

Cast a wary eye on surveillance efforts

It's become a cottage industry — scaring the bejesus out of the citizenry in an effort to push U.S. House members into following the example of their Senate counterparts and pass legislation giving the administration legal authority to secretly surveil phone calls and e-mails of U.S. citizens in this country without court approval.

Surveillance advocates from President Bush on down are disingenuously mischaracterizing the law — and the already vast power of the government to gather intelligence information electronically — in order to gain the votes needed to send such legislation to the president for signature.

To set the record straight, here are some key points concerning the surveillance powers of government — current and desired:

Q. Despite the fact that the House has not yet caved to the president and the Senate and permanently expanded the power of the government to surreptitiously surveil Americans' international calls and e-mails, is our government still able to conduct necessary foreign intelligence surveillance?

A. Yes. The sky has not fallen and will not fall. The government has had and continues to have robust power and lawful authority to monitor calls and e-mails of known or suspected terrorists.

Q. As an American citizen within the United States,



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aren't my calls and e-mails protected against the government listening in, unless the government suspects me of unlawful activity, including working with or communicating with terrorists?

A. Such calls should be, and are, protected against warrantless surveillance by the 30-year-old Foreign Intelligence Surveillance Act. However, under the "Protect America Act," in effect from August 2007 until the middle of February of this year, the government was given vastly expanded power to listen in to any of your

calls or e-mails, so long as a government official "reasonably believed" one party was outside the United States. In other words, any call you made with or e-mail you sent to, someone in another country — a friend, a relative, a business associate or anyone else — could be monitored by the government without any suspicion you were doing something wrong or that you were conspiring with a member of al-Qaida.

Q. Is the government listening in on my calls regardless?

The government already has vast power to gather intelligence information electronically.

A. Probably. Even though FISA requires the government to first get a court order to listen in to your calls, this administration claims it has the inherent right to ignore the law and eavesdrop on Americans' calls anyway.

Q. Don't we want the government to be able to listen in to calls if a terrorist overseas is talking to someone in this country?

A. Of course; and the government can already do that.

Q. Why should people overseas have the same protections against the government monitoring their conversations as U.S. citizens inside the United States?

A. They don't, and they shouldn't have. This is one of the big lies the administration is pushing. Protections against warrantless surveillance that properly extend to Americans

within the United States do not extend to persons overseas. In other words, the government can listen in to conversations taking place outside the U.S., regardless of whether the House adopts the same expansive legislation already passed by the Senate.

Q. But wasn't there a problem with a secret court decision last year restricting the government's ability to listen in to persons overseas?

A. Yes, and that problem should be addressed legisla-

tively. Calls between two persons not in the U.S. that happen to be routed through a switching station inside the United States should not be subject to the warrant requirements of FISA just because they were routed thusly. However, that problem can be resolved very easily by a specific and limited change to FISA — a change that does not require the vast expansion of surveillance powers sought by the administration.

Q. What about this question of granting telecommunications companies immunity for disclosing their customers' private calling information to the government without proper authority?

A. Companies, just like individuals, should not violate the law, regardless of their motivation. Legislation allowing companies to violate the law just because a government official asks them to would set a terrible precedent we would come to regret mightily.

Q. Finally, are those House members who are raising questions about the expanded powers the administration is seeking doing so for partisan reasons?

A. No. The objections they have raised are principled and reflect important, nonpartisan values: respect for the Fourth Amendment, limits on executive-branch power and fundamental privacy concerns.

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