Gonzales' sick-bed appeal

His hospital visit to John Ashcroft shows why the administration shouldn't get the benefit of the doubt on wiretapping.

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IT'S A RIVETING SCENE that could have come from a more civil-liberties-friendly version of the television show "24."

As the U.S. attorney general recovers from surgery, a White House lawyer heads to his hospital room to get the AG's signature on a form authorizing continued electronic surveillance of Americans suspected of terrorist ties. But the president's lawyer is foiled by the acting attorney general, who makes it to his boss' bedside first. In this scenario, it's not a ticking time bomb but an illegal invasion of privacy that's defused.

That stranger-than-fiction story was related this week to the Senate Judiciary Committee by former Deputy Atty. Gen. James B. Comey.

On March 10, 2004, Comey was running the Justice Department during Atty. Gen. John Ashcroft's convalescence from gallbladder surgery. After refusing on legal grounds to sign a directive extending the Terrorist Surveillance Program, Comey learned that President Bush's counsel and chief of staff were on their way to Ashcroft's hospital room to try an end run. Comey told senators that he "raced to the hospital and was waiting with a "pretty bad-off" Ashcroft when the White House team arrived.

Ashcroft declined to sign anything, despite a plea from then-presidential counsel Alberto R. Gonzales. Later, after Ashcroft and Comey suggested that they might resign over the issue, Bush agreed to unspecified changes in the program.

Gonzales' role in this drama brings together the Bush administration's biggest personnel problem — on Thursday, two senators proposed a vote of "no confidence" in the attorney general — and one of its most controversial policies. It also serves as a reminder that, long before he moved from the White House to the Justice Department, Gonzales was a serial enabler of legal shortcuts in the war on terror.

The timing of Comey's revelations couldn't be worse for Bush. The administration is seeking changes — some of them reasonable — in the Foreign Intelligence Surveillance Act, the 1978 law that requires a court order for electronic eavesdropping on U.S. citizens.

But skeptical members of Congress recall that, for five years, the administration flouted that very law by eavesdropping on the international phone calls and e-mails of Americans without court approval.

The administration says that the FISA court is now overseeing the Terrorist Surveillance Program, though it hasn't provided details. But earlier this month, even as he was asking for changes in FISA, Bush's director of national intelligence suggested to a Senate committee that the president had the constitutional power to engage in surveillance on his own "in a crisis."
Bush is likelier to obtain the FISA changes he is seeking if the attorney general standing at his side isn't the man who tried to coax a hospital-bed signature from an ailing John Ashcroft.