

Carte blanche to illegally spy on Americans

Telecoms Flex Their Muscles: FISA "Compromise" Locks-in Lawless Spying

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You knew it would eventually come to this: a huge victory for the Bush regime and a gigantic swindle by Democratic party sell-outs posing as an "opposition."

Thursday, House and Senate leaders in a bipartisan Washington love-fest, stooped to new lows of dissimulation as they reached agreement on a bill that gives the nation's spy agencies and their outsourced "partners" in the telecommunications industry *carte blanche* to illegally spy on Americans.

By Friday afternoon the votes were in and, surprise! the bill passed by a lopsided 293-129. The bill now moves to the Senate where easy passage is expected next week. The White House immediately endorsed the bill.

According to [The Washington Post](#),

White House spokesman Tony Fratto called the measure "a bipartisan bill" that "will give the intelligence professionals the long-term tools they need to protect the nation, and liability protection for those who may have assisted the government after the 9/11 attacks." (Dan Eggen and Paul Kane, "Surveillance Bill Offers Protection to Telecom Firms," *The Washington Post*, Friday, June 20, 2008)

"Bipartisan" indeed! House speaker Nancy Pelosi (D-CA) described it as a "[balanced bill](#)." True enough, if by "balanced" Ms. Pelosi means that it protects her "constituents"—the giant telecoms—while telling Americans, in the ignoble words of former White House press secretary Ari Fleischer, to "watch what they say, watch what they do."

Gloating over the Democrats' "capitulation," as Senator Russ Feingold (D-WI) characterized the deal, Senator Christopher "Kit" Bond (R-MO) who led Republicans during negotiations, told [The New York Times](#), "I think the White House got a better deal than even they had hoped to get."

Despite hand-wringing by Democrats, the accord gives "Bush and his aides, including Attorney General Michael B. Mukasey and Director of National Intelligence Mike McConnell, much of what they sought in a new surveillance law," *Times'* reporter Eric Lichtblau avers.

Virtually guaranteeing that U.S. citizens *won't* have their day in court, H.R. 6304, the FISA Amendments Act of 2008, grants immunity to giant telecom companies who participated in the Bush administration's lawless surveillance programs. Congressman Roy Blunt (R-MO)

told the *Times* without skipping a beat, “The lawsuits will be dismissed.”

And in the best tradition of totalitarians everywhere, Bond, defending immunity provisions for lawless telecoms told [Dow Jones Newswires](#),

“I’m not here to say that the government is always right, but when the government tells you to do something, I’m sure you would all agree that I think you all recognize that is something you need to do.”

Ponder those words and then consider the loathsome depths reached by the Democrats and their Republican partners in crime.

Under the proposal, U.S. intelligence agencies will be allowed to issue broad orders to U.S. phone companies, ISPs and other online service providers to cough-up all communications if it is “reasonably believed” to involve non-citizens outside the country. To boot, the plethora of spy agencies who make up the U.S. intelligence “community” will neither be bothered by naming their “targets” nor will they have to obtain prior approval by any court to continue their driftnet-style surveillance.

In other words, under terms of H.R. 6304 one American or *the entire internet* could be subject to warrantless surveillance and intrusive data-mining by state actors or private spooks. Considering that some 70% of intelligence “community” employees are mercenary contractors in the pay of private corporations that rely on U.S. Government handouts to pad their bottom line, the bill drives another nail in the coffin of privacy and individual rights while furthering the already-considerable transformation of the former American Republic into a post-Constitutional “New Order.”

The Democratic “compromise” overturns longstanding rules of the 1978 Foreign Intelligence Surveillance Act under which the government was compelled to obtain court approval and individual warrants if an American’s communications were to be monitored.

As ACLU Washington Legislative director Caroline Fredrickson [said](#) in her denunciation of the proposed “compromise,”

“This bill allows for mass and untargeted surveillance of Americans’ communications. The court review is mere window-dressing — all the court would look at is the procedures for the year-long dragnet and not at the who, what and why of the spying. Even this superficial court review has a gaping loophole — ‘exigent’ circumstances can short cut even this perfunctory oversight since any delay in the onset of spying meets the test and by definition going to the court would cause at least a minimal pause. Worse yet, if the court denies an order for any reason, the government is allowed to continue surveillance throughout the appeals process, thereby rendering the role of the judiciary meaningless. In the end, there is no one to answer to; a court review without power is no court review at all.”

“The Hoyer/Bush surveillance deal was clearly written with the telephone companies and internet providers at the table and for their benefit. They wanted immunity, and this bill gives it to them.” (“ACLU Condemns FISA Deal, Declares Surveillance Bill Unconstitutional,” American Civil Liberties Union, Press Release, June 19, 2008)

As Fredrickson outlined above, this onerous legislative flotsam grants immunity to telecoms currently being sued for breaking federal wiretapping laws by handing over billions of Americans' call records to state and private data-miners whilst giving agencies such as the NSA and FBI access to phone and internet infrastructure inside the United States itself. Under terms of the "compromise" the bill strips away the right of a federal district court to decide whether these multinational privateers violated federal laws prohibiting wiretapping without a court order. In terms of telecom liability, and the huge damages that may have resulted from a guilty verdict by a jury, this is huge.

As United States District Chief Judge Vaughn R. Walker [wrote](#) on July 20, 2006 regarding AT&T's motion to dismiss EFF's *Hepting vs. AT&T* lawsuit,

Because the alleged dragnet here encompasses the communications of "all or substantially all of the communications transmitted through [AT&T's] key domestic telecommunications facilities," it cannot reasonably be said that the program as alleged is limited to tracking foreign powers. Accordingly, AT&T's alleged action here violate the constitutional rights clearly established in *Keith*. Moreover, because "the very action in question has previously been held unlawful," AT&T cannot seriously contend that a reasonable entity in its position could have believed that the alleged domestic dragnet was legal.

The current congressional agreement stipulates instead, that the U.S. Attorney General need only certify that a company being sued did not participate, or that the state provided said privateer with a written request certifying that the President authorized the program and that his henchmen-attorneys determined it was "legal." As the Electronic Frontier Foundation [writes](#),

The new bill specifically allows the Court to see the directives that were given to the telecoms as "supplemental materials" to the AG certification (p. 90:22), but the court is still only evaluating whether they existed, not whether they were legal requests, or whether it was legal for the phone companies to comply with them. Thus, even if a court independently would have ruled the directives and the surveillance they authorized to be unlawful, the bill still requires the court to rubber stamp the retroactive immunity it provides. ("Analysis of H.R. 6304: It's Still Immunity!", Electronic Frontier Foundation, June 19, 2008)

In other words, even if a court rules that Bush administration directives are patently illegal, which indeed they are, the formerly independent judiciary's role under the new FISA amendments passed by the House, diminish its role to that of a mere accessory, an afterthought and rubberstamp for decrees issued by the "unitary executive" exercising plenary (unlimited) powers. Despite the temporizing weasel-words by congressional leaders, Friday's House vote is nothing less than a formula for *permanent presidential dictatorship*.

Consider this: if the White House can unrestrictedly spy on Americans based on the merest of "exigent circumstances," will future "exigencies"—an external terrorist attack or *internal provocation*—spearhead a martial law regime with full suspension of civil liberties and the detention of domestic dissidents, the "other persons who may pose a threat to national security," referred to by [National Security Presidential Directive 59](#)?

In the final analysis, whatever temporary divisions may exist amongst the twin parties of

capitalist reaction, none of the leading Democrats have any interest in challenging the fundamental fraud of the so-called “war on terror.” Indeed, “terrorism” is but a convenient pretext for a bipartisan attack on democratic rights as a decaying American Empire launch “preemptive” wars in a quixotic quest to shore-up its crumbling edifice.

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