

ACTIVITIES AND YOO

Anonymous Liberal is trying to sort through something I've been looking at for a while: to what degree was Ashcroft fully read into the warrantless wiretap program? I think there's a two-part answer to this question. As I'll show below, I think BushCo had Ashcroft approve the multiple aspects of "the program" in isolation from each other, giving him an incomplete picture of how the parts worked together. Furthermore, as they did with Congress, they made sure that no one who could offer any real advice on the program every got read into it, forcing Ashcroft to make his determinations from a position of ignorance. And all of this likely fits into a larger process, whereby Cheney and Addington worked directly with John Yoo to obtain the substantive approvals from DOJ, thereby bypassing Ashcroft on the larger issues. All of which might explain why Ashcroft raised the issue after Gonzales and Card tried to manhandle him while he was recuperating the ICU ward.

Contrary to what Spencer Ackerman claims, this is not "the first time" the allegation that Ashcroft wasn't adequately read into this program has been made. Aside from Whitehouse's questioning of Gonzales in his last SJC appearance and the correction Gonzales submitted after that appearance, a number of reports have laid out the Cheney-Addington approach to shredding the Constitution more generally.

Cheney and Addington's MO

Take this article from December 2005, laying out how John Yoo bypassed normal review processes when writing opinions that justified these expansive policies (including the warrantless wiretapping program):

Within weeks [of 9/11], Mr. Yoo had begun to establish himself as a critical player in the Bush administration's legal response to the

terrorist threat, and an influential advocate for the expansive claims of presidential authority that have been a hallmark of that response.

While a mere deputy assistant attorney general in the legal counsel office, Mr. Yoo was a primary author of a series of legal opinions on the fight against terrorism, including one that said the Geneva Conventions did not apply and at least two others that countenanced the use of highly coercive interrogation techniques on terror suspects. **Recently, current and former officials said he also wrote a still-secret 2002 memorandum that gave legal backing to the administration's secret program to eavesdrop on the international communications of Americans and others inside the United States without federal warrants.**

A genial, soft-spoken man with what friends say is a fiercely competitive streak, Mr. Yoo built particularly strong working relationships with several key legal officials in the White House and the Pentagon. **Some current and former government officials contend that those relationships were in fact so close that Mr. Yoo was able to operate with a degree of autonomy that rankled senior Justice Department officials, including John Ashcroft, then the attorney general.**

[snip]

Mr. Yoo's belief in the wide inherent powers of the president as commander in chief was strongly shared by one of the most influential legal voices in the administration's policy debates on terrorism, David S. Addington, then the counsel to Vice President Dick Cheney. Documents and interviews suggest that those views have been part of

the legal arguments underpinning not only coercive interrogation and the prosecution of terrorism suspects before military tribunals but also the eavesdropping program.

Some current and former officials said the urgency of events after Sept. 11 and the close ties that Mr. Yoo developed with Mr. Addington (who is now Mr. Cheney's chief of staff), Mr. Gonzales, Mr. Flanigan and the general counsel of the Defense Department, William J. Haynes II, had sometimes led him to bypass the elaborate clearance process to which opinions from the legal counsel office were normally subjected.

[snip]

"They were not getting enough critical feedback from within O.L.C., or from within the Justice Department, or from other agencies," one former official said of Mr. Yoo's opinions. **Officials said senior aides to Attorney General Ashcroft also complained that they were not adequately informed about some of the Mr. Yoo's frequent discussions with the White House.**

Mr. Yoo said he had always duly notified Justice Department officials or other agencies about the opinions he provided except when "I was told by people very high in the government not to for classification reasons."

So, we know Yoo wrote the opinion justifying the warrantless wiretapping program. We know Yoo sometimes bypassed normal clearance processes. And we know he did this when Dick Cheney "people very high in the government" told him not to share the opinions with others "for classification reasons." This method has been mapped in a number of articles since then, including the WaPo's Angler series (though that

article specifically maps what happened with military commissions). So we've known for some time that Cheney and Addington worked directly with John Yoo in an effort to bypass normal vetting processes and John Ashcroft himself.