

# RATIONALIZING THE HOSPITAL VISIT

As promised, I wanted to say a few more things about Murray Waas' articles from yesterday. Murray reports two new details that weren't in the IG report on Gonzales' notes or in Barton Gellman's reporting on the events of March 10, 2004. His first story adds to Gellman's earlier report that George Bush was the one who called John Ashcroft's hospital room to alert Mrs. Ashcroft that Gonzales and Andy Card were coming; Murray notes that Gonzales "recently" told federal investigators that Bush was the one who sent him to the hospital. Murray's second story reveals that DOJ investigators are trying to determine whether, on Bush's orders, Gonzales created a false record of the March 10, 2004 briefing of the Gang of Eight to justify Bush's reauthorization of the warrantless wiretap program after Comey and Ashcroft refused to reauthorize it.

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, according to sources close to the investigation.

[snip]

In reauthorizing the surveillance program over the objections of his own Justice Department, President Bush later claimed to have relied on notes made by Gonzales about a meeting that had taken place the day before (March 10), in which Gonzales and Vice President Cheney had met with eight congressional leaders—also known as the “Gang of Eight”—who receive briefings about covert intelligence programs. According to Gonzales's notes, the congressional

leaders had said in the meeting that they wanted the surveillance program to continue despite the attorney general's refusal to certify that it was legal.

But four of the congressional leaders present at the meeting say that's not true; they never encouraged the White House to sidestep the objections of the attorney general and continue the program without his approval.

I have no doubt that Gonzales fictionalized his notes so as to invent a rationale for reauthorizing the program in spite of Comey's disapproval. But I think something else is going on, as well—a desire to invent a rationale for Gonzales and Card's March 10 hospital visit itself.

#### **What Gonzales Told the Senate**

Consider, for example, how Gonzales responded to questions about the hospital visit during his July 24, 2007 testimony. One of his goals was to explain away his earlier claim that there had been no significant disagreement about the warrantless wiretap program (keep in mind, Gonzales is probably pretending that Bush only admitted the wiretapping within the US, but not the data mining that they used to target who would be tapped).

SPECTER: First of all, Mr. Attorney General, what credibility is left for you when you say there's no disagreement and you're party to going to the hospital to see Attorney General Ashcroft under sedation to try to get him to approve the program?

GONZALES: The disagreement that occurred, and the reason for the visit to the hospital, Senator, was about other intelligence activities. It was not about the terrorist surveillance program that the president announced to the American people.

Now, I would like the opportunity..

SPECTER: Mr. Attorney General, do you expect us to believe that?

But when Specter pressures him on that issue, Gonzales pivots to introduce the Gang of Eight briefing, claiming that's the context in which we have to understand the hospital confrontation.

GONZALES: Well, **may I have the opportunity to talk about another very important meeting in connection with the hospital visit that puts it into context?**

It was an emergency meeting in the White House Situation Room that afternoon. It involved senior members of the administration and the bipartisan leadership of the Congress, both House and Senate, as well as the bipartisan leadership of the House and Senate Intel Committees, the gang of eight. [my emphasis]

It was only **after** claiming that the Gang of Eight meeting was the necessary context for the hospital confrontation that Gonzales stated that the entire purpose of the meeting was to inform Congress that Comey refused to approve the program.

The purpose of that meeting was for the White House to advise the Congress that Mr. Comey had advised us that he could not approve the continuation of vitally important intelligence activities despite the repeated approvals during the past two years of the same activities.

The exchange between Specter and Gonzales moves away from the Gang of Eight meeting after this statement. But, as if on cue, Orrin Hatch then

offers Gonzales the opportunity to expand on his earlier comments.

HATCH: You may not have had a full opportunity to explain what happened the day of your hospital visit to Attorney General Ashcroft. So if you would, please finish your description of those events so we can all understand just what happened there.

GONZALES: The meeting that I was referring to occurred on the afternoon of March 10th, just hours before Andy Card and I went to the hospital.

GONZALES: And the purpose of that meeting was to advise the gang of eight, the leadership of the Congress, that Mr. Comey had informed us that he would not approve the continuation of a very important intelligence activity despite the fact the department had repeatedly approved those activities over a period of over two years.

Note how Gonzales' answer almost exactly repeats his earlier answer to Specter, as if it was a rehearsed talking point? From that talking point, Gonzales makes the allegedly perjurious claim that there was consensus among the Gang of Eight that the program should continue even though Comey did not agree.

We informed the leadership that Mr. Comey felt the president did not have the authority to authorize these activities, and we were there asking for help, to ask for emergency legislation.

HATCH: Was Mr. Comey there during those two years?

GONZALES: He was not there during the entire time, no, sir.

HATCH: How much of that time?

GONZALES: I can't recall now, Senator,

when Jim Comey became the deputy attorney general.

**The consensus in the room from the congressional leadership is that we should continue the activities, at least for now, despite the objections of Mr. Comey.**

There was also consensus that it would be very, very difficult to obtain legislation without compromising this program, but that we should look for a way ahead.

**It is for this reason that within a matter of hours Andy Card and I went to the hospital.** We felt it important that the attorney general knew about the views and the recommendations of the congressional leadership, that as a former member of Congress and as someone who had authorized these activities for over two years that it might be important for him to hear this information.

**That was the reason that Mr. Card and I went to the hospital.**

[snip]

And so I just wanted to put in context for this committee and the American people why Mr. Card and I went. **It's because we had an emergency meeting in the White House Situation Room, where the congressional leadership had told us, "Continue going forward with this very important intelligence activity."**

[my emphasis]

Then later, in a response to DiFi, Gonzales completes the rationalization, stating he just felt like John Ashcroft needed to know how Congress felt.

GONZALES: But, again, we went there because we thought it important for him

to know where the congressional leadership was on this. We didn't know whether or not he knew of Mr. Comey's position and, if he did know, whether or not he agreed with it.

### **How Gonzales' Lies Relate to His Logic**

So Gonzales' talking points consist of the following:

1. The purpose of the Gang of Eight meeting was to inform the leaders of Congress that Comey had refused to reauthorize a program that Ashcroft had authorized for two years.
2. The purpose of the Gang of Eight meeting was also to see if Congress could pass emergency legislation to authorize the program.
3. Congress had instructed the Administration to go forward with the program regardless of Comey's objection.
4. The purpose of the hospital visit was to inform Ashcroft that Congress had supported continuing the program.

To understand why I think the notes were intended to support this larger story, considering which parts of Gonzales story are alleged to be lies—and therefore presumably supported by any fictionalized notes he took.

Item 1, that the purpose of the meeting was to inform Congress that Comey refused to reauthorize the program, seems to be partly true. The WaPo reported that Congress was not

informed of the legal underpinnings of the program.

The legal underpinnings of the program were never discussed, they said, but the congressional group raised no objections and agreed that the program should go forward, they said.

But Nancy Pelosi suggested that the Gang of Eight was informed of Comey's objections, at least at some level.

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.

Item 2 appears to be true in its entirety, at least according to Barton Gellman.

In fact, Cheney asked the lawmakers a question that came close to answering itself. Could the House and Senate amend surveillance laws without raising suspicions that a new program had been launched? The obvious reply became a new rationale for keeping Congress out.

There seems to be some dispute over item 3: Pelosi suggests a "majority" supported the program going forward. Yet Jello Jay and Tom Daschle claim they were never asked whether the program should move forward.

Daschle said in a statement that he could not recall the meeting and is "quite certain that at no time did we encourage the AG or anyone else to take such actions." He added: "This appears

to be another attempt to rewrite history."

Rockefeller said that lawmakers were never asked to give the program their approval and that administration officials' infrequent briefings about it were short and involved "virtually no questions."

The truth may lie somewhere in between—that Pelosi raised objections to the program, but that the Gang of Eight was never formally asked whether or not the program should move forward.

Item 4, of course, is total bullshit, the one completely unsubstantiated story here. Had the Administration simply wanted to inform DOJ about Congress' purported approval for the program to continue, they would have gone to Comey. Instead, they went to Ashcroft—because they were trying to bypass Comey altogether. In other words, the two underlying alleged lies—that they had explained Comey's objections and that Congress had approved it moving forward anyway—provided an excuse for the bigger lie. Gonzales had to invent the "consensus" that the program should go forward to rationalize Bush's authorization of the program. But he also had to invent it to provide some kind of explanation why he and Card would visit Ashcroft at the hospital.

### **Two More Reasons Why This Is about the Hospital Visit**

There are two more reasons to believe that, if Gonzales created fictionalized notes, he did so at least partly to explain the hospital meeting.

First, the timing. Gonzales didn't create these notes right after he and Bush authorized the program to move forward on Thursday March 11. Rather, Gonzales claims he created the notes over the weekend, after Bush learned on Friday March 12 that he might have mass resignations at DOJ on his hands. Not only didn't Gonzales write the notes until there was a much greater risk of



exposure, but he wrote them after it became clear that the Administration had a problem with Comey in particular.

Also, the relationship between the notes and the hospital confrontation seems to explain George Terwilliger's bizarre attack on Comey in his memo addressing the DOJ's findings related to Gonzales' improper treatment of classified information.

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."

Terwilliger's attack doesn't make sense on several levels. Obviously, he knows well that Comey was not interposing himself in the chain of command—Ashcroft wasn't in the chain of command on March 10; Comey was the acting Attorney General. Moreover, this memo was not supposed to have anything to do with the underlying investigation of whether Gonzales lied about the Gang of Eight meeting. Yet for some reason, Terwilliger focused on Comey in his response to it. And in doing so, Terwilliger closely repeats Gonzales' larger fiction—that the hospital meeting was nothing ominous, but rather just the Administration's efforts to keep Ashcroft informed.

For some reason, Bush and Gonzales appear to be as worried about having to explain the hospital confrontation itself as they are at having to explain why Bush reauthorized the program after

DOJ had told him it was not legally sound. I don't entirely understand why that's true—aside from perhaps a fear of being exposed. But it sure seems that if Gonzales did fabricate notes of the Gang of Eight meeting, he did so as much to hide the reasons for the hospital visit as to rationalize Bush's reauthorization of the program itself.

Update: Terwilliger attack link fixed per W0.  
And grammar fixed per skdadl.