Ex-Justice Department official: Ashcroft had 'reservations' about legality of wire tapping proposal

by Dana Wilkie

WASHINGTON - While acting as White House counsel, Alberto Gonzales tried to pressure a very sick then-Attorney General John Ashcroft - hospitalized and at times not entirely lucid - to approve a warrantless wiretapping program that Ashcroft already believed had no legal basis, a former Justice Department official testified Tuesday.

James B. Comey, the No. 2 man under Ashcroft, told the Senate Judiciary Committee that the hospital visit was "improper" and that he prepared a resignation letter upon learning the next day that the program had been approved without his or Ashcroft's signatures. "I was very upset," said Comey, whose testimony comes as lawmakers examine whether the Justice Department, now under Gonzales, fired federal prosecutors such as San Diego's Carol Lam based on the political nature of cases they did or did not pursue. "I thought I just witnessed an effort to take advantage of a very sick man who did not have the powers of the attorney general."

Ashcroft and former Deputy Attorney General Comey have in the past refused to comment on the March 2004 hospital visit, which was previously reported. But in his first public comments about that night, Comey provided details that appeared to raise doubts among some senators whether Gonzales could be trusted to run the nation's chief law enforcement agency above political influence. "I would say what happened in that hospital room crystallized Mr. Gonzales' view about the rule of law - that he holds it in minimum low regard," said Sen. Chuck Schumer, D-N.Y., chairman of the committee probing Gonzales' involvement in the firings of Lam and seven other U.S. attorneys.

The Justice Department has said Lam was fired because she failed to aggressively prosecute illegal-immigration and firearms cases. Democrats question whether Lam was fired because she put former Rep. Randy "Duke" Cunningham, R-San Diego, behind bars on bribery charges.

White House spokesman Tony Snow chuckled when asked about Comey's testimony.

"The fact is, you've got somebody who has splashy testimony on Capitol Hill," Snow said. "Good for him. We're not talking about internal deliberations."

A Gonzales spokesman did not return a call or an e-mail seeking comment.

Comey's testimony came the day after the resignation announcement of Paul McNulty - the Gonzales deputy attorney general whose February congressional testimony ignited a political firestorm around the U.S. attorneys' dismissals. McNulty is the fourth and highest-ranking Justice Department official to resign since the

uproar began.

Comey's testimony - at times surprisingly candid - focused on the first weeks of March 2004, as Ashcroft's office was reviewing a domestic eavesdropping program that needed reauthorization by March 11. The program required regular reviews and signatures by the attorney general certifying its legality, but Justice officials had deep concerns about Bush's legal authority to bypass the courts to order domestic wiretaps without warrants.

On the day Ashcroft told Comey he had "reservations about (the program's) legality," Ashcroft fell ill with pancreatitits, underwent surgery and was placed in George Washington University Hospital's intensive care unit, where Ashcroft's wife had banned all visitors and phone calls.

Comey, who was acting attorney general during Ashcroft's hospitalization, relayed Ashcroft's reservations to the White House and said he would not certify the wiretap program. But while driving home that night, Comey learned that Gonzales and Bush chief of staff Andrew Card were "on their way to the hospital to see Mr. Ashcroft."

"I was concerned that, given how ill I knew the attorney general was, that there might be an effort to ask him to overrule me when he was in no condition to do that," said Comey, who immediately went to the hospital, asked FBI Director Robert Mueller to join him there and found Ashcroft "pretty bad off," requiring assistance "to orient him as to time and place."

"In walked Mr. Gonzales, carrying an envelope, and Mr. Card," Covey said. "Mr. Gonzales began to discuss why they were there - to seek his approval.

"(Ashcroft) lifted his head off the pillow and in very strong terms expressed his view of the matter - and said to them, 'But that doesn't matter, because I'm not the attorney general. There is the attorney general.' And he pointed to me.

"The two men did not acknowledge me. They turned and walked from the room."

Upon learning the next day that the wiretap program was reauthorized "without a signature from the Department of Justice attesting as to its legality," Comey said he prepared a letter of resignation.

"I didn't believe that as the chief law enforcement officer in the country I could stay when they had gone

ahead and done something that - the Justice Department had said had no legal basis," said Comey, adding that Ashcroft's chief of staff asked him to delay his resignation until "Mr. Ashcroft was well enough to resign with me."

It was unclear who authorized the wiretapping program without Justice Department approval.

But Comey said the president later met with him and Mueller privately, then gave them "direction to do what - the Justice Department believed was necessary to put this matter on a footing where we could certify to its legality."

Snow belittled Comey's characterization that Gonzales and Card may have tried to take advantage of Ashcroft's weakened condition to get the program approved.

"Trying to take advantage of a sick man?" Snow repeated. "Because he had an appendectomy and his brain didn't work?

"The fact is... this is a program that saved lives (and) that is vital for national security."

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