President, trade adjustment assistance for displaced workers, and the Andean Trade Preference Act.

Finance Committee Chairman Max Baucus (D-Mont.) said that, on the contentious issue of labor and environmental standards, the bill uses the U.S.-Jordan Free Trade Agreement, which uses labor standards articulated by the International Labor Organization, approved earlier this year, as that which U.S. trade negotiations cannot go below.

Baucus said that an amendment sponsored by Larry Craig (R-Id.) and Mark Dayton (D-Minn.), which provides for a point of order against any agreement that changes U.S. trade law, was removed, and replaced by language that directs United States trade negotiators not to seek to undermine U.S. trade law.

The opposition made its presence known. Ernest Hollings (D-S.C.) said that the discussion "carefully avoided" the effect of current trade policy. He said that the U.S. trade deficit for July was \$41.5 billion, and is heading for a total current account deficit for the year of \$500 billion, "with the outcome being a weakening of the dollar."

Hollings noted the importance of manufacturing, quoting former Sony chief Akio Morita, who has said that "in order to become a nation-state, you have to develop a strong manufacturing capacity," and that "the world power that loses its manufacturing strength will cease to be a world power."