Warrantless Surrender

Congress is stampeded into another compromise of Americans’ rights.

Monday, August 6, 2007; Page A16

THE DEMOCRATIC-led Congress, more concerned with protecting its political backside than with safeguarding the privacy of American citizens, left town early yesterday after caving in to administration demands that it allow warrantless surveillance of the phone calls and e-mails of American citizens, with scant judicial supervision and no reporting to Congress about how many communications are being intercepted. To call this legislation ill-considered is to give it too much credit: It was scarcely considered at all. Instead, it was strong-armed through both chambers by an administration that seized the opportunity to write its warrantless wiretapping program into law -- or, more precisely, to write it out from under any real legal restrictions.

Administration officials, backed up by their Republican enablers in Congress, argued that they were being dangerously hamstrung in their ability to collect foreign-to-foreign communications by suspected terrorists that happen to transit through the United States. The problem is that while no serious person objects to intercepting foreign-to-foreign communications, what the administration sought -- and what it managed to obtain -- allows much more than foreign-to-foreign contacts. The government will now be free to intercept any communications believed to be from outside the United States (including from Americans overseas) that involve "foreign intelligence" -- not just terrorism. It will be able to monitor phone calls and e-mails of U.S. citizens or residents without warrants -- unless the subject is the "primary target" of the surveillance. Instead of having the Foreign Intelligence Surveillance Act court ensure that surveillance is being done properly, with monitoring of Americans minimized, that job would be up to the attorney general and the director of national intelligence. The court's role is reduced to that of rubber stamp.

This is as reckless as it was unnecessary. Democrats had presented a compromise plan that would have permitted surveillance to proceed, but with court review and an audit by the Justice Department’s inspector general, to be provided to Congress, about
the verbal abuse I think but have trained myself not to speak

There is one small saving grace here: These sweeping new powers expire after six months. Of course, having dropped the audit requirement, lawmakers won't have a good way of knowing how many Americans had their communications intercepted. The administration will no doubt again play the national security card. Democratic leaders say they want to move quickly to fix the damage. If only we could be more confident that they won't get rolled again.

© 2007 The Washington Post Company