

THE DODGE ON RETROACTIVE IMMUNITY

Okay. This will serve as a summary of my analysis of the SSCI report on their FISA bill and to show how the SSCI managed to convince themselves to give retroactive immunity to the telecoms. Thus far, I have shown that:

- This report suggests that the Authorization to Use Military Force was central to the enactment of Bush's illegal warrantless wiretap program.
- The report claims they need to give telecoms immunity because, since the Administration invoked State Secrets, the telecoms have no effective means to defend themselves against lawsuits, even if they're innocent.
- The Republicans (backed by Bush's veto threat) want to retain the ability for the Attorney General to declare someone an agent of a foreign power and wiretap them overseas, with no court review.
- The current bill still does not provide court review of whether the government adheres to its own minimization procedures.

Now, as I said, the SSCI pretends they have to

give telecoms immunity because mean old George Bush invoked State Secrets, leaving the telecoms with no way to protect themselves against lawsuits. But they use one more dodge to rationalize giving the telecoms immunity.

As SSCI points out, the telecoms would be immune from prosecution if they had been authorized to conduct wiretaps under 18 U.S.C.

Â§2511(2)(a)(ii).

Under the existing statutory scheme, wire or electronic communication providers are authorized to provide information and assistance to persons with authority to conduct electronic surveillance if the providers have been provided with (1) a court order directing the assistance, or (2) a certification in writing signed by the Attorney General **or certain other officers** that "no warrant or court order is required by law, that all statutory requirements have been met, and that the specific assistance is required." See 18 U.S.C. Â§2511(2)(a)(ii).

I've bolded those words, "or certain other officers," to emphasize that Jello Jay and the Republicans didn't actually specify what the law says. So let's look at the law, shall we?