

IS CHENEY RELYING ON GONZALES' RETROACTIVE NOTES?

Glenn picked up on Cheney's recent reiteration of a claim that Alberto Gonzales has made (and may be in trouble for lying to Congress for): that he briefed Congressional leaders on the illegal warrantless wiretap program and they all agreed it should go forward without Congressional approval. Glenn calls on those Congressional leaders who were at the briefing to respond to Cheney's claims. But I'm more interested in the way Cheney's willingness to repeat Gonzales' story puts the notes Gonzales made to (presumably) back his side of the story back in play.

As I emailed Glenn and Barton Gellman explains to Rachel Maddow (at 6:30 and following), the meeting in question is the March 10, 2004 meeting at which Cheney tried to go around Jim Comey so as to get legal cover for their warrantless wiretap program.

Gellman: He's talking about a meeting on March 10 of 2004. He's never previously talked about it in public. And he's backing up the official story which is that eight members of Congress—four Republicans and four Democrats—came in and were told "The Justice Department thinks this program is illegal, should we go ahead with it anyway, despite there's no law in Congress authorizing it?" And that four Republicans and four Democrats said "Yes, go right ahead. Do the illegal thing." Now, I talked to four people who were in that meeting and not all of them were Democrats and all of them dispute that that's the way it happened.

Maddow: Isn't there some way that could be checked? Doesn't somebody write down

what happens at those things?

Gellman: Yeah, and it was Top Secret code word classified and remains so.

First, let me correct Gellman. Cheney's making a somewhat different claim—one apparently disproven by the facts. He's claiming he briefed all nine Congressional leaders: that is, the Gang of Eight, plus Tom DeLay.

CHENEY: We brought in the chairman and the ranking member, House and Senate, and briefed them a number of times up until — this was — be from late '01 up until '04 when there was additional controversy concerning the program.

At that point, we brought in what I describe as the big nine — not only the intel people but also the speaker, the majority and minority leaders of the House and Senate, and brought them into the situation room in the basement of the White House.

I presided over the meeting. We briefed them on the program, and what we'd achieved, and how it worked, and asked them, "Should we continue the program?" They were unanimous, Republican and Democrat alike. All agreed — absolutely essential to continue the program.

I then said, "Do we need to come to the Congress and get additional legislative authorization to continue what we're doing?" They said, "Absolutely not. Don't do it, because it will reveal to the enemy how it is we're reading their mail." [my emphasis]

This, by itself, discredits Cheney's story, since Bush's own Director of National Intelligence has explained that Tom DeLay—as House Majority Leader, the ninth Congressional leader—received his briefing on March 11.

Perhaps Cheney is conflating his briefing on March 10—at which not all participants supported his illegal power grab—with his briefing on March 11—at which Tom DeLay presumably sanctioned whatever law-breaking his fellow Texans wanted to do. He presents this as one meeting, but it was two.

I'd like to return to Gellman's second point: that there is a transcript of the meeting that would reveal whose version of the story is correct. I've actually seen conflicting version of that—whether or not the Bush Administration made any record of these briefings (they didn't make any record, for example, of some of their torture briefings, though we do know briefing documents were handed out at the meeting).

But there is one known written "record" of that meeting—one I'm increasingly convinced was tailored to support just the story that Gonzales and Cheney are telling.

In one of the several DOJ Inspector's General investigations into Alberto Gonzales' conduct, we learned that, on Bush's instructions, Gonzales made notes of this meeting.

Gonzales told the OIG that President Bush directed him to memorialize the March 10, 2004, meeting.

And, significantly, Gonzales claims he drafted the notes "a few days" after March 10.

Gonzales stated that he drafted notes about the meeting in a spiral notebook in his White House Counsel's Office within a few days of the meeting, probably on the weekend immediately following the meeting. Gonzales stated that he wrote the notes in a single sitting except for one line, which he told us he wrote within the next day.

This would mean Gonzales drafted the notes only after after Jim Comey and Robert Mueller had

already told Bush on March 12 they—and a number of other DOJ lawyers—were going to resign in protest that Bush had reauthorized the program over their objections. In other words, Bush appears to have instructed Gonzales to memorialize the events of March 10 only after he realized they might be in trouble for it.

There are several more details that make me believe this document was crafted to support a false narrative of what happened on March 10. Gonzales explained to DOJ's IG that he took the notes to memorialize Congressional reactions—which is precisely the issue that is being contested.

Gonzales said that his intent in drafting the notes was to record the reactions of the congressional leaders during the meeting, as opposed to recording any operational details about the program that were discussed.

And Gonzales treated the notes as his personal security blanket, taking them with him after he left the White House and storing them in his potentially unlocked briefcase somewhere at his house. He took them home rather than storing them in a safe available at DOJ because he did not feel "comfortable" leaving them at DOJ (where, presumably, they might be accessible to others).

We also asked Gonzales why on that first evening he did not leave the notes in the Justice Command Center, a facility available to him for storage of TS/SCI materials. Gonzales responded that he did not recall thinking about it, and that he might not have "felt comfortable" leaving the notes there at that time.

[snip]

Gonzales said his decision to take the notes with him when he left the White House was "instinctive," and that he

wanted to “protect” the notes. He also stated that his decision to take the notes was in part based on the fact that he was remaining with the federal government and would continue to be involved with the NSA surveillance program as Attorney General.

This sure makes it sound like, so long as Gonzales was going to be involved in the illegal wiretap program, he intended to keep those notes in his personal possession.

Finally, we know that Gonzales retrieved the notes in response to Jim Comey’s testimony revealing some of Gonzales’ actions on March 10.

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And that he then used those notes to prepare for his July 24 testimony—the testimony at which he first publicly alleged that Congressional leaders supported the continuation of the program in spite of DOJ concerns about its legality.

Gonzales told us he also used the notes in connection with his preparation to testify before a congressional committee in July 2007. According to Steven Bradbury, Principal Deputy Assistant Attorney General for the Office of Legal Counsel, Gonzales produced the notes to Bradbury and other Department officials on July 19, 2007, as they helped prepare Gonzales for his appearance before the Senate Judiciary Committee on July 24,

2007.

In other words, Gonzales took the notes after it became clear he might get in trouble for his actions; he treated them as personal CYA rather than official record; and his testimony based on the notes alleged that Congressional leaders assented to the decision to continue the program.

And now Cheney is spouting the same line.

This may end up being a he said-she said, with Gonzales' retroactive CYA notes being pitted against the memories of others who attended the meeting. But with Cheney repeating this same line as part of his effort to whitewash the Bush Administration's illegal program, I'm guessing those notes may one day be public (or, at least, reviewed in an inquiry into this program). With Gellman's representation that at least one Republican disputes the Cheney-Gonzales version, though, we may well demonstrate that Gonzales' retroactive version doesn't match the memories of those at the meeting.