

# What Are Cheney and Addington Hiding About NSA Spying on Americans?

by Edward Spannaus

Former Deputy Attorney General James Comey's Senate testimony on May 15—that the entire leadership of the Justice Department was prepared to resign over their disagreement with the White House, particularly with Dick Cheney and his lawyer David Addington—around the NSA domestic surveillance program, raises the question once again: Is the NSA spying program much bigger than has ever been admitted?

And it also adds still more evidence for the bill of impeachment against Vice President Cheney which is growing every day, and which demands urgent Congressional attention.

It has been the gnawing suspicion of many observers all along, as to the real reason that the White House, under Cheney's direction, has continuously stonewalled, and shrouded the NSA surveillance program in such secrecy. There have been hints, such as in a January 2007 PBS "Frontline" interview with former Justice Department official John Yoo, that the program involved tapping into the entire data flow of electronic communications, and then using data-mining techniques to search for suspects and targets.

Sixteen months ago, on Feb. 6, 2006, when Attorney General Alberto Gonzales was testifying before the Senate Judiciary Committee, he was asked by Sen. Charles Schumer (D-N.Y.) about reports that Comey and others had disagreed about the NSA program. Gonzales answered, "there has not been any serious disagreement about the program that the President has confirmed. There have been disagreements about other matters regarding operations which I cannot get into." When pressed by Schumer, Gonzales repeated that, "none of the reservations dealt with the program that we're talking about today. They dealt with operational capabilities that we're not talking about today." And a little later, Gonzales stated: "I'm here only testifying about what the President has confirmed. And with respect to what the President has confirmed, I do not believe that these DOJ officials that you're identifying had concerns about this program."

## Attempted Cold Coup

Now, consider Gonzales's bland denials back then, in light of the dramatic testimony presented by Comey to the Senate Judiciary Committee on May 15, in which he described the events of March 2004, when the entire top leadership of the Department of Justice (DOJ) blocked the continuation of

the White House's domestic surveillance program (whatever it was at the time), after having concluded that there was no legal basis for it.

In their desperation to continue whatever it was they were doing, Cheney and his allies in the White House attempted to carry out what can only be called a "cold coup" against the entire DOJ leadership.

Comey's testimony revealed that on March 10, 2004, while then-Attorney General John Ashcroft was critically ill, and had been in intensive care for a week after a severe attack of pancreatitis, then-White House Counsel Alberto Gonzales and Chief of Staff Andrew Card, clearly acting on behalf of Cheney and Addington, invaded Ashcroft's hospital room to attempt to get the weakened Ashcroft to sign a document re-authorizing the surveillance program. This, even though they knew that Ashcroft himself had earlier agreed that the DOJ should refuse to do so, and further, that he had designated Comey as Acting Attorney General with full powers, during his hospitalization. Furthermore, Ashcroft's wife had ordered that her husband have no visitors.

When Comey was alerted by Ashcroft's wife that Gonzales and Card were on their way to the hospital, Comey and FBI Director Robert Mueller raced to the hospital, sirens and emergency lights flashing, to get there first. Mueller even ordered the FBI agents guarding Ashcroft's room, that under no circumstances should they allow Comey to be removed from the room.

Despite his weakness and sedation, Ashcroft made it clear to Gonzales and Card that he was opposed to the continuation of the surveillance program, and then told them: "But that doesn't matter, because I'm not the Attorney General; there is the Attorney General," indicating Comey.

"I was concerned that this was an effort to do an end-run around the Acting Attorney General and to get a very sick man to approve something that the Department of Justice had already concluded—the Department as a whole—was unable to be certified as to its legality," Comey testified.

After Ashcroft's refusal to sign the re-authorization document, the White House went ahead and re-authorized the illegal program the next day, *without* DOJ approval. At this point, Comey and all the top DOJ leadership—including Ashcroft—were prepared to resign, along with FBI Director Mueller. "I couldn't stay, if the Administration was going to

engage in conduct that the Department of Justice said had no legal basis,” Comey told the Senate committee.

When Sen. Arlen Specter, the ranking Republican on the Judiciary Committee, asked Comey if he had had discussions with anyone else in the Administration, besides Gonzales and Card, who disagreed with the DOJ’s conclusions over the NSA program, this was the colloquy:

**Specter:** Well, Mr. Comey, did you have discussions with anybody else in the administration who disagreed with your conclusions?

**Comey:** Yes, sir.

**Specter:** Who else?

**Comey:** [The] Vice President.

**Specter:** Anybody else?

**Comey:** Members of his staff.

**Specter:** Who on his staff?

**Comey:** Mr. Addington disagreed with the conclusion. . . . I don’t remember any other White House officials telling me they disagreed.

Ultimately, according to Comey, President Bush agreed, after meeting privately with Comey and Mueller, *without Cheney present*, to allow them to make changes in the surveillance program which the DOJ believed put it on a better legal basis.

It was already well-known, in early 2006, that Cheney and Addington were the ones running the NSA spy program. Prior to the Feb. 6, 2006 hearing, all the Democrats on the Senate Judiciary Committee (then still the minority) had asked that Addington, “who reportedly played a leading role advocating for the program,” be summoned to testify. Two days after the hearing, senior *Washington Post* columnist David Ignatius wrote: “Gonzales mouthed the no-compromise rhetoric before the Senate Judiciary Committee Monday, but policy decisions on this issue are made in the bunker occupied by Vice President Cheney and his chief of staff David Addington.”

### ‘Bigger and Broader...’

Now, back to the February 2006 hearing. At a certain point, as reported at the time (*EIR*, Feb. 17, 2006), Sen. Dianne Feinstein (D-Calif.) raised the obvious issue: that the spying program was much bigger than the Administration wanted anyone to know. She listed the number of changes that the Congress had already made to the Foreign Intelligence Surveillance Act (FISA) to accommodate the war on terrorism, and continued:

“Now, in view of the changes that we have made, I cannot understand why you didn’t come to the committee, unless the program was much broader and you believed it would not be authorized. That’s the only reason I can figure you didn’t come to the committee, . . . that this program is much bigger and much broader than you want anyone to know.”

This question has now arisen again in light of Comey’s testimony. Peter Swire, who dealt with privacy issues in the

OMB for the Clinton Administration, writing for the Center for American Progress on May 16, said that Gonzales’s February 2006 testimony raises two possibilities: that Gonzales made serious misstatements under oath, or that Comey’s objections “applied to a different spying program.” Swire explained that, “then we would have senior Justice officials confirming that ‘other programs’ exist for domestic spying, something the Administration has never previously stated.”

The *New York Times*, in a May 17 editorial, picked up on this, noting that there are “clues” in Comey’s testimony, and Gonzales’s earlier testimony, “that Mr. Bush initially ordered broader surveillance than he and his aides have acknowledged”—and that it was this broader surveillance that Ashcroft, Comey, et al., refused to endorse, triggering the “bizarre events in Mr. Ashcroft’s hospital room.”

As to what was involved in the broader surveillance program, there are a number of questions to which the Congress should seek answers. Among these are:

- What is the relationship between the Pentagon’s “Able Danger” data-mining program, which was used in two known areas, terrorism and suspected technology transfers to China, and other areas which are still classified, and the known NSA domestic surveillance program? Investigative journalist Seymour Hersh, speaking at a forum at the Georgetown University Law Center in February 2006, said that his sources had told him that the NSA surveillance program was an outgrowth of a data-mining program targetting China in 1999, which, *EIR* has confirmed, was one of the so-called “Able Danger” programs.

- What triggered the testimony of long-time NSA employee Russell Tice, to a House Government Reform subcommittee in February 2006, that he was concerned about the legality and constitutionality of another “special access” electronic surveillance program being conducted by the NSA? Tice said that this program was different, and more far-reaching, than the warrantless wiretapping program which the *New York Times* had revealed in December 2005, but that he was forbidden to discuss the program because of its highly-classified nature.

- What really happened to the so-called Total Information Awareness (TIA) program, a massive data-mining effort developed in the Defense Advance Research Projects Agency (DARPA) under retired Adm. John Poindexter? TIA was somewhat similar to what is known about the “Able Danger” program, except that TIA was to create a permanent data-base using government and commercial records, such as bank and credit card records, telephone bills, travel records, etc. Although TIA was officially terminated in 2003, the *National Journal* reported on Feb. 23, 2006, that the program had been secretly transferred from DARPA to the NSA, with the same funding, and still using the same private defense contractors.

If and when Congress decides to find out what exactly it is that Cheney is covering up, these are some excellent places to start.