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More Disruptions to The Cheney/Rockefeller FISA Plan

by Glenn Greenwald

Regardless of the ultimate outcome of the FISA and telecom immunity conflict, there is something quite unique about how things have proceeded that I think is worth noting. Telecom immunity and warrantless eavesdropping powers are exactly the types of issues that normally generate very little controversy or debate. Identically, the bill advocated by Dick Cheney, Jay Rockefeller and Mitch McConnell is the type of bill that is normally passed, quickly and quietly, by Congress without any trouble. That isn't happening this time, and it's worth looking at why that is.

The establishment media has virtually ignored these matters from the beginning. Most establishment-serving pundits who have paid any attention — the David Ignatiuses and Joe Kleins and Fred Hiatts — have done so by advocating, as usual, the Establishment position: retroactive immunity and warrantless eavesdropping powers are the right thing to do. Although there is no citizen-constituency whatsoever crying out for telecom immunity or new warrantless eavesdropping powers, the forces behind those provisions are the ones which typically dictate what Congress does: namely, the largest corporations and their lobbyists, who have been working, as always, in the dark to ensure that the law they want is enacted.

That's typically the way Washington works — the most significant laws are seamlessly enacted with little real debate or attention, driven by corporations and lobbyists working in secret with Senators, cheered on by the Serious media pundits, with bipartisan pools of lawmakers silently and obediently on board. And once those forces line up behind any measure, it is normally almost impossible to stop it — not just stop it, but even disrupt it at all. That's the insulated Beltway parlor, virtually impervious to outside influences, least of all the opinions of the citizen-rabble.

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All of those standard Beltway forces are squarely lined up behind telecom immunity and new eavesdropping powers, and yet, things are not proceeding smoothly for them at all. Back in December, Harry Reid, Jay Rockefeller and Mitch McConnell scheduled just a couple of days for the FISA debate because they assumed that was all that would be needed to deliver quickly and quietly to the President everything he demanded.

But when Chris Dodd and others [impeded that plan by obstructing and filibustering](#), Reid just cynically assumed that once Dodd was out of the presidential race, he would [cease with the "grandstanding"](#) and allow the Senate to function the way it is supposed to: collegially delivering to the Establishment what it wants, without disruption.

But Dodd's commitment to impede these corrupt and lawless measures is clearly authentic and was not grounded in cynical political concerns — as was obvious to anyone uninfected by the jaded Beltway Virus. Dodd's willingness to join Russ Feingold in single-mindedly pursuing what are considered extreme and alienating steps in the Senate to stop this bill — holds, filibusters and withholding of unanimous consent agreements — along with Dodd's [increasingly eloquent and relentless advocacy on behalf of the Constitution and the rule of law](#), has disrupted the Cheney/Reid/Rockefeller plan just enough so that it may now unravel altogether.

Dodd has been in the Senate for 24 years. As he will the first to acknowledge, engaging in filibusters and obstruction and defiance of his party's leadership are things he has almost never done. Dodd isn't Russ Feingold. He has been the picture of the establishment Senator in the party's "liberal" wing, rarely deviating and almost never standing alone to oppose the party leadership. So what has changed? Why has he been so willing so tenaciously to pursue this fight — even in the face of [overt though anonymous threats](#) that he could alienate his party's leadership and lose influence as Banking Committee Chairman if he persists?

Dodd himself provided the answer [in his Senate floor speech](#) (h/t [Kitt](#)):

I've promised to fight those scare tactics with all the power any one senator can muster. And I'm here today to keep that promise. For several months now, I've **listened to the building frustration over this immunity and this administration's campaign of lawlessness. I've seen it in person, in mail, online — the passion and eloquence of citizens who are just fed up. They've inspired me more than they know.**

That is exactly what happened. When the administration first demanded retroactive immunity in the wake of the passage of the Protect America Act, nobody was talking about that issue outside of blogs and grass-roots and civil liberties organizations — the roster of annoying citizen-groups that are typically ignored. But the pressure built; it became increasingly intense and relentless; it found a political official in Chris Dodd willing to ride it; and it unquestionably has altered the course of how all of this has played out. As a result, even the three presidential candidates have become increasingly attentive to it — not enough, to be sure, but more than before. Strictly in response to calls from blog readers, John Edwards issued a series of statements against telecom immunity this week, even [sending out a mailing to his email list solely on this topic](#), despite the fact that he is in the middle of a critical primary fight in South Carolina. Both Bill and Hillary Clinton have been [making commitments to increase their involvement](#), with Hillary even vowing to speak out against it today. This week, Barack Obama also made his [most emphatic statement](#) to date: "I strongly oppose retroactive immunity in the FISA bill. . . . That is why I am proud to stand with Sen. Dodd and a grassroots movement of Americans who are standing up for our civil liberties and the rule of law."

The [lead Editorial](#) in *The New York Times* this morning is devoted to lambasting Harry Reid and Jay Rockefeller for their active efforts to ensure passage of the Cheney/Rockefeller FISA bill. After failing to do so the first time around, the House in November passed a decent bill that contains no immunity and has numerous safeguards on eavesdropping powers, and — at least as of now — appears unlikely to capitulate. The only reason any of that happened is because enough citizens were sufficiently intense and active to catapult this issue to the fore and prevent the quiet and easy enactment of telecom immunity and new warrantless eavesdropping powers. In the absence of that, this would have all been over with, easily and without trouble, back in December.

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There is never any shortage of super-sophisticated cynics to come along and say how none of this matters, how it's so pitifully naive to think that any difference can ever be made, how the System is so Corrupted and the Deck So Stacked Against Us that everything is doomed and defeat is the inevitable option. And there is an element of truth to the premises of that defeatist mindset. The principal reason blogs exist, after all, is precisely because all other

institutions intended to provide some adversarial check on what our government does — the establishment media, the “opposition party,” the Congress — typically do the opposite: they serve as enablers of it rather than checks on it. That’s all true enough.

But what incidents such as this one conclusively demonstrate is that it is always possible, if enough citizen intensity is mustered and the right strategy is formulated, for citizens to disrupt and defeat the best-laid plans of our corrupt political establishment. There’s a comfort and temptation in denying that truth. Those who insist that defeat is inevitable and All is Lost are relieved of the burdensome task of trying. But defeat occurs because the right strategy isn’t found, not because it is inevitable.

As always, the significance of what has occurred here shouldn’t be overstated. The only reason Senate Democrats became angry on Thursday is because Republicans actually refused to **allow Democrats to capitulate, as they were ready and eager to do**. Senate Republicans blocked Democrats from caving in completely to Bush because they didn’t want this issue resolved. They want to ensure that Bush, in Monday’s State of the Union address, can accuse Senate Democrats of failing to act on FISA, and thus attack and mock them as being weak on national security and causing the Terrorists to be able to Slaughter Us All.

And, rather pitifully, [some Democrats are shocked — so very upset](#) — that, yet again, their demonstrated willingness to give the Republicans everything they demanded has not prompted a Good, Nice, Courteous Response. **“We did everything you told us to do. Why are you being so mean and unfair?”** That sad posture is what led even Jay Rockefeller apparently to announce that he will vote against cloture on his own bill.

Worse, even if Democrats prevent the Republicans’ cloture vote on Monday, that will mean we’ll just be right back to where we were before that happened: with a series of votes that will almost certainly end in the Senate with some form of retroactive immunity and vastly expanded warrantless eavesdropping powers. So it isn’t as though there is some victory here yet that is complete or even all that meaningful.

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Still, it is very worth [doing what’s possible to encourage Democrats to sustain a filibuster on Monday](#) and prevent a cloture vote on the Senate Intelligence Committee bill, which will mean that there will be no new law in place before the Protect America Act expires (February 2). Bush will then have to choose — at least as Reid [is boldly promising](#) — between some short-term extension of the Protect America Act (with no immunity) or have the bill lapse altogether.

Even just a two-week or one-month extension will allow more time to marshal the opposition to telecom immunity and a new FISA bill and to do what’s possible to encourage the House to stand firm behind their bill — in exactly the way that the Dodd Delay in December prevented quick and easy resolution. The longer this drags on without resolution, the more possible it is to push the opposition to a tipping point, and sometimes unexpected developments or even some luck (such as McConnell’s overplaying his hand on Thursday) can prevent it all from happening.

As the events of the last two months demonstrate, if citizen opposition is channeled the right way, it can make a genuine difference in affecting the course of events in Washington. Defeating telecom immunity will keep alive the lawsuits that will almost certainly reveal to some extent what the Government did in illegally spying on Americans over the last six years

or, at the very least, produce a judicial adjudication as to its illegality. And, in turn, the effects from **that** could be extremely significant. Because victories are so rare, it's easy to get lulled into believing that none of these campaigns are ever effective and that citizens can never affect any of it, which is precisely why it's so important to remind ourselves periodically of how untrue that proposition is.

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