THE FISA REPORT

Laura links to a CQ story based on this SSCI report on FISA. As Starks noted in his CQ article, the report reveals that the telecom companies did not have the requisite approval from the Attorney General for the period following the hospital confrontation; rather, they had White House Counsel Alberto Gonzales' approval.

> The committeeâ€™s published report on legislation (S 2248) that wouldrewrite the rules for government surveillance states thattelecommunications companies participating in the NSA program receivedregular letters affirming President Bush had authorized the program.
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> But all but one of the letters also stated that the attorney generalhad determined the program to be lawful, according to the report. Thatletter, which covered a period of â€œless than sixty days,â€ insteadstated that â€œthe activities had been determined to be lawful by thecounsel to the president.â€

I'll have my own excerpts of the report in a post shortly. But for now, consider some implications of this:

- Bush did not authorize the program personally after Comey refused to authorize it; Gonzales did. Presumably, they were trying to protect the President (and the Vice President) from responsibility for having done so. But where, then, does the legal

responsibility for having violated the Telecommunications Act lie? With the telecoms, for taking authorization from the White House Counsel—who is not approved by the Senate—rather than the Attorney General? Furthermore, does this expose Gonzales legally? **Update:** I need to make a correction. The report makes clear that Bushauthorized the program at each step. It's just that for thepost-hospital confrontation period, he was relying on Gonzales tocertify it was legal.

- I wonder whether Bush told the telecoms why Gonzales was approving the program rather than Comey subbing for Ashcroft? Did the telecoms know that Comey, not Gonzales, was acting AG? Did Bush simply say Gonzales had approved the program because Ashcroft was sick?
- This report says nothing about the pre-9/11 activities Nacchio has alleged.