

TERMINATE

Telecom lobbyist John Ashcroft is back on the influence circuit again, trying to admonish us that refusing the telecoms immunity will kill people. Only he usually doesn't refer to telecom immunity as such. Instead, he calls on Congress to "terminate" the lawsuits against the telecom companies.

There are many complex and difficult issues associated with these debates, but whether to terminate the huge lawsuits that have been filed against the nation's major telecommunications carriers accused of cooperating with classified counterterrorism programs is not one of them.

Who knew that John Ashcroft was such a good sophist?

Not surprisingly, Ashcroft dodges several key issues. He suggests that there are only two circumstances where immunity would be granted.

The Senate bill would confer immunity in only two limited circumstances: if the carrier did not do what the plaintiffs claim; or if the carrier did do what the plaintiffs claim but based on explicit assurances from the highest levels of the government that the activities in question were authorized by the president and determined to be lawful.

But that's one of the tricks with this surveillance—the telecoms did something, and it's not entirely clear we've described what they did properly. Moreover, there's the presence of telecoms that recognized the form of the requests was illegal—for some reason, Qwest recognized the assurances that the activity was authorized to be dubious.

And of course, Ashcroft makes no mention of the period when the program was not authorized by the AG, but was instead authorized by the White House Counsel. Such authorization is not legal, not under the law as written. While the telecoms may not be in the position to assess the honesty of the Bush Administration representations, they surely knew in March 2004 that Alberto Gonzales was not the AG, and that any authorization given by him was not worth the paper it was written on.

And finally, there's that issue of whether or not the telecoms do have enough to assess the intent of the government. If the government can ask for data and use it in any fashion they want (or ask the telecoms to use it in any fashion), what does that say about the creeping surveillance? It demonstrates precisely the problem with surveillance that takes place independent of any review: the government can do anything and just claim it's legal. Even if it violates clear laws like FISA.