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The FISA Follies, Redux
The New York Times | Editorial

Sunday 27 January 2008

i
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The Senate (reportedly still under Democratic control) seems determined to help President Bush violate Americans' civil liberties and undermine the constitutional separation of powers. Majority Leader Harry Reid is supporting White House-backed legislation that would expand the administration's ability to spy on Americans without court supervision and ensure that the country never learns the full extent of Mr. Bush's illegal wiretapping program.

The 1978 Foreign Intelligence Surveillance Act, or FISA - which Mr. Bush decided to ignore after 9/11 - requires a warrant to intercept telephone calls and e-mail messages between people in the United States and people abroad.

It needed updating to keep pace with technology, and the technical fixes were included in a bill that Congress passed last summer. The problem was that Mr. Bush managed to add measures that sharply undercut the court's role in monitoring eavesdropping. Fortunately, lawmakers gave them an expiration date of Feb. 1.

The House has passed a reasonable new bill - fixing FISA without further endangering civil liberties. But Mr. Bush wants to weaken FISA as much as he can. And the Senate leadership has been only too happy to oblige.

With the help of Republican senators and the misguided chairman of the Intelligence Committee, Jay Rockefeller, the White House got a bill that, once again, reduces court supervision of wiretapping. It also adds immunity for telecommunications companies that cooperated with the illegal spying.

Mr. Bush says without amnesty, the government won't get cooperation in the future. We don't buy it. The real aim is to make sure the full story of the illegal wiretapping never comes out in court.

Mr. Reid - who is still falling for the White House's soft-on-terrorism bullying - set up deliberations in a way that ensured that a better Judiciary Committee version of the bill would die a procedural death and that the Intelligence Committee bill would pass.

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The Judiciary bill died this week, with the help of other bullyable Democratic senators like Mr. Rockefeller, Claire McCaskill, Mary Landrieu and Ben Nelson. The Republicans repaid them by announcing they would block any further attempts to reach a compromise.

It is now up to the House to protect Americans' rights. Mr. Bush has already started issuing the ritual claims that if his bill is not passed instantly, Osama bin Laden will be telephoning his agents in the United States and no one will know. Let us be clear, Mr. Bush has always had the authority to order emergency wiretaps - and get court approval after the fact. That has never been the problem with FISA.

The House should vote to extend last summer's flawed rules for at least 30 days and go on recess, forcing the Senate to do the same thing, and then bring the whole matter to a conference committee. There will then be plenty of time for a real debate.

Lawmakers and the rest of the nation should bear this in mind: Mr. Bush's version of this law does not make intelligence-gathering more robust. Opponents like Senators Christopher Dodd and Patrick Leahy want to spy on Al Qaeda, too. They're just not willing to do it in a way that undermines the very democracy that the spies, Congress and the president are supposed to be protecting.

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