

JELLO JAY AND HOYER SLITHER BACK INTO THE FISA LIMELIGHT

Crikey, this is getting old. You may have seen by now that rumors of a new push on passage of FISA, and, of course, full retroactive immunity, are bubbling to the surface in the last 24 hours. Here is Jane. Here is Digby. Here is McJoan. From Jane at FDL:

According to the ACLU, there is rumor of a backroom deal being brokered by Jay Rockefeller on FISA that will include retroactive immunity. I've heard from several sources that Steny Hoyer is doing the dirty work on the House side, and some say it will be attached to the new supplemental.

A few more facts and circumstances are available now than were in the earlier stories. For one, we apparently see the "urgency lever" being pressed this time around (there always seems to be one in these plays, it's a feature). From Alexander Bolton at The Hill:

The topic has reached a critical point because surveillance orders granted by the director of national intelligence and the attorney general under the authority of the Protect America Act begin to expire in August.

If Congress does not approve an overhaul of the Foreign Intelligence Surveillance Act (FISA) by Memorial Day, intelligence community officials will have to prepare dozens of individual surveillance warrants, a cumbersome alternative to the broader wiretapping authority granted by the Protect America Act, say congressional officials familiar with the issue.

Maybe, but if so, then the situation is intentionally so from a designated plan by the Administration to have some of their programs start running out while they are still in office and can use the "urgency" to fuel their desperate push for immunity. The reason, if you will recall, is the little provision placed in the Protect America Act (PAA) allowing any surveillance order (i.e. entire general program, not just individual warrants) existing at the sunset of the PAA, which occurred on February 17, 2008, to continue until expiration, which means that there was NO necessity that any program that the government wished to pursue expire anytime during the current Administration. I have reminded folks of this repeatedly, but here is a wonderful synopsis from Cindy Cohn of EFF:

The PAA provides that any currently ongoing surveillance continues until the "date of expiration of such order," even if PAA expires. "Orders" are what the PAA calls the demand for surveillance by the Attorney General or Director of National Intelligence (there's no court involved). These surveillance orders can be issued for up to a year at a time, and since the PAA is only 6 months old, every order issued under the PAA will still continue for at least six months, until July 31, 2008, even if the law expires. And a surveillance order issued on January 30, 2008 will allow continued surveillance until January 30, 2009.

Even immunity proponent Senator Rockefeller agrees on this point. In a press release he issued today (it's not online yet) he said: "Our government will continue to have authority under the law until at least August of this year, and can even extend that authority until January 2009."

So, it is pretty likely that anything that is expiring while this Administration is in office

is something that they specifically and intentionally did not care about or, better yet, wanted to expire in order to use as a wedge ploy down the road to get their immunity while they are still in office. For any program order they cared about, all they had to do was implement it, or renew it if it had already been instituted, immediately prior the expiration of the PAA and it would have then been viable and active well past when they are out of office. If they didn't do that, they didn't care. They pull this bunk every time; don't fall for it.

There is another old meme that I would like to knock back down before it gets out of hand again; namely that what is going on here is the result of panic and demand by the telcos. For all the same reasons I pointed out here at length, that just is not the case, and nothing since then has changed that fact. There have been nothing but token efforts to keep up appearances by the telcos in regards to lobbying and otherwise forcing passage of immunity. Jane mentions that AT&T hired the new big gun lobby shop, Breaux-Lott, to lead their lobby efforts on immunity. And just how many millions, heck tens of millions, of dollars did AT&T pay the two former heavyweight Senate Leaders to save AT&T's very existence in life? Uh, that would be zero millions of dollars. AT&T is expending the whopping grand total of \$150,000 for their entire lobbying effort. Yep, a paltry \$150K. You have got to be kidding me; they are so not even trying that they may not even be breathing on this issue.

No, if AT&T really gave a tinker's damn about immunity, they would be expending closer to \$150 million than \$150 thousand. This immunity push is now, and always has been, solely about protecting the dirty rear ends of Bush, Cheney and their slacker lackeys, and covering up the evidence of their blatant systematic and systemic criminal conduct. Never forget that. Instead, the push is being made through the same old tact; Republican solidarity and immense political pressure and manipulation of the Blue

Dog Democrats. Again, from The Hill:

Hoyer has discussed various possible compromises with Blue Dogs in the hope of avoiding defections similar to what Democratic leaders saw on Republican-favored immigration legislation.

"A number of Blue Dogs are working on a compromise between the House and the Senate," said Rep. Jane Harman (Calif.), a member of the Blue Dog Coalition and the former ranking Democrat on the House Intelligence Committee. "I'm working with Hoyer and working with others.

"Some other Blue Dogs are involved," she added. "Blue Dogs are 47 votes; 47 votes will determine how this comes out."

Oh goody, the Blue Dogs are *still* driving the bus, and Jane Harman is *still* smack dab in the middle of the pie with her questionable history of acquiescence with Bush's surveillance program; and, perhaps more importantly, reason to cover it up. This group of constant weak links is being subjected to immense pressure to sell out the Constitution and country's right to privacy; but, again, not from the telco lobby, but rather Bush/Cheney political surrogate shadow operations. Once again, from The Hill:

Conservative and freshman Democrats are growing skittish. These lawmakers expect campaign opponents to accuse them of imperiling national security if Congress does not enact new intelligence surveillance legislation.

One outside interest group, the Defense of Democracies Action Fund, has already launched radio ads specifically criticizing Blue Dog Democrats for supporting a House-crafted intelligence bill opposed by President Bush.

Defense of Democracies is, exactly like

Freedom's Watch, nothing but a high powered Bush/Cheney/RNC mouthpiece. So, the bottom line is we know what the goal of the FISA push is (immunity), we know who wants it and why (the Bush/Cheneys because they have engaged in a mass criminal conspiracy and need cover), and we know the path the push will take (GOP assimilation of Blue Dogs). Really, the only part of this puzzle we do not yet know is what the precise nature of "the compromise" is that will cravenly be peddled.

If you will remember, back in early March, there was a compromise proposal floated in the House that would allow for case by case immunity determinations to be made by courts based on certifications and *ex parte* arguments by the government. Here are the thoughts I expressed at the time, but in short, i agreed with the EFF and ACLU that it was a surprisingly acceptable proposal. The Bush Administration, of course, immediately shrieked and threatened veto. Clearly, such reasonable compromises seem to be relegated to the dustheap of history and we are now back to some other form of "compromise" that results in unmitigated full retroactive immunity. Typical of a Bushco "compromise", we give them everything they want, and in return we get jack.

If there is any two way compromise deal (as opposed to an illusion that just gives Bush what he wants), the best bet at this point is that it will involve Bushco giving slight concessions on exclusivity provisions that they do not really want, in return for getting full retroactive immunity. The other possibility that has been floated involves full retroactive immunity for telecoms in exchange for a bipartisan commission to investigate the illegal wiretapping; but this has about zero chance of being acceptable to the Bushies, they simply are not going to agree to be investigated.

So, the foregoing being what appears to be the case, it looks like we need to gear up immediately for the same full court battle we

have been having; the "compromise" is looking bad once again. That said, painful as it may be, it is time to get back to work with your fingers and phones. You know the drill. Make sure they remember that Donna Edwards is going to have a seat in Congress and Al Wynn will not; and the vote was not even close. Make them remember what this country stands for. Here is a list of the Blue Doggies. Here is a comprehensive list of contact information for all House members. And please don't forget Steny Hoyer.