



Warrantless Waste of Valuable Time

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We all know the scene. (Well, most of us over 30 know it) Charlie Brown runs confidently toward his friend Lucy, assured that this time, she will not pull the football away as he is about to kick. Inevitably he ends up on his back, humiliated and dejected -- tricked again!

After the recent retroactive immunity for telecom companies FISA fight, it would not be surprising to see Nancy Pelosi prance about her office with a football marked "government assurances" tucked safely under her arm. At the same time, moderate "Blue Dog" Democrats, like Lucy's younger brother Linus, nervously clutch their security blanket, afraid to step up and do what is right for the nation.

But, the football Speaker Pelosi holds is political and the consequences far more real and far more deadly.

Intelligence agencies have always been able to obtain intelligence outside of the United States without warrants. Would anyone seriously consider requiring a warrant to tap Osama Bin Laden's satellite phone? Would anyone object to the CIA giving the FBI information Osama Bin Laden's favorite phone numbers? Of course not. We need only look at the bureaucratic behemoth before 9/11 to tell us such restrictions are outdated in an age of email, cell phones, and the internet.

The question is less clear when internet, cell phone, and email traffic is relayed through hardware inside the United States. The question is also less clear if such communication originates outside of the United States and reaches an individual inside the United States.

These issues will be, and should be debated by Congress and explicit authorization granted or withheld from the President. Asking whether or not the President should have authorized the surveillance he did after 9/11 is a question for historians. We

cannot put the genie back in the bottle. The fact remains that such surveillance happened, the government gave assurances, and we believe it was the right thing to do. The media punditocracy loves to ask the, “if you knew then what you know now” questions. But in the end, hindsight is 20/20 and politicians spend too much time fighting yesterday’s fight at the expense of tomorrow.

The political football at issue here is whether America's telecommunications companies, or any other American for that matter, given assurances by the Department of Justice that their cooperation in an investigation is legal, has a right to expect the government to honor those representations.

As Democrat Chairman of the Senate Intelligence Committee, Jay Rockefeller (D-WV) said,

“Within weeks of the 2001 attacks, communications companies received written requests and directives for assistance with intelligence activities authorized by the President. These companies were assured that their cooperation was not only legal but also necessary because of their unique technical capabilities. (emphasis added) They were also told it was their patriotic duty to help protect the country after the devastating attacks on our homeland.”

Like Charlie Brown, America's telecommunications companies felt secure that when the government assures them that their cooperation is legal and necessary -- it means what it says.

Enter Speaker Pelosi. Ever eager to placate a restive far-left base, the Speaker took up the cause of America's most afflicted, most patriotic, and most selfless band of do-gooders...America's trial lawyers. It’s no coincidence that they gave over a million dollars to Democrats so far this election.

Alarmed that the Senate should pass retroactive immunity by such a wide bipartisan margin, the Trial Lawyers kicked into high gear. Fearful that their 40% contingency fees would disappear faster than the media's post-surge Iraq war coverage, these 21st century Robin Hoods convinced the Speaker to put fairness and national security on the backburner and take up the cause of an amorphous and undefined class of people who allege they have been somehow harmed by surveillance of overseas communications.

These lawsuits are, to use Senator Rockefeller's words, "unfair and unwise."

On April 23rd, Republicans filed a discharge petition to force H.R. 5440 to the floor. This is the House version of S.2248. This legislation would, among other things, streamline the FISA process and provide protection to persons and companies that assisted the government after 9/11 and were told such assistance was "not only legal but also necessary."

It is expected that virtually all House Republicans will sign the petition. It is up to Democrats, many of whom ran and were elected campaigning as Republicans, to live up to their campaign promises. The pressure being put on them by the Speaker and Democrat "leadership" is incredible. But as Henry Clay said, "I would rather be right than President." For the Democrats struggling with this choice, would you rather be right or be friends with the Speaker?

The Pelosi/trial lawyer version of the FISA bill passed the House 213-197. This was surprising to many because on Jan. 28, twenty-one moderate "Blue Dog" Democrats sent a letter to Speaker Pelosi urging her to pass the Senate version that included retroactive immunity. As the Washington Times wrote after the vote, Democrat "leadership would have lost without the votes of 14 ...Blue Dogs...who were among the signers of a letter to Mrs. Pelosi urging support for telecommunications immunity."

This type of, "do as I say, not as I do" politics is what America is growing tired of.

In the letter to Speaker Pelosi, the "Blue Dogs" said that any FISA bill should include, "targeted immunity for carriers that participated in anti-terrorism surveillance programs." They recognized, as do we, that such a provision is not only the right thing to do for our national security, but it is the fair thing to do.

Fairness is not a Republican or Democrat virtue. It is an American virtue. Like the Great Pumpkin, no one is sure if the FISA bill will appear this year. But there is one thing that is certain; America does not pull the football out from under the trusting kicker no matter the political advantages.

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