

# THE MARCH 10, 2004 HOSPITAL CONFRONTATION, A TIMELINE

I've had this timeline mostly done sitting in my drafts. Given Murray Waas' two latest articles, I thought I'd put it out.

One reason I'm posting this today: if Gonzales' claim that he probably wrote his notes during the weekend immediately after the Hospital confrontation is correct, it suggests he didn't take his notes until **after** Bush learned Comey and Mueller might resign. Also, he wrote his notes of the Gang of Eight meeting after Mueller had already first saved his notes on the confrontation.

This timeline is a combination of this timeline of Robert Mueller's notes (which is, IMVHO, one of my better timelines, so click through and read it for more analysis), this timeline of the OLC opinions pertaining to the program from the time period, details from Comey's testimony before SJC, as well as other known events. I will add details from Barton Gellman's book in the next week.

**October 3, 2003:** Jack Goldsmith confirmed as head of OLC.

**Mid-November 2003:** Goldsmith writes draft memo for Ashcroft: Review of Legality of the [NSA] Program

**December 11, 2003:** Comey confirmed Deputy AG.

**Monday, March 1, 2004:** Mueller meets with Comey in his office.

**Thursday, March 3 or 4:** Comey and Ashcroft decide not to reauthorize the warrantless wiretap program.

**Thursday, March 4:** Ashcroft hospitalized with

pancreatitis. Comey becomes Acting AG.

## Tuesday, March 9

**10:00AM:** Mueller meets with top FBI officials—several with counter-terrorism focus, Fedarcyk, Pistole, Caproni (and perhaps Wainstein and Gebhardt).

**12:00PM:** Meeting at Card's office, VP, CIA Deputy Director John McLaughlin, NSA Director Michael Hayden, Robert Mueller, Alberto Gonzales and others present. (Note, Mueller does not record that Comey was at this meeting.)

**4:00PM: Meeting** at Card's office with Mueller, Comey, attorneys from OLC, VP, Card, Gonzales, Hayden and others. (Note, this meeting is basically an extension of the earlier meeting, this time with the lawyers from DOJ present.)

**Time unknown:** Comey refuses to reauthorize the program.

## Wednesday, March 10

**Time unknown:** Briefing for the Gang of Eight (Denny Hastert, Bill Frist, Porter Goss, Pat Roberts, Nancy Pelosi, Tom Daschle, Jane Harman, and Jello Jay). According to Gonzales, at the briefing "the lawmakers rejected emergency legislation but recommended that the program should continue despite the Justice Department's opposition." Jello Jay disputes Gonzales' account; it is unclear how he and Jane Harman responded.. Nancy Pelosi opposed the continuation of the program.

**7:15PM?** (Comey says around 8:00, but before the call to Mueller at 7:20): Ashcroft Chief of Staff David Ayres calls Comey as he is on his way home. He says Mrs. Ashcroft has received a call—possibly from the President—and "as a result of that call Mr. Card and Mr.

Gonzales were on their way to the hospital to see Mr. Ashcroft."

**7:18PM?:** Comey directs his driver to take him to George Washington Hospital. Comey calls his Chief of Staff to tell him to "get as many of my people as possible to the hospital immediately."

**7:20PM:** Comey calls Mueller at he is at a restaurant with wife and daughter. Comey is at AG's hospital with Goldsmith and Philbin. Tells Mueller that Card and Gonzales are on the way to hospital to see the AG but that AG is in no condition to see them, much less make decision to authorize continuation of the program. Asks Mueller to come to AG's hospital to witness condition of AG. [Note, Mueller says Comey calls from hospital, Comey says he calls from his vehicle.]

**7:25PM?:** Comey reaches hospital. Tries to orient Ashcroft.

**7:30PM?:** Goldsmith and Patrick Philbin arrive at hospital.

**7:35PM?:** Gonzales and Card arrive at hospital. Gonzales explains they are there to get Ashcroft's approval on the warrantless wiretap program; he has an envelope with the authorization in it. Ashcroft raises himself off his pillow and explains the problems with the program. Then, Ashcroft reinforces that Comey, not Ashcroft, was the Attorney General at that moment. Ashcroft also complains that the White House-ordered compartmentalization had prevented Ashcroft from consulting with experts on the legality of the program.

**7:40PM?:** Mueller and Comey speak. Comey asks Mueller to meet with Ashcroft to serve witness to his condition. Comey also asks him to inform the FBI detail that no one is to be permitted to see

Ashcroft, other than family, without Mueller's consent. Mueller passes on these instructions to the security detail. [Comey says this second conversation took place by phone before Card and Gonzales arrived, with a third conversation in person after they left, Mueller says the order to the FBI detail took place in person after Card and Gonzales came and left.]

**8:10PM?:** Mueller **describes** his visit with Ashcroft: Saw AG. Janet Ashcroft in the room. AG in chair, is feeble, barely articulate, clearly stressed.

**8:20PM?:** Mueller **departs** the hospital. Comey gets an "urgent" call in the command center from Card. Card orders Comey to come to the White House immediately. Comey says he will not meet with him without a witness present. Card plays dumb, "What conduct? We were just there to wish him well." Comey responds, "After what I just witnessed, I will not meet with you without a witness. And I intend that witness to be the solicitor general of the United States."... "Until I can connect with Mr. Olson, I'm not going to meet with you." Card asked if Comey was refusing to come to the White House, to which Comey responded, "No, sir, I'm not. I'll be there. I need to go back to the Department of Justice first." Comey calls Ted Olson at a dinner party and Olson and the other top leaders of the department meet at DOJ.

**8:30PM?:** Comey returns to DOJ to meet with Olson and other top leaders of DOJ (including Associate Attorney General Robert McCallum, Goldsmith, Philbin, and other staffers).

**11:00PM:** Comey and Olson go to DOJ together.

**11:20PM?:** Comey and Card have a more

civil discussion. There is some discussion about DOJ resignations.

**11:30PM?:** Gonzales and Olson join Comey and Card.

#### **Thursday, March 11**

**1:37-1:40AM** (7:37-7:40AM Madrid time): Almost simultaneously, bombs go off on four different trains in Madrid.

**Time unknown:** Goldsmith sends Gonzales a one-page letter "seeking clarification regarding advice that OLC had been requested to provide concerning classified foreign intelligence activities."

**Time unknown:** Tom DeLay briefed on warrantless wiretap program.

**Time unknown:** Gonzales signs reauthorization of warrantless wiretap program in lieu of Comey signing it.

**12:00PM:** Mueller meets with Card in Card's office at his request. [6 paragraphs are redacted]

**12:40PM:** Mueller stops by Gonzales' office after meeting with Card.

**1:15PM:** Mueller meets with Comey, et al., at Comey's office.

**Time unknown:** Comey prepares a letter of resignation dated March 12, the following day. David Ayres asks Comey to hold off on resigning until John Ashcroft was well enough to resign at the same time. Comey agrees to hold off resigning until Monday morning, with the understanding that Friday March 12 would be his last day.

**2:50PM:** Gonzales calls Mueller.

#### **Friday, March 12**

**9:00AM?:** Comey and Mueller brief Bush and Cheney on counter-terrorism efforts.

**9:30AM:** Bush speaks with Comey, alone, in his office.

**9:45AM:** Bush calls Mueller into the side office off the Oval Office after the conclusion of the morning briefing of him. [7 paragraphs redacted] Bush tells Mueller to do what DOJ thinks is needed to put the program on a legal footing.

**10:45AM:** Mueller meets with Comey and others at DOJ.

**Time unknown:** Goldsmith sends a one-page memorandum to Comey providing legal advice concerning certain decisions relating to classified foreign intelligence activities.

**4:06PM:** Mueller first saves his notes about the confrontation in a file titled, "H:RSM\_DocsMiscellaneousProgram.wpd March 12, 2004 (4:06PM)."

**4:50PM:** Mueller calls Gonzales.

**5:00PM:** Mueller meets with Comey and others.

**6:45PM:** Mueller calls Gonzales.

### **Saturday March 13**

**Time unknown:** "Probably on the weekend immediately following" the March 10 showdown, on Bush's direction, Alberto Gonzales records responses from Gang of Eight members to briefing on warrantless wiretap program.

**9:55AM:** Mueller calls General Hayden.

### **Sunday March 14**

**Time unknown:** OLC provides a briefing titled "Presentation: Where DOJ is on

[REDACTED CLASSIFIED CODENAME]." It consists of a two-page presentation, and (presumably) five-page handouts of bullet points related to the presentation. These materials "were prepared for purposes of providing legal assistance and advice to other Executive Branch officials concerning DOJ's views about foreign intelligence activities."3:00PM: Mueller meets at DOJ with Comey, et al.

**Time unknown:** "Within the next day," Gonzales adds a single line to his notes on the Gang of Eight briefing.

**6:20PM:** Mueller calls Comey.

**6:45PM:** Mueller calls Gonzales.

#### **Monday March 15**

**8:50AM:** Mueller discusses issues with Tenet after morning briefing in Sit Room.

**9:30AM:** Mueller calls Comey.

**Time unknown:** Goldsmith prepares a three-page memorandum (of which there are four copies) for Comey. The memo includes an electronic file. The memo "outlines preliminary OLC views with respect to certain legal issues concerning classified foreign intelligence activities. The memorandum specifically notes that OLC's views have 'not yet reached final conclusions' and that OLC is 'not yet prepared to issue a final opinion.'"

#### **Tuesday March 16**

**Time unknown:** OLC 63 [the same as FBI 4] is a two-page memorandum (and related electronic file) dated March 16, 2004, from the Acting Attorney General to the Counsel to the President, copied to the

President's Chief of Staff, containing legal recommendations regarding classified foreign intelligence activities.

**1:45 PM:** Gonzales calls Mueller.

**6:40 PM:** Comey calls Mueller.

**8:00 PM:** Gonzales calls Mueller at home.

**8:30PM:** Comey calls Mueller.

**Wednesday March 17, 11:05AM:** Comey calls Mueller.

**March 22, 2004. from Goldsmith to Comey:** OLC 114 consists of two copies of a three-page memorandum dated March 22, 2004, to the Deputy Attorney General from the Assistant Attorney General for OLC, which confirms oral advice provided by OLC on a particular matter concerning classified foreign intelligence activities.

**Tuesday, March 24, 1200:** Mueller meets with Cheney, at his request, in his Office. (Note, at almost precisely the same time, Scooter Libby was perjuring himself before the Grand Jury.)

**March 30, 2004, briefing from Comey to Ashcroft:** OLC 65 is a five-page document (plus an electronic file), dated March 30, 2004, entitled "Briefing for AG." This outline for a briefing to be provided to the Attorney General by the Deputy Attorney General prepared by Department staff includes a summary of preliminary OLC conclusions concerning the TSP and other intelligence activities; a discussion of issues for decision concerning these intelligence activities; a description of advice provided by OLC to other Executive Branch agencies and components concerning these activities; and an identification of legal issues requiring further discussion.

**May 6, 2004:** Jack Goldsmith drafts OLC 54, a memo for John Ashcroft, which consists of six copies, some with handwritten comments and



marginalia, of a 108-page memorandum, dated May 6, 2004, from the Assistant Attorney General for OLC to the Attorney General, as well as four electronic files, one with highlighting, prepared in response to a request from the Attorney General that OLC perform a legal review of classified foreign intelligence activities.

**June 17, 2004:** Jack Goldsmith announces his resignation.