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The Beltway Establishment's contempt for the rule of law

The imminent Telecom Amnesty law is but the latest example proving that Washington no longer believes it is subject to the "rule of law"

Glenn Greenwald

Oct. 14, 2007 | *The Washington Post's* Editorial Page, in the establishment-defending form of Fred Hiatt, [today became](#) but the latest Beltway appendage to urge the enactment of a special law providing amnesty to our nation's poor, put-upon, lawbreaking telecoms:

There is one major area of disagreement between the administration and House Democrats where we think the administration has the better of the argument: the question of whether telecommunications companies that provided information to the government without court orders should be given retroactive immunity from being sued. House Democrats are understandably reluctant to grant that wholesale protection without understanding exactly what conduct they are shielding, and the administration has balked at providing such information. But the telecommunications providers seem to us to have been acting as patriotic corporate citizens in a difficult and uncharted environment.

Let's leave to the side Hiatt's inane claim that these telecoms, in actively enabling the Bush administration to spy on their customers in violation of the law, were motivated by the pure and upstanding desire to be "patriotic corporate citizens" -- rather than, say, the desire to obtain extremely lucrative government contracts which would [likely have been unavailable](#) had they refused to break the law. Leave to the side the fact that actual "patriotism" would have led these telecoms to adhere to the surveillance and privacy laws enacted by the American people through their Congress in accordance with the U.S. Constitution -- as a [handful of actual patriotic telecoms](#) apparently did -- rather than submit to the illegal demands of the President.

Further leave to the side that these telecoms did not merely allow warrantless surveillance on their customers in the hectic and "confused" days or weeks after 9/11, but **for years**. Further leave to the side the fact that, as Hiatt's [own newspaper just reported yesterday](#), the desire for warrantless eavesdropping capabilities seemed to be on the Bush agenda well before 9/11.

And finally ignore the fact that Hiatt is defending the telecom's good faith even though, as he implicitly acknowledges, he has no idea what they actually did, because it is all still Top Secret and we are barred from knowing what happened here. For all those reasons, Hiatt's claim on behalf of the telecoms that they broke the law for "patriotic" reasons is so frivolous as to insult the intelligence of his readers, but -- more importantly -- it is also completely irrelevant.

There is no such thing as a "patriotism exception" to the laws that we pass. It is not a defense to illegal behavior to say that one violated the law for "patriotic" reasons. That was Oliver North's defense to Congress when he [proudly admitted breaking multiple federal laws](#). And it is the same "defense" that [people like North](#) have been making to justify Bush's violations of our surveillance laws -- what we call "felonies" -- in spying on Americans without warrants.

By definition, the "rule of law" does not exist if government officials and entities with influential Beltway lobbyists can run around breaking the law whenever they decide that there are good reasons for doing so. The bedrock principle of the "rule of law" is that the law applies equally to everyone, even to those who occupy Important Positions in Fred Hiatt's social, economic and political circles and who therefore act with the most elevated of motives.

In a [1998 essay in *Foreign Affairs*](#)

entitled "The Rule of Law Revival," Thomas Carothers of the Carnegie Endowment for International Peace wrote optimistically that the "rule of law" has now become the centerpiece, the prime consensus, for most international relations and has been recognized as the linchpin for third-world countries developing into functioning democracies. Here is how he defined the basic principles of "the rule of law":

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THE RULE of law can be defined as a system in which the laws are public knowledge, are clear in meaning, and **apply equally**

to everyone. They enshrine and uphold the political and civil liberties that have gained status as universal human rights over the last half-century. . . . Perhaps most important, the government is embedded in a comprehensive legal framework, **its officials accept that the law will be applied to their own conduct**, and the government seeks to be law-abiding.

What is happening now in Washington is -- in every respect -- the exact opposite of this. Already, it was revealed that our highest government officials, including the President, broke the law deliberately and for years by spying on Americans without the warrants required by the laws we enacted, and all of official Washington immediately agreed that nothing should happen as a result. And nothing did happen.

And now, some of our country's richest, largest, most powerful and most well-connected corporations were caught breaking laws that have been in place for decades, such as [Section 222 of the Communications Act of 1934](#), which provides that "[e]very telecommunications carrier has a duty to protect the confidentiality of proprietary information of . . . customers." [18 U.S.C. 2511](#) makes warrantless eavesdropping a felony; [18 U.S.C. 2702](#) requires that any "entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication" without a court order; and [18 U.S.C. 2520](#) provides for civil damages for any violations.

Here, the Government will not prosecute telecoms for breaking the law, because the government itself conspired in that lawbreaking. Thus, public interest groups and private citizens, including the telecoms' own customers, are attempting to hold them accountable for their lawbreaking by [suing them in courts of law](#).

In response, these corporations are using their vast resources to give money to key lawmakers and pay huge lobbying fees to [politically well-connected former government officials](#) to pressure the Congress to **write a new law that has no purpose other than to declare that they are immune from accountability for their lawbreaking**. They're conniving, literally, to be specially exempted from the rule of law.

And our opinion-making elite is eagerly defending this -- insisting that while the poor irrelevant souls who buy and sell drugs near the corners of their offices are real criminals and **those people** belong in prison, our nation's telecoms and other high officials, when they get caught breaking the law, should have special laws written decreeing that they are **immune** from all consequences.

This has become the norm for the Beltway. It is [exactly what happened](#) when poor, persecuted Lewis Libby was so unfairly subjected to a mean criminal trial and the possibility of prison -- just because he "technically" committed some felonies. Libby was one of **them**, not the kind of person who belongs in prison. As [Hiatt wrote](#), in defending Bush's extraordinary commutation of Libby's sentence on the ground that 30 months was just too harsh (while generously allowing that Libby should spend a little time in prison): given "Mr. Libby's long and distinguished record of public service, [] we sympathize with Mr. Bush's conclusion 'that the prison sentence given to Mr. Libby is excessive.'"

And thus, just as they did for George Bush's warrantless eavesdropping crimes and Lewis Libby's obstruction of justice and perjury felonies, the Beltway establishment is now banding together to demand that the telecoms be bequeathed with the **legal right** to break the law. In his *Foreign Affairs* essay, Carothers warned of the primary obstacle to the installation of the "rule of law" in developing third-world countries:

The primary obstacles to such reform are not technical or financial, but political and human. Rule-of-law reform will succeed only if it gets at the fundamental problem of leaders who refuse to be ruled by the law. **Respect for the law will not easily take root in systems rife with corruption and cynicism, since entrenched elites cede their traditional impunity and vested interests only under great pressure.**

Is it possible to find a more accurate description than this of what has been taking place over the last six years in Washington, as the rule of law for our political elites has completely eroded?

If it is actually true that the telecoms did nothing wrong -- if their armies of internal and outside lawyers were actually correct that they had such a strong basis for doing what they did -- then they will not be found liable. They will only be liable if -- despite the best teams of lawyers that money can buy (just like Lewis Libby had) -- they are found by a court to have broken the law. And "good faith" violations are [already exempted](#) from the statute (see 2520(d)), a defense they can raise and prove in a court of law if -- as Hiatt and his friends claim -- it is actually valid.

That is how a country that lives under the "rule of law" functions -- whether some one is found to have acted illegally is determined by a court of law, not neatly resolved after the fact with special amnesty laws passed by Congress that they buy. Here is what Carothers identified as the most "crucial" step for third-world countries to take in order to develop a healthy "rule-of-law" culture:

Type three reforms aim at the deeper goal of increasing government's compliance with law. A key step is achieving genuine judicial independence. . . . But the most crucial changes lie elsewhere. Above all, **government officials must refrain from interfering with judicial decision-making and accept the judiciary as an independent authority.**

The corruption and sleaze here is so transparent and extreme. We're just sitting by watching as telecoms right in front of our faces purchase from government officials the right to be exempt from lawsuits currently pending in our court system. Government officials, more or less on a bipartisan basis, are about to intervene in these lawsuits and prevent them from proceeding to a determination of whether telcoms violated

numerous, long-standing laws. And Fred Hiatt and [David Ignatius](#) and [Joe Klein](#) and virtually all Beltway "journalistic" opinion-makers think that is the right thing to do, just as they insisted that the President and his aides should never be subjected to consequences for their lawbreaking either.

By definition, our Beltway establishment does not believe in the rule of law -- at least not for them. They are creating a completely segregated, two-track system where high Beltway officials and their corporate enablers arrogate unto themselves the power to decide when they can break the law. They are thus literally exempt from our laws, even our criminal laws, while [increasingly harsh, merciless, and inflexible punishments](#) are doled out for the poorest and least connected criminals -- who receive no consideration of any kind, let alone presidential commutations or special laws written for them by Congress retroactively rendering legal their patently criminal behavior.

The Telecom Immunity law that Congress seems well on its way to enacting is one of the most conclusive pieces of evidence yet not only that our Royal Beltway Court is corrupt and decayed at its core. It also proves that they no longer care who knows it.

-- Glenn Greenwald

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