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# Immunity to Telecoms for illegally Spying on Americans

By Tom Burghardt
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***Antifascist Calling...***

You can tell a sell-out by the Democrats are in the works when "Congressional and intelligence officials" revert to using phrases like "degradation," loss of "intelligence capabilities," "dangerous step backward" and "unthinkable."

Was "terrorist chatter" sucked up by the **NSA data vacuum** or did the FBI's "**Quantico circuit**" discover "actionable intelligence" of an al-Qaeda plot to nuke lower Manhattan?

No. The alarmist rhetoric from Washington insiders described a "severe gap in overseas intelligence" that would allegedly occur were U.S. spy agencies "forced" to obtain warrants to monitor terrorism suspects, *The New York Times* **reports**.

According to Eric Lichtblau,

*That prospect seemed almost inconceivable just a few months ago, when Congressional negotiators and the White House promised a quick resolution to a bruising debate over the government's surveillance powers. But the dispute has dragged on. Though both sides say they are hopeful of reaching a deal, officials have been preparing classified briefings for Congress on the intelligence "degradation" they say could occur if there is no deal in place by August.* ("Impasse on Spying Could Lead to Tighter Rules," *The New York Times*, June 10, 2008)

The fact that such assertions are patently false and obfuscate current interpretations of the 1978 FISA law, even by the (admittedly low) standards of the Bush Justice Department, doesn't mean they won't be used *ad nauseam* as bipartisan talking points to ram through flawed, indeed unconstitutional legislation.

As the Electronic Frontier Foundation **avers**,

*[Assistant Attorney General for National Security Kenneth] Wainstein said that the current interpretation of FISA does not impede the interception of foreign-to-foreign telephone calls–even after the secret FISA court ruling that [Director of National Intelligence Mike] McConnell claims required the change in the law. Thus, according to the Department of*

*Justice's own interpretation of FISA, the surveillance law does not require court orders for foreign-to-foreign phone calls, or any other communications where both ends are known to be overseas, even if the communication passes through a U.S. switch. The Government does not need prepare individual warrants for surveillance of terrorism targets overseas. …*

*Pursuant to FISA, the government can freely wiretap any "agent of a foreign power," which includes those who "engages in international terrorism or activities in preparation therefore." Any one who the Intelligence Community has evidence is a terrorist is fair game, even if the terrorists are communicating with a United States person.*

*The FISA court approves almost every application put before it. For example, the court granted all but four of 2,371 government requests in 2007. FISA Court Judge Royce C. Lamberth, has said he has approved FISA orders in minutes with only an oral briefing.* [Kurt Opsahl, "What Will Happen to Surveillance in August 2008," Electronic Frontier Foundation, June 10, 2008)

What it all boils down to has nothing to do with "national security" or an "imminent threat" of a terrorist attack, but rather, a Congressional plan to grant retroactive immunity to lawbreaking telecoms who hope to escape liability for illegally spying on Americans at the behest of the Bush administration.

Among the "compromises" sought by Democrats and Republicans is a scheme cooked-up by Senators Christopher Bond (R-MI) and Jay Rockefeller (D-WV) to allow the FISA court, the most secretive and least transparent judicial body in the United States, "to review the administration's requests and determine by a 'preponderance of the evidence' whether the requests were valid," according to the *Times*.

But as Senators Christopher Dodd (D-CT) and Russ Feingold (D-WI) **wrote** to House and Senate "leadership,"

*As we understand it, the [Republican] proposal would authorize secret proceedings in the Foreign Intelligence Surveillance Court to evaluate the companies' immunity claims, but the court's role would be limited to evaluating precisely the same question laid out in the Senate bill: whether a company received "a written request or directive from the Attorney General or the head of an element of the intelligence community… indicating that the activity was authorized by the President and determined to be lawful." Information declassified in the committee report of the Senate Select Committee on Intelligence on the FISA Amendments Act, S. 2248, confirms that the companies received exactly these materials….*

*In other words, under the Bond proposal, the result of the FISA Court's evaluation would be predetermined. Regardless of how much information it is permitted to review, what standard of review is employed, how open the proceedings are, and what role the plaintiffs' lawyers are permitted to play, the FISA Court would be required to grant immunity. To agree to such a proposal would not represent a reasonable compromise.*

And since "the FISA court would be required to grant immunity" under terms of the "compromise" legislation, what's the real significance of the angst-laden "August deadline"? According to Lichtblau,

*Democrats may have even more at stake. They acknowledge not wanting to risk reaching*

*their national convention in Denver in August without a deal, lest that create an opening for the Republicans and Senator John McCain, their presumptive presidential nominee, to portray themselves as tougher on national security–a tried-and-true attack method in the past–just as the Democrats are nominating Senator Barack Obama.*

There you have it. Unfortunately, Lichtblau doesn't share this "news" with *Times'* readers until the 20th paragraph of a 25 paragraph piece. Talk about "burying the lede"! But just for kicks, let's take a closer look.

The Bush administration, a mendacious pack of war criminals who by all standards of decency should be packed off to the Hague in chains, have subverted constitutional guarantees against Americans' right to privacy, in league with giant multinational privateers (telecoms) who were paid $1,000 per illegal **wiretap** that presumably represent millions of illegal data sweeps. How many? We don't know because its secret.

Why the rush then, to pass this piece of legislative flotsam? Liability, and lots of it, too! According to ***USA Today's*** Leslie Cauley, under section 222 of the Communications Act, the FCC "can levy fines up to $130,000 per day per violation, with a cap of $1.325 million per violation. The FCC has no hard definition of 'violation.' In practice, that means a single 'violation' could cover one customer or 1 million."

Were the multiple **lawsuits** against spying telecoms to go forward, and should they be found guilty in open court of violating their customer's constitutionally-protected right to privacy, it would add up to a horde of angry shareholders and a "deep impact" on the corporate bottom line.

To avert such a "disaster," the telecom industry has rolled-out the big guns–bundles of cash to their congressional "friends." According to the **Center for Responsive Politics**, **AT&T Inc.** has spent $5,213,841; **Verizon Communications** $3,880,000; the **National Cable & Telecommunications Association** $3,260,000 and **Comcast Corporation** $2,660,000 during the *first quarter* of 2008 on lobbying pay-outs. In a word, that's a lot of fire power! Call it a veritable "shock and awe" campaign for senators and congressmen cozily ensconced in the corporatist kennel.

And lest we forget the significance of the "gathering threat" posed by that "August deadline," president Bush stepped-up to the the plate and reminded us that "terrorists are planning attacks on American soil that will make September 11 pale in comparison."

And so it goes, on and on and on…

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