

# IS THIS WHY CONGRESS FOLDED ON FISA?!?!?

There's a DOJ IG report focusing on Alberto Gonzales tomorrow—but it's not the one we've all been anxiously anticipating (the one on the US Attorney firings). Rather, this one arose (I believe) out of the clear evidence that Gonzales discussed classified details about the warrantless wiretap program in front of John Ashcroft's wife, who was sitting in his ICU hospital room on March 10, 2004 when Gonzales and Andy Card stormed into the room to try to get Ashcroft to sign off on the warrantless wiretap program. From James Comey's testimony, it appeared that Gonzales may well have divulged details of this program to someone not authorized to hear them, and from that DOJ's Inspector General investigated whether Gonzales had broken the law when he did so.

But Gonzales' blabbing in front of Mrs. Ashcroft aren't the details from the DOJ IG report that got leaked to the WaPo—by all appearances, by Gonzales' attorney George Terwilliger. Instead, the WaPo focuses on the new revelation that, after January 2005, Gonzales was wandering around DC with notes from the meeting between the Administration and the Gang of Eight that took place on March 10, 2004.

Former attorney general Alberto R. Gonzales improperly handled classified information about some of the government's most sensitive national security programs, but authorities will not recommend that he face criminal sanctions, according to officials familiar with an investigative report to be released today.

[snip]

**At issue are notes that Gonzales took during a March 2004 meeting between President Bush and congressional leaders**

**in the White House Situation Room**, as a program that allowed authorities to secretly monitor communications for evidence of terrorist plots was set to expire.

When Gonzales, then White House counsel, moved to become the Justice Department's top official in early 2005, he failed to secure the notes in a sensitive compartmentalized facility, the inspector general has concluded.

**Gonzales kept the notes in a safe in his office and at times took them to and from work in a briefcase** – practices that violated protocols for the handling of classified materials, according to people familiar with the report.

In a memo to the inspector general, Gonzales's advisers characterized the episode as an unintentional mistake and a technical violation of the rules. [my emphasis]

Recall that at that meeting—held after James Comey told the Administration there was no legal basis for the warrantless wiretap program so he couldn't reapprove it—the Administration asked Congressional leaders whether or not they could pass emergency legislation to legalize the illegal program. The Gang of Eight said no. However, a majority of the members of Congress at the meeting approved going forward with the program in spite of Comey's concerns about it (Jello Jay, Jane Harman, Nancy Pelosi, Tom Daschle, Pat Roberts, Porter Goss, Denny Hastert, and Bill Frist attended the meeting; of the Democrats, Harman has never denied approving of the program).

Mr. Gonzales said that he and Andrew H. Card Jr., then White House chief of staff, had tried to obtain Mr. Ashcroft's approval as a last resort, after the lawmakers rejected emergency legislation but recommended that the

program should continue despite the Justice Department's opposition.

[snip]

Senator John D. Rockefeller IV, who attended the 2004 meeting as the top Democrat on the Senate Intelligence Committee, called Mr. Gonzales's account "untruthful." Mr. Rockefeller said he believed Mr. Gonzales was deliberately misleading Congress about the showdown over the N.S.A. program inside the Bush administration.

[snip]

Other lawmakers who were not at the hearing but who attended the meeting on March 10, 2004 at the White House, also challenged Mr. Gonzales's account. Mr. Rockefeller and Representative Jane Harman of California, who in 2004 was the top Democrat on the House Intelligence Committee, insisted that there was only one N.S.A. program, making Mr. Gonzales's assertions inaccurate.

"The program had different parts, but there was only one program," Ms. Harman said, adding that Mr. Gonzales was "selectively declassifying information to defend his own conduct," which she called improper.

But another member of the Gang of Eight – the Republican and Democratic leaders of the Senate and House and of the two Intelligence Committees – supported Mr. Gonzales's version. Speaking on condition of anonymity, he confirmed the attorney general's testimony that the group reached a "consensus" that the disputed intelligence activity should continue and that passing emergency legislation would risk revealing secrets.

Speaker Nancy Pelosi of California, who attended the 2004 White House meeting as House Democratic minority leader, said through a spokesman that she did not dispute that the majority of those present supported continuing the intelligence activity. But Ms. Pelosi said she dissented and supported Mr. Comey's objections at the meeting, said the spokesman, Brendan Daly.

In other words, this was the meeting at which at least five members of Congress—at least one Democrat—agreed that the Administration should continue illegally wiretapping American citizens even after DOJ's own lawyers warned against doing so. There are disputes about what went on in that meeting. And Alberto Gonzales, sometime after he became Attorney General in 2005, repeatedly took his notes of that meeting out of his safe at DOJ and wandered around DC with them in his briefcase. No word where he went with that briefcase or whom he spoke to.

I have long maintained that that meeting—at which a bunch of members of Congress became complicit in the Administration's illegal wiretapping program—was the big reason why Congress rallied to give the Administration precisely what it wanted in a reformed FISA bill. And now we learn—in an article that appears to be transparently designed to preemptively get news of Gonzales' improper treatment of those notes out in the open, in which the only quoted source is Gonzales' own attorney—that Alberto Gonzales repeatedly took proof of his version of what went down in that meeting out of DOJ.

It sure does raise questions about what he did with those notes, doesn't it?

Update: If there's any doubt that this story is a preemptive leak from Gonzales' camp, here's the AP story, which doesn't even go to the trouble of calling Fine for his no comment.

The story reveals that Bush asked Gonzales to take these notes.

Gonzales took the notes of the meeting at Bush's request,

And that he was warned against storing the notes in that particular safe—to which Terwilliger responded that there was no evidence he willfully ignored that advice.

He apparently was advised that his office safe was not proper storage for the notes or other highly classified material, the memo shows. However, there's no proof that Gonzales intentionally defied that guidance, the memo states, arguing he acted "without conscious disregard" for the rules.

Apparently he just, um, forgot.

Most stunning, though, is Terwilliger's legally false claim that Comey was intruding on a high level executive conversation when he showed at the hospital room.

The memo also takes a shot at Comey, who in Senate testimony last year described the hospital visit as an attempt by Gonzales and then-White House Chief of Staff Andy Card "to take advantage of a very sick man."

In the memo, Terwilliger calls such criticism "demonstrably hyper-inflated rhetoric without basis in fact." He says during the hospital visit Comey was "seeking to interpose himself between the president and a high-level official communication to his attorney general on a vital matter of national security."

As Ashcroft himself pointed out in the hospital, Comey was the AG at this point, not Ashcroft.

You think it's any indication of how much danger

Gonzales is in that Terwilliger is being this aggressive in responding?