Cheney Shielded Bush From Crisis

By Barton Gellman
Washington Post Staff Writer
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This is the second of two stories adapted from "Angler: The Cheney Vice Presidency," to be published Tuesday by Penguin Press. Original source notes are denoted in [brackets] throughout.

Vice President Cheney convened a meeting in the Situation Room at 3 p.m. on Wednesday, March 10, 2004, with just one day left before the warrantless domestic surveillance program was set to expire. Around him were National Security Agency Director Michael V. Hayden, White House counsel Alberto R. Gonzales and the Gang of Eight -- the four ranking members of the House and the Senate, and the chairmen and vice chairmen of the intelligence committees.

Even now, three months into a legal rebellion at the Justice Department, President Bush was nowhere in the picture [1]. He was stumping in the battleground state of Ohio, talking up the economy.

With a nod from Cheney, Hayden walked through the program's vital mission [2]. Gonzales said top lawyers at the NSA and Justice had green-lighted the program from the beginning. Now Attorney General John D. Ashcroft was in the hospital, and James B. Comey, Ashcroft's deputy, refused to certify that the surveillance was legal.

That was misleading at best. Cheney and Gonzales knew that Comey spoke for Ashcroft as well. They also knew, but chose not to mention, that Jack L. Goldsmith, chief of the Office of Legal Counsel at Justice, had been warning of major legal problems for months.

More than three years later, Gonzales would testify that there was "consensus in the room" from the lawmakers, "who said, 'Despite the recommendation of the deputy attorney general, go forward with these very important intelligence activities.' [3]" By this account -- disputed by participants from both parties -- four Democrats and four Republicans counseled Cheney to press on with a program that Justice called illegal.

In fact, Cheney asked the lawmakers a question that came close to answering itself. Could the House and Senate amend surveillance laws without raising suspicions that a new program had been launched? The obvious reply became a new rationale for keeping Congress out.

The Bush administration had no interest in changing the law, according to U.S. District Judge Royce C. Lamberth, chief of the federal government's special surveillance court when the warrantless eavesdropping began.

"We could have gone to Congress, hat in hand, the judicial branch and the executive together, and gotten
any statutory change we wanted in those days, I felt like," he said in an interview. "But they wanted to
demonstrate that the president's power was supreme."

* * *

Late that Wednesday afternoon, Bush returned from Cleveland. In early evening, the phone rang at the
makehift FBI command center at George Washington University Medical Center, where Ashcroft remained
in intensive care. According to two officials who saw the FBI logs, the president was on the line [4]. Bush
told the ailing Cabinet chief to expect a visit from Gonzales and White House Chief of Staff Andrew H.
Card Jr.

A Senate hearing in 2007 described some of what happened next. But much of the story remained untold
[5].

Alerted by Ashcroft's chief of staff, Comey, Goldsmith and FBI Director Robert S. Mueller III raced toward
the hospital, abandoning double-parked vehicles and running up a stairwell as fast as their legs could pump.

Comey reached Ashcroft's bedside first. Goldsmith and his colleague Patrick F. Philbin were close behind.
Now came Card and Gonzales, holding an envelope. If Comey would not sign the papers, maybe Ashcroft
would.

The showdown with the vice president the day before had been excruciating, the pressure "so great it could
crush you like a grape," Comey said [6]. This was worse.

Was Comey going to sit there and watch a barely conscious man make his mark? On an order that he
believed, and knew Ashcroft believed, to be unlawful?

Unexpectedly, Ashcroft roused himself. Previous accounts have said he backed his deputy. He did far more
than that. Ashcroft told the president's men he never should have certified the program in the first place [7].

"You drew the circle so tight I couldn't get the advice that I needed," Ashcroft said, according to Comey. He
knew things now, the attorney general said, that he should have been told before. Spent, he sank back in his
bed.

Mueller arrived just after Card and Gonzales departed. He shared a private moment with Ashcroft, bending
over to hear the man's voice.

"Bob, I'm struggling," Ashcroft said.

"In every man's life there comes a time when the good Lord tests him," Mueller replied. "You have passed
your test tonight."

* * *

Goldsmith was out the door. He telephoned Ed Whelan, his deputy, who was at home bathing his children.

"You've got to get into the office now," Goldsmith said. "Please draft a resignation letter for me. I can't tell
you why."
All hell was breaking loose at Justice. Lawyers streamed back from the suburbs, converging on the fourth-floor conference room. Most of them were not cleared to hear the details, but a decision began to coalesce: If Comey quit, none of them were staying.

At the FBI, they called Mueller "Bobby Three Sticks," playfully tweaking the Roman numerals in his fancy Philadelphia name. Late that evening, word began to spread. It wasn't only Comey. Bobby Three Sticks was getting ready to turn in his badge.

Justice had filled its top ranks with political loyalists. They hoped to see Bush reelected. Had anyone explained to the president what was at stake?

Whelan pulled out his BlackBerry. He fired off a message to White House staff secretary Brett Kavanaugh, a friend whose position gave him direct access to Bush.

"I knew zilch about what the matter was, but I did know that lots of senior DOJ folks were on the verge of resigning," Whelan said in an e-mail, declining to discuss the subject further. "I thought it important to make sure that the president was aware of that situation so that he could factor it in as he saw fit."

Kavanaugh had no more idea than Whelan, but he passed word to Card.

The timing was opportune. Just about then, around 11 p.m., Comey responded to an angry summons from the president's chief of staff. Whatever Card was planning to say, he had calmed down suddenly.

What was all this he heard, Card asked, about quitting?

"I don't think people should try to get their way by threatening resignations," Comey replied. "If they find themselves in a position where they're not comfortable continuing, then they should resign."

"He obviously got the gist of what I was saying," Comey recalled.

It was close to midnight when Comey got home, long past the president's bedtime. Bush had yet to learn that his government was coming apart.

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Trouble was spreading. The FBI's general counsel, Valerie E. Caproni, and her CIA counterpart, Scott W. Mueller, told colleagues they would leave if the president reauthorized the program over Justice Department objections.

Assistant Attorney General Christopher A. Wray, who ran Justice's criminal division, stopped Comey in a hallway.

"Look, I don't know what's going on, but before you guys all pull the rip cords, please give me a heads-up so I can jump with you," he said.

James A. Baker, the counselor for intelligence, thought hard about jumping, too. Early on, he got wind of the warrantless eavesdropping and forced the White House to disclose it to Lamberth. Later, Baker told Lamberth's successor that he could not vouch that the Bush administration was honoring its promise to keep the chief surveillance judge fully informed.
"I was determined to stay there and fight for what I thought was right," Baker said in an interview, declining to say what the fight was about, on or off the record. He had obligations, he said, to the lawyers who worked for him in the Office of Intelligence Policy and Review. "If it had come to this, if people were willing to go to the mat and tolerate the attorney general and deputy attorney general resigning, that's pretty serious. God knows what else they would have come up with."

* * *

At the White House on Thursday morning, the president moved in a bubble so tight that hardly any air was getting in. It was March 11, decision day. If Bush reauthorized the program, he would have no signature from the attorney general. By now that was nowhere near the president's biggest problem.

Many of the people Bush trusted most were out of the picture. Karl Rove was not cleared for the program. Neither was Dan Bartlett or Karen Hughes.

National security adviser Condoleezza Rice had the clearance, but Cheney did not invite her to the meetings that mattered.

Bush gave a speech to evangelicals that morning and left the White House for an after-lunch fundraiser in New York. In whatever time he took to weigh his options, the president had only Cheney, Card and Gonzales to advise him.

The vice president knew exactly where he stood, unswerving in his commitment to keep the program just as it was. Gonzales later told two confidants that he had broken with David S. Addington, Cheney's lawyer, urging Bush to find common ground with Justice. Card, too, told colleagues that he had urged restraint.

"My job was to communicate with the president about the peripheral vision, not just the tunnel vision of the moment," he said, deflecting questions about the details.

Did peripheral vision mean a broader view of the consequences?

"Yes," Card replied. "It was like -- I don't want to limit it to this particular matter, but that's part of a chief of staff's job. A lot of people who work in the White House have tunnel vision, and not an awful lot of people have peripheral vision. And I think the chief of staff is one of the people who should have peripheral vision."

Card didn't really need the corner of his eye to see a disaster at hand. Even so, Bush didn't know what his subordinates knew that Thursday morning.

Cheney, Addington, Card and Gonzales had plenty of data. Card had heard the news directly from Comey the night before. On Thursday, the FBI director delivered much the same warning.

For Cheney, it didn't matter much whether one official or 10 or 20 took a walk. Maybe they were bluffing, maybe not. The principle was the same: Do what has to be done.

"The president of the United States is the chief law enforcement officer -- that was the Cheney view," said Bartlett, Bush's counselor, who was later briefed into the program and the events of the day. "You can't let resignations deter you if you're doing what's right."
Cheney and Addington "were ready to go to the mat," he said, and the vice president's position boiled down to this: "That's why we're leaders, that's why we're here. Take the political hit. You've got to do it."

* * *

Addington opened the code-word-classified file on his computer. He had a presidential directive to rewrite.

It has been widely reported that Bush executed the March 11 order with a blank space over the attorney general's signature line. That is not correct. For reasons both symbolic and practical, the vice president's lawyer could not tolerate an empty spot where a mutinous subordinate should have signed. Addington typed a substitute signature line: "Alberto R. Gonzales."

What Addington wrote for Bush that day was more transcendent than that. He drew up new language in which the president relied on his own authority to certify the program as lawful. Bush expressly overrode the Justice Department and any act of Congress or judicial decision that purported to constrain his power as commander in chief. Only Richard M. Nixon, in an interview after leaving the White House in disgrace, claimed authority so nearly unlimited.

The specter of future prosecutions hung over the program, now that Justice had ruled it illegal.

"Pardon was in the air," said one of the lawyers involved.

It was possible to construct a case, he said, in which those who planned and carried out the program were engaged in a criminal conspiracy. That would be tendentious, this lawyer believed, but with a change of government it could not be ruled out.

"I'm sure when we leave office we're all going to be hauled up before congressional committees and grand juries," Addington told one colleague in disgust.

* * *


Comey got word a couple of hours later. He sat down and typed a letter.

"Over the last two weeks . . . I and the Department of Justice have been asked to be part of something that is fundamentally wrong," he wrote. "As we have struggled over these last days to do the right thing, I have never been prouder of the Department of Justice or of the Attorney General. Sadly, although I believe this has been one of the institution's finest hours, we have been unable to right that wrong. . . . Therefore, with a heavy heart and undiminished love of my country and my Department, I resign as Deputy Attorney General of the United States, effective immediately."

David Ayres, Ashcroft's chief of staff, pleaded with Comey to wait a few days. He was certain that Ashcroft would want to quit alongside him. Comey agreed to hold his letter through the weekend.

Bush was not a man to second-guess himself. By Friday morning, he would need new facts to save him. Somebody, finally, would have to tell him something.
It was Rice, largely in the dark herself, who threw the president a lifeline. She had a few minutes alone with him, shortly before 7:30 a.m., on the day after he renewed the surveillance order. She told Bush about Comey's agitated approach, the day before, to Frances Fragos Townsend, the deputy national security adviser for combating terrorism. This was no way to keep a secret.

"It was a compartmented issue," Rice recalled in an interview [19]. "Obviously, there was a security issue here and not just a legal one, because you didn't want this sort of bumping around."

Rice made a suggestion.

Comey is "a reasonable guy," she told the president. "You really need to make sure that you are hearing these folks out."

An hour later, Comey and Robert Mueller arrived at the White House for the regular 8:30 terrorism briefing. They had a lot to cover: Bombs aboard commuter trains in Madrid had killed 191 people.

Both men told aides that this would be their last day in government. There would be no door-slamming, but the president had made his choice and they had made theirs.

Bush stood as the meeting ended, crossing behind Cheney's chair. Comey moved in the opposite direction, on his way out. He had nearly reached the grandfather clock at the door, two witnesses said, when the president said, "Jim, can I talk to you for a minute? [20]"

Bush nodded toward the private dining room a few steps from his desk, the one he shared with Cheney once a week. This time the vice president was not invited.

"I'll wait for you downstairs," Mueller told Comey.

* * *

By now, around 9:15 Friday morning, Bush knew enough to be nervous about what the acting attorney general might do. That did not mean he planned to reverse himself. One high-ranking adviser said there was still an "optimism that maybe you can finesse your way through this."

Afterward, in conversations with aides, the two men described the meeting in similar terms.

"You don't look well," Bush began.

Oldest trick in the book. Establish dominance, put the other guy off his game [21].

"Well, I feel okay."

"I'm worried about you. You look burdened."

"I am, Mr. President. I feel like there's a tremendous burden on me."

"Let me lift that burden from your shoulders," Bush said. "Let me be the one who makes the decision here."

"Mr. President, I would love to be able to do that."
Bush's tone grew crisp.

"I decide what the law is for the executive branch," he said.

"That's absolutely true, sir, you do. But I decide what the Department of Justice can certify to and can't certify to, and despite my absolute best efforts, I simply cannot in the circumstances."

Comey had majored in religion, William and Mary Class of 1982. He might have made a connection with Bush if he had quoted a verse from Scripture. The line that came to him belonged to a 16th-century theologian who defied an emperor.

"As Martin Luther said, 'Here I stand; I can do no other,' " Comey said. "I've got to tell you, Mr. President, that's where I am."

Now Bush said something that floored Comey.

"I just wish that you weren't raising this at the last minute."

_The last minute! He didn't know._

The president kept talking. Not the way it's supposed to work, popping up with news like this. The day before a deadline?

_Wednesday. He didn't know until Wednesday. No wonder he sent Card and Gonzales to the hospital._

"Oh, Mr. President, if you've been told that, you have been very poorly served by your advisers," Comey said. "We have been telling them for months we have a huge problem here."

"Give me six weeks," Bush asked. One more renewal.

"I can't do that," Comey said. "You do say what the law is in the executive branch, I believe that. And people's job, if they're going to stay in the executive branch, is to follow that. But I can't agree, and I'm just sorry."

_If they're going to stay._

Comey was edging toward a breach of his rule against resignation threats.

_This man just needs to know what's about to happen._

"I think you should know that Director Mueller is going to resign today," Comey said.

Bush raised his eyebrows. He shifted in his chair. He could not hide it, or did not try. He was gobsmacked.

"Thank you very much for telling me that," he said.

Comey hurried down to Mueller, who sat in the foyer outside the Situation Room. A Secret Service agent followed close behind. The president would like to see you, the agent told Mueller.
Comey pulled out his BlackBerry and sent a note to six colleagues at 9:27 a.m.

"The president just took me into his private office for a 15 minute one on one talk," he wrote [22]. "Told him he was being misled and poorly served. We had a very full and frank exchange. Don't know that either of us can see a way out. . . . Told him Mueller was about to resign. He just pulled Bob into his office."

The FBI director was no more tractable than Comey. This was a rule-of-law question, he told the president, and the answer was in the Justice Department [23]. The FBI could not participate in operations that Justice held to be in breach of criminal law. If those were his orders, he would respectfully take his leave.

And there it was, unfinessable. Bush was out of running room, all the way out. He had only just figured out that the brink was near, and now he stood upon it.

Not 24 hours earlier, the president had signed his name to an in-your-face rejection of the attorney general's ruling on the law. Now he had two bad choices. March on, with all the consequences. Or retreat.

The president stepped back from the precipice. He gave Mueller a message for Comey.

"Tell Jim to do what Justice thinks needs to be done," he said.

Seven days later, Bush amended his March 11 directive. The legal certification belonged again to the attorney general. The surveillance program stopped doing some things, and it did other things differently. Much of the operation remained in place. Not all of it.

* * *

Because Bush did not walk off the cliff, and because so much of the story was suppressed, an extraordinary moment in presidential history passed unrecognized.

"I mean, it would be damn near unprecedented for the top echelon of your Justice Department to resign over a position you've taken," Bartlett said.

There might be one precedent, he allowed. He did not want to spell it out.

"Not a good one," he said.

During the Watergate scandal, the attorney general and deputy attorney general resigned, refusing to carry out Richard Nixon's order to fire the special prosecutor. Nixon lost his top two Justice officials, and that was called the Saturday Night Massacre.

Bush had come within minutes of losing his FBI director and at least the top five layers at Justice. What would they call that? Suicide, maybe?

"You don't have to be the smartest guy to figure out that [mass resignations] would be pretty much the most devastating thing that could happen to your administration," said Mark Corallo, Ashcroft's communications director and, during Bush's first race for the White House, chief spokesman for the Republican National Committee. "The rush to hearings on the Hill, both in the House and Senate, would be unbelievable. The media frenzy that would have ensued would have been unlike anything we've ever seen. That's when you're getting into Watergate territory."
Long after departing as chief of staff, Card held fast to the proposition that whatever happened was nobody's business, and no big deal anyway [24].

"I think you're writing about something that's irrelevant," Card said. "Voyeurism."

Because?

"Nobody resigned over this," he said. It all boiled down to trash talk: "'Oh, I was gonna swing at the pitch but it was too high.'"

That seems unlikely to stand as history's verdict. In the fourth year of his presidency, a man who claimed the final word was forced by subordinates to comply with their ruling on the law. Ashcroft, Comey, Goldsmith, Philbin -- believers, one and all, in the "unitary executive branch" -- obliged the commander in chief to stand down. For the first time, a president claimed in writing that he alone could say what the law was. A rebellion, in direct response, became so potent a threat that Bush reversed himself in a day.

"This is the first time when the president of the United States really wanted something in wartime, and tried to overrule the Department of Justice, and the law held," said Goldsmith, after studying similar conflicts under Abraham Lincoln and Franklin D. Roosevelt.

In the aftermath, the White House senior staff asked questions. Was the president getting timely information and advice? Had he relinquished too much control to Cheney?

Bush, aides said, learned something he would not forget. Cheney was the nearest thing to an anti-politician in elected office. Bush could not afford to be like that. In his second term, his second chance, the president would take greater care to consult his own instincts.

"Cheney was not afraid of giving pure, kind of principled advice," Bartlett said. "He thinks from a policy standpoint, and I think he does this out of pure intentions. He thinks of the national security interest or the prerogatives of the executive. The president has other considerations he has to take into account. The political fallout of certain reactions -- he's just going to calculate different than Cheney does."

"He grew accustomed to that," Bartlett said.

Staff researcher Julie Tate contributed to this report.