

Congress gives in on wiretapping

By [Global Research](#)

Global Research, June 21, 2008

[San Francisco Chronicle](#) 21 June 2008

Region: [USA](#)

Theme: [Police State & Civil Rights](#)

Friday, June 20, 2008

Weak, timid, spineless. Those are a few words to describe Congress as it prepares to back President Bush's plans to justify his warrantless spying on Americans.

What's billed as a compromise measure to codify rules on antiterrorist surveillance is too tame by half. The agreement kowtows in important ways to Bush's overwrought view that the war of terror cannot be bound by judicial oversight or the Bill of Rights.

At issue is a bid by the White House to legitimize its covert eavesdropping on communications between this country and overseas. Under a 1978 law, such surveillance needed the approval a special secret court which usually granted intelligence agency requests, sometimes days later if the matter was urgent.

This roomy law wasn't good enough for Bush. Beginning Sept. 11, 2001, the White House skipped the legal channels to listen in on exchanges it judged to be potentially dangerous. When this end-run became known in 2005, the president complained that obtaining warrants took too long, a charge that is baseless.

But the issue carries political weight, which is where Congress comes in. After the Bush spying was revealed, a re-write of the surveillance oversight rules began. To be sure, it needed an overhaul because Internet and phone networks have changed the communications world. For example, e-mail chatter within the Mideast, a prime target for intelligence gatherers, often runs through data centers in this country, meaning more surveillance than ever could result.

But in the overhaul, the White House is getting too much. Future snooping, in most cases, will need to go before a judge overseeing government requests. It remains to be seen how strict this process will be or whether the White House will revert to its hurry-up demands for full spy powers, leaving court approval as an afterthought.

Another glaring failure is the legal immunity conferred on major telecommunications companies that went along with the years of no-warrant spying. There are 40 lawsuits pending against these companies, and the bill allows a federal judge to dismiss the suits if a company can provide written assurance that the president said the spying was legal. This path is far too easy on firms that went along with unauthorized snooping.

The law, which the Senate may endorse as well, has another effect. It effectively erases an issue that exposes the president's high-handed assumption of near-kingly power to conduct the anti-terrorist campaign. Democratic leaders in both the House and Senate, though, clearly don't want to bring on a fight they fear could backfire during a presidential

campaign. But what about civil protections and a runaway presidency?

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