

THE CONTENTS OF ALBERTO GONZALES' SAFE BRIEFCASE

Here's what Alberto Gonzales thought was so sensitive, he illegally kept it in an unsecure safe and brought it back and forth to work in his briefcase.

The classified materials that are the subject of this investigation consist of notes that Gonzales drafted to memorialize a classified briefing of congressional leaders about the NSA surveillance program when Gonzales was the White House Counsel; **draft and final** Office of Legal Counsel opinions about both the NSA surveillance program and a detainee interrogation program; correspondence from congressional leaders to the Director of Central Intelligence; and other memoranda describing legal and operational aspects of the two classified programs.

[snip]

Gonzales told the OIG that President Bush directed him to memorialize the March 10, 2004, meeting. [ed. Note, contrary to one of the press reports, it does not appear that Bush was at the meeting—though Cheney was.] 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. The notes also included the SCI codeword used to identify the program. [my emphasis]

[snip]

The two envelopes contained a total of 17 separate documents. The envelope containing documents related to the NSA surveillance program bore the handwritten markings, "TOP SECRET – EYES ONLY – ARG" followed by an abbreviation for the SCI codeword for the program. The envelope containing the documents relating to a detainee interrogation program bore classification markings related to that program. Each document inside the envelopes had a cover sheet and header-footer markings indicating the document was TS/SCI. The documents related to the NSA surveillance program discussed in Gonzales's handwritten notes as well as to a detainee interrogation program. The documents included Office of Legal Counsel opinions that discuss the legal bases for various aspects of the compartmented programs, memoranda summarizing the operational details of the programs, **correspondence from congressional Intelligence Committee leaders to Director of Central Intelligence Hayden about one of the TS/SCI programs**, a "talking points" memorandum about one of

the compartmented programs, and a **draft legal declaration of a high-ranking intelligence agency official relating to the NSA surveillance program.** [my emphasis]

In general, it seems that this little treasure trove of documents comprised ones that concern programs so sensitive that Gonzales side-stepped all normal document management systems, because he was worried the SCI storage at DOJ **would not be secure enough.** He chose to keep these documents in a manner that made them more accessible to enemies of the state, because he didn't trust highly-vetted employees within the DOJ.

And what were the two programs so sensitive he needed to keep documents out of the hands of those who had access to the SCIF down the hall from his office in DOJ? The illegal wiretap program and—almost certainly—the torture program. Alberto Gonzales compromised the security of these programs because he didn't want any of the highly vetted people with access to an SCIF safe to see evidence of the documentation behind two illegal programs.

The March 10 Document as a Record of Congressional Complicity

Looking more specifically, it appears my original guess was correct—that Gonzales' notes from the March 10 meeting with the Gang of Eight was designed to record their complicity in the Administration's illegal wiretapping. We know from the report that when several Democrats disputed Gonzales account of the March 10 briefing, he started sharing the notes with the White House Counsel's office—so he in fact did use those documents to protect himself, at least (remember, he was risk of perjury charges for his statements about the wiretapping program before Congress).

And I am mighty curious about that one line that he—with his now-legendary memory

failures—remembers writing on a separate occasion from the rest of the notes. Did he go back to implicate another member of Congress? How can Gonzales remember the circumstances surrounding that one sentence and virtually nothing else from his tenure in the Administration?

Are These Documents Among Those Congress Hasn't Seen Yet?

Then there are the OLC opinions—opinions pertaining to both the warrantless wiretap program and the torture program. Does this batch of documents include some of the opinions—such as the one seemingly abolishing the 4th Amendment—that the Bush Administration hasn't shown Congress yet? That's the kind of OLC opinion I could imagine Gonzales hoarding.

Also note that he was keeping draft and final opinions. That's interesting for two reasons. First, because the torture of Abu Zubaydah started before the August 1 OLC memo was finalized, which opens up the possibility that Gonzales has kept some drafts as if they gave legal cover. But it also raises the possibility that the variances between draft and final opinions reveal the true drafting process.

Finally, note the reference to the "draft legal declaration of a high-ranking intelligence agency official relating to the NSA surveillance program." No mention of which official it was or even which agency, only that it was a draft. Particularly given the Administration's refusal to actually show NSA the opinions that justified this program, I wonder what's in that draft declaration.

Congressional Notes to Hayden

And finally, we return to Hayden, with notes from Congress that had to have been written after Hayden became DCI in 2006. But since the IG report doesn't identify whether the correspondence pertains to the illegal wiretap program or the torture program, and since Hayden was Director of NSA during the period when the

warrantless wiretapping program was really lacking in legal justification (according to Comey), it could relate to either program.

But why was Gonzales hoarding this correspondence, and how did he get a hold of it? Was it more CYA, tracking the statements of members of Congress so as to insulate himself and (presumably) Bush?

Perhaps not surprisingly for an IG report that basically lets Gonzales off for breaking the law, the report doesn't seem all that interested in the content of the documents, aside from noting they include TS/SCI information. After all, you'd think it would go to the issue of intent that Gonzales chose to hoard documents pertaining exclusively to two programs that lawyers within DOJ and CIA had determined to be illegal. But apparently, Gonzales was never asked about that.