

ALBERTO GONZALES AND INTERNET DATA MINING

I was going to leave this speculation well enough alone. But George W Bush decided to interrupt his dog painting to defend Obama's surveillance dragnet.

Bush also defended the surveillance program, which began during his administration after 9/11, saying the programs guarantee civil liberties are protected.

"I put the program in place to protect the country and one of the certainties is civil liberties were guaranteed," Bush said.

So here goes.

In his book, Jack Goldsmith describes Alberto Gonzales siding against David Addington in a debate just once, only to have George Bush override the then White House Counsel.

Addington's hard-line nonaccommodation stance always prevailed when the lawyers met to discuss legal policy issues in Alberto Gonzales' office. During these meetings, Gonzales himself would sit quietly in his wing chair, occasionally asking questions but mostly listening as the querulous Addington did battle with whomever was seeking to "go soft." It was Gonzales' responsibility to determine what to advise the president after the lawyers had kicked the legal policy matters around. But I only knew him to disagree with Addington once, **on an issue I cannot discuss**, and on that issue the president overruled Gonzales and sided with the Addington position. [my emphasis]

The issue Goldsmith could not discuss could be torture or prisoner transfers or something entirely unknown, but the data mining at the heart of the hospital confrontation is clearly one candidate.

There's no overt evidence Gonzales tried to do the right thing on the illegal surveillance program. After all, even after Bush agreed to put the program right on March 12, 2004, Gonzales still objected to Goldsmith and Jim Comey's first advice on the program. After Goldsmith laid out his initial advice on March 15, Gonzales wrote a memo saying,

Your memorandum appears to have been based on a misunderstanding of the President's expectations regarding the conduct of the Department of Justice. While the President was, and remains, interested in any thoughts the Department of Justice may have on alternative ways to achieve effectively the goals of the activities authorized by the Presidential Authorization of March 11, 2004, the President has addressed definitively for the Executive Branch in the Presidential Authorization the interpretation of the law.

This led Comey to write up his resignation letter on March 16. "[A]lthough I believe this has been one of [DOJ's] finest hours, we have been unable to right that wrong." Three days later, Bush modified his March 11 Authorization, directing NSA to stop collecting Internet metadata within a week.

Of course, three months later, the Administration resumed collection of Internet metadata using the FISC PR/TT order. That was within days of Goldsmith's departure, though he had announced his departure a month earlier and Comey, obviously, stuck around for over a year longer.

So still no evidence the Internet data mining

was the issue on which Gonzales tried to stand up to Addington.

But let's jump ahead to the circumstances of Alberto Gonzales' resignation in August 2007. At the time, his sudden and confusing resignation was attributed to the multiple scandals embroiling him – chiefly the US Attorney firing scandal, but also Gonzales' Clapper-like lies about the illegal wiretap program before the Senate a month earlier. But for some reason, Gonzales did not benefit from the kind of sinecure every other former Bush official – even James Comey, who went to Lockheed – enjoyed upon departure, which you would have thought he'd get after lying to protect the President.

Then, a year after Gonzales' departure, we learned that in the weeks before he resigned, White House Counsel Fred Fielding had narced him out for storing a bunch of Top Secret CYA documents in a briefcase in his closet. The White House discovered Gonzales had these documents when in July 2007 they learned he had notes from the Congressional briefing that preceded the hospital confrontation.

Bush appears to have told Gonzales to write these documents after Comey threatened to quit. After Gonzales wrote up the notes, he went back to add in one more line.

Gonzales told the OIG that President Bush directed him to memorialize the March 10, 2004, meeting. 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.** 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. In the notes, Gonzales listed who was present, followed by a general summary of the briefing given to the congressional leaders by intelligence agency officials, and the congressional leaders' responses to the briefing. However, Gonzales's summary also referenced TS/SCI operational aspects of the program by his use of specific terms associated with the program. [my emphasis]

And then when Gonzales got his promotion to Attorney General, he brought that CYA document (along with copies of final and draft OLC memos from that and the torture program, which would have shown detailed discussions about what was and was not legal) with him.

Fielding narked out Gonzales in the same period Bush was commuting Scooter Libby's sentence, so it's clear the Bush Administration had no squeamishness about mishandling, or even leaking, top secret information. Which made the whole thing, up to and including Gonzales' forced resignation and struggles finding a job afterwards, seem like retaliation for insufficient loyalty.

And now we know that 11 days after Gonzales' replacement Michael Mukasey started, the Administration proposed resuming some of the Internet metadata program that had been curtailed in March 2004. Though there was an odd delay in it getting to Mukasey: the attached procedures were signed by Robert Gates on October 19, it was dated November 20, sent through the Acting DAG the next day, and seemingly stamped received at DOJ a week after that. Mukasey finally signed the procedures (it's not clear when he approved the program) several months later, on January 3, 2008.

That doesn't mean these events – Gonzales' exposure for mishandling classified documents and subsequent ouster and the re-expansion of

the program that cause so much trouble back in March 2004 (which, because he signed the Presidential Authorization, had exposed Gonzales personally) – are related.

But I do find it interesting that one of the first things they did after they got Gonzales out of the way was to resume some of the practices ended in 2004.

One more thing: the person within DOJ who authorized the Inspector General to investigate the boss? Ken Wainstein.

The matter was referred to the OIG by Kenneth Wainstein, former Assistant Attorney General for the National Security Division, on August 10, 2007. The White House Counsel's Office had initially notified the Department of Justice (Department) about the matter, and Wainstein, after consultation with other senior Department officials, referred the matter to the OIG for investigation.

The guy who proposed resuming the two-degrees data mining of Internet metadata?

Ken Wainstein. Both, in his position as Assistant Attorney General for National Security Division.

And then in 2008 he went onto become Homeland Security Czar, working inside the Bush White House (the same move Lisa Monaco just took).

When Bush emphasized the continuity of the current program with what he did, remember that for the first two years of Obama's term, he continued not just the dragnet collection of US person phone metadata and the bulk collection based on foreign targets, but he continued the Internet metadata mining of ties with US persons. Precisely the part of the program that caused so much trouble in 2004.