

GONZO SINGS! JUSTICE IN THE DEPARTMENT AT LAST?



It has been clear for a long time that Gonzales had serious criminal exposure for his acts during his service in the Bush Administration, which is why immediately after departure from the DOJ AGAG lawyered up by hiring criminal-defense lawyer George Terwilliger. Probably one of the reasons Gonzales announced his resignation within a week of the initiation of an Inspector General's investigation into his conduct.

That IG report described how Gonzales' improperly, and illegally, possessed, handled and transported Top Secret information; i.e. the two most important, secret, and arguably illegal, programs in the history of the Bush Administration, the illegal wiretap program and—almost certainly—the torture program.

In most circumstances when the DOJ gets a fish like this on the hook, the first thing you would expect would be for them to work him for incriminating information on other malfeasance he is aware of and to entice him into a cooperations agreement to help bring others to justice. And this is just what it looks like is happening. Murray Waas is just out with a major article in The Atlantic:

According to people familiar with statements recently made by Gonzales to federal investigators, Gonzales is now saying that George Bush personally directed him to make that hospital visit.

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Gonzales has also told Justice Department investigators that President Bush played a more central and active

role than was previously known in devising a strategy to have Congress enable the continuation of the surveillance program when questions about its legality were raised by the Justice Department, as well as devising other ways to circumvent the Justice Department's legal concerns about the program, according to people who have read Gonzales's interviews with investigators.

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In describing Bush as having pressed him to engage in some of the more controversial actions regarding the warrantless surveillance program, Gonzales and his legal team are apparently attempting to lessen his own legal jeopardy. The Justice Department's inspector general (IG) is investigating whether Gonzales lied to Congress when he was questioned under oath about the surveillance program. And the Justice Department's Office of Professional Responsibility (OPR) is separately investigating whether Gonzales and other Justice Department attorneys acted within the law in authorizing and overseeing the surveillance program. Neither the IG nor OPR can bring criminal charges, but if, during the course of their own investigations, they believe they have uncovered evidence of a possible crime, they can seek to make a criminal referral to those who can.

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And what began as investigations narrowly focused on Gonzales's conduct could easily morph into broader investigations leading into the White House, and possibly leading to the appointment of a special prosecutor.

Man, that all sounds great. But the suspects that Gonzales could hand up are current and former Bush Administration officials, all the

way up to Bush, Cheney and other senior officials. Who in George Bush's and Michael Mukasey's DOJ is going to have the moral and ethical fortitude to do their duty in this regard? What provisions will be made to avoid the obvious conflicts of interest inherent in this situation? Who will do the right thing and uphold the rule of law? And who will insure that the situation is not allowed to be played, again, like a drum by the Bushies and their cagey attorneys so that they all skate?

Glad you asked, because that is *already* a prime concern. Again, from Wass and The Atlantic:

Dan Richman, a former federal prosecutor in Manhattan and professor at Columbia Law School, told me that Gonzales appears to be attempting to walk the thin line of taking himself out of harm's way while at the same time protecting the president, a strategy that very well could work: "I think he is serving his own purposes and the White House's purposes," Richman says.

According to Richman, by invoking Bush's name and authority, Gonzales and his legal team are making it more difficult for investigators to seek a criminal investigation of his actions, or for other investigators to later bring criminal charges against him: "The clearer it is that Gonzales did what he did at the behest of the president of the United States, the safer that he [Gonzales] is legally," says Richman. At the same time, by saying that he is advising the president, Gonzales also makes it easier for those at the White House to claim executive privilege if they do indeed become embroiled in the probe.

Moreover, according to one senior Justice Department official, Gonzales, his legal team, and the White House also know that Justice's IG and OPR are

unlikely to press senior White House officials, let alone the president, to answer their questions.

And, therein you have the \$64 billion conundrum. You have Alberto Gonzales working to protect both himself and the rest of the Bush brigade, and they are negotiating with Bush's Department of Justice, led by the new AGAG and consigliere, Michael Mukasey. This is not, in terms of the best interests of the American people, the Constitution and the rule of law, exactly an arm's length transaction. And, quite frankly, that is a glaring understatement.

So, how do the forces of truth, justice and ethics move the matter towards an honest consideration that actually might portend accountability for the malfeasance so prima facially apparent?

One scenario feared by the White House is that the IG or OPR could send a public report to Congress concluding that Gonzales or some other official may have committed a crime. At a minimum, that would make the conduct of Gonzales, or of any other official deemed to be under suspicion, the subject of a criminal investigation.

If the report also raised unanswered questions about possible misconduct by other senior administration officials, or even the president, that could lead to the appointment of a special prosecutor. Some consider this unlikely; Attorney General Mike Mukasey has said that he is not an advocate of special prosecutors, and his critics in Congress have said that Mukasey tends to use his position for the political benefit of the White House. But in the hands of congressional Democrats, a public report accusing Gonzales and other administration officials of misconduct could make it difficult for Mukasey to

resist their calls for the appointment of a special prosecutor.

Inside the White House, this is what is called the "nightmare scenario." White House Counsel Fred Fielding, who served in the Nixon White House during Watergate and as a White House counsel during the Reagan administration, has told others in the White House that although he does not consider this a likelihood, it should not be ruled out, and Bush and his staff should be ready for such a contingency.

Fred Fielding doesn't consider accountability "a likelihood". How quaint. I wonder if the odds might improve substantially if citizens far and wide, say for instance all the readers of this and the other key blogs in the blogosphere, were to put direct and heavy pressure on their congressional Representatives and Senators to give Fred fielding and the Bushies their "nightmare scenario" they so richly deserve. And guess what? They are all going to be home in your districts begging for votes and support for an election set to go in five weeks. If there was ever a time they were hungry and amenable to influence, now is the time. Lock em down; make them promise to bring accountability!

There is one other paragraph in Murray's article of particular note that should be related here:

A congressional source familiar with the meeting said in an interview that he believed it was significant that Bush personally directed Gonzales to write notes as to what occurred at the meeting. Ordinarily members of Congress don't take notes at briefings concerning such highly classified issues. Very likely, Gonzales's notes are the only ones that exist. [The Justice Department is investigating whether former Attorney General Alberto Gonzales created a set of fictitious notes so that President

Bush would have a rationale for reauthorizing his warrantless eavesdropping program. For that story [click here.](#)]

Only time will tell whether or not Congress can be supplied with the electoral fear to induce backbone formation necessary for accountability. It is up to use to see that all the senior officials in the Bush Administration are place in the dock of a criminal trial court.

One thing is for sure, for Alberto Gonzales, the man that George Bush appallingly appointed to lead the nation's most critical cabinet agency, the Department of Justice, it will be the first real experience he has ever had in a trial courtroom.