

Gonzales tried to 'take advantage' of sick Ashcroft

By Newsdesk
Chicago Tribune

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May 15, 2007

Posted by Frank James at 12:38 pm CDT

James Comey, the former deputy attorney general, told a riveting story at today's Senate Judiciary hearing of a March 2004 hospital-room encounter at which, in Comey's words, then White House counsel Alberto Gonzales tried to "take advantage" of a critically ill John Ashcroft to get him to certify a national security program about whose legality the Justice Department had profound doubts.

According to Comey, Gonzales and then White House chief of staff Andrew Card visited an exceedingly sickly Ashcroft to get him to override the Justice Department's concerns about the program which Comey wouldn't identify but is widely known to be the National Security Agency's controversial domestic eavesdropping project which the Bush Administration calls the Terrorism Surveillance Program.

The story of Ashcroft beating back Gonzales's attempt to get him to sign off on the program had been reported before. But this was the first time one of the main characters at the meeting had publicly talked about it, providing a wealth of details. Comey, who was acting attorney general during Ashcroft's illness, described rushing to George Washington Hospital after he learned that Gonzales and Card were headed there, and beating them to Ashcroft's room where Ashcroft's anxious wife awaited.

He recalled putting in a call to Federal Bureau of Investigation director Robert Mueller who immediately headed for the hospital himself but first ordered his agents to not allow Comey to be removed from the hospital room by anyone.

Comey told how when Gonzales and Card arrived, they walked over to Ashcroft's bed and after a brief greeting, announced why they were there which was followed by what sounds like a scene from a Hollywood film. A very weak Ashcroft, who had appeared disoriented to Comey just minutes earlier, lifted his head from the pillow and said very cogently why he refused to certify the program, a position based on discussions he had with Comey and other Justice officials before he got sick, then said they should be talking to Comey anyway since he was the acting AG. Then Ashcroft lowered his head back to the bed.

Comey remembered how the two men left the room without saying a word to him and how later he got an angry call from Card.

In short, based on what Comey described, Gonzales may be one of the few people in Washington who could successfully make his predecessor, John Ashcroft, look like a civil libertarian and liberal hero.

Here's a portion of the transcript from today's hearing with some of Comey's gripping testimony which came in response to a question by Sen. Charles Schumer (D-NY.)

The sense one gets is that there were some very serious Republican officials in Washington who were very much worried about what they saw as sinister behavior by some other very serious Republican officials. Remarkable stuff.

SEN. SCHUMER: Thank you. Okay, we're going to get right into the questioning, because Mr. Comey does not have an opening statement. As I said in my opening remarks, many have been concerned that Alberto Gonzales has made the Justice Department a mere extension of the White House, where independence takes a back seat to service to the White House, where the rule of law takes a back seat to the political needs of the president's party.

Before we get to the other issues, I want to go back to an incident from the time that Mr. Gonzales served as White House counsel. There have been media reports describing a dramatic visit by Alberto Gonzales and Chief of Staff Andrew Card to the hospital bed of John Ashcroft in March 2004, after you as acting attorney general decided not to authorize a classified program. First, can you confirm that a nighttime hospital visit took place?

MR. COMEY: Yes, I can.

SEN. SCHUMER: Okay, can you remember the date and the day?

MR. COMEY: Yes, sir, very well, it was Wednesday, March the 10th, 2004.

SEN. SCHUMER: And how do you remember that date so well?

MR. COMEY: This was a very memorable period in my life, probably the most difficult time in my entire professional life. And that night was probably the most difficult night of my professional life, so it's not something I'd forget.

SEN. SCHUMER: Okay, were you present when Alberto Gonzales visited Attorney General Ashcroft's bedside.

MR. COMEY: Yes.

SEN. SCHUMER: And am I correct that the conduct of Mr. Gonzales and Mr. Card on that evening troubled you greatly.

MR. COMEY: Yes.

SEN. SCHUMER: Okay, let me go back and take it from the top. You rushed to the hospital that evening. Why?

MR. COMEY: I'm only hesitating because I need to explain why --

SEN. SCHUMER: Please. I'll give you all the time you need.

MR. COMEY: Okay, sir, I've actually thought quite a bit over the last three years about how I would answer that question if it was ever asked, because I assumed that at some point I would have to testify about it. The one thing I'm not going to do and be very, very careful about is, and because this involved a classified program, I'm not going to get anywhere near classified information. I'm also -- am very leery of and will not reveal the content of advice I gave as a lawyer or deliberations I engaged in. I think it's very important for the Department of Justice that someone who held my position not do that.

SEN. SCHUMER: In terms of privilege.

MR. COMEY: Yes, sir.

SEN. SCHUMER: Understood.

MR. COMEY: Subject to that, I -- and I'm uncomfortable talking about this, but I'll answer the question.

SEN. SCHUMER: I understand.

MR. COMEY: I -- to understand what happened that night, I've kind of got to back up about a week.

SEN. SCHUMER: Please.

MR. COMEY: In the early part of 2004, the Department of Justice was engaged -- the Office of Legal Counsel, under my supervision, in a reevaluation both factually and legally of a particular classified program. And it was a program that was renewed on a regular basis and required signature by the attorney general certifying to its legality. And the -- and I remember the precise date; the program had to be renewed by March the 11th, which was a Thursday, of 2004. And we were engaged in a very intensive reevaluation of the matter.

And a week before that March 11th deadline, I had a private meeting with the attorney general for an hour, just the two of us, and I laid out for him what we had learned and what our analysis was in this particular matter. And at the end of that hour-long private session, he and I agreed on a course of action. And within hours he was stricken and taken very, very ill --

SEN. SCHUMER: You thought -- just assuming -- you thought something was wrong with how it was being operated or administered or overseen?

MR. COMEY: We had -- yes, we had concerns as to our ability to certify its legality, and -- which was our obligation for the program to be renewed.

The attorney general was taken that very afternoon to George Washington Hospital, where he went into intensive care and remained there for over a week. And I became the acting attorney general. And over the next week, particularly the following week, on Tuesday, we communicated to the relevant parties at the White House and elsewhere our decision that, as acting attorney general, I would not certify the program as to its legality, and explained our reasoning in detail, which I will not go into here, nor am I confirming it's any particular program. That was Tuesday that we communicated that.

The next day was Wednesday, March the 10th, the night of the hospital incident. And I was headed home at about 8:00 that evening. My security detail was driving me. And I remember exactly where

I was, on Constitution Avenue, and got a call from Attorney General Ashcroft's chief of staff telling me that he had gotten a call --

SEN. SCHUMER: What's his name?

MR. COMEY: -- David Ayres -- that he had gotten a call from Mrs. Ashcroft, from the hospital. She had banned all visitors and all phone calls. I hadn't seen him or talked to him, because he was very ill. And Mrs. Ashcroft reported that a call had come through and that as a result of that call, Mr. Card and Mr. Gonzales were on their way to the hospital to see Mr. Ashcroft.

SEN. SCHUMER: Do you have any idea who that call was from?

MR. COMEY: I have some recollection that the call was from the president himself, but I don't know that for sure. It came from the White House. And it came through, and the call was taken in the hospital.

So I hung up the phone, immediately called my chief of staff, told him to get as many of my people as possible to the hospital immediately. I hung up, called Director Mueller and -- with whom I'd been discussing this particular matter and who had been a great help to me over that week, and told him what was happening. He said, "I'll meet you at the hospital right now."

Told my security detail that I needed to get to George Washington Hospital immediately. They turned on the emergency equipment and drove very quickly to the hospital.

I got out of the car and ran up -- literally ran up the stairs with my security detail --

SEN. SCHUMER: What was your concern? You were in obviously a huge hurry.

MR. COMEY: 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.

SEN. SCHUMER: Right. Okay.

MR. COMEY: I was worried about him, frankly. And so I raced to the hospital room, entered, and Mrs. Ashcroft was standing by the hospital bed. Mr. Ashcroft was lying down in the bed. The room was darkened. And I immediately began speaking to him, trying to orient him as to time and place, and try to see if he could focus on what was happening. And it wasn't clear to me that he could.

He seemed pretty bad off, and --

SEN. SCHUMER: And at that point, it was you, Mrs. Ashcroft and the attorney general and maybe medical personnel in the room. No other Justice Department or government officials.

MR. COMEY: It was just the three of us at that point. I tried to see if I could help him get oriented. As I said, it wasn't clear that I had succeeded. I went out in the hallway, spoke to Director Mueller by phone. He was on his way. He handed the phone to the head of the security detail, and Director Mueller instructed the FBI agents present not to allow me to be removed from the room under any circumstances. And I went back in the room. I was shortly joined by the head of the Office of Legal Counsel, Assistant Attorney General Jack Goldsmith, and a senior staffer of mine who had worked on this matter, an associate deputy attorney general.

So the three of us Justice Department people went in the room. I sat down.

SEN. SCHUMER: Can you just give us the names of the two other people?

MR. COMEY: Jack Goldsmith, who was the assistant attorney general, and Patrick Philbin, who was associate deputy attorney general.

I sat down in a(n) armchair by the head of the attorney general's bed. The two other Justice Department people stood behind me. Mrs. Ashcroft stood by the bed holding her husband's arm, and we waited. And it was only a matter of minutes that the door opened and in walked Mr. Gonzales carrying an envelope and Mr. Card. They came over and stood by the bed, greeted the attorney general very briefly. And then Mr. Gonzales began to discuss why they were there, to seek his approval for a matter, and explained what the matter was, which I will not do.

And Attorney General Ashcroft then stunned me. He lifted his head off the pillow and in very strong terms expressed his view of the matter, rich in both substance and fact, which stunned me, drawn from the hourlong meeting we'd had a week earlier, and in very strong terms expressed himself, and then laid his head back down on the pillow. He seemed spent, and said to them, "But that doesn't matter, because I'm not the attorney general."

SEN. SCHUMER: But he expressed his reluctance or -- he would not sign the statement that they -- give the authorization that they had asked. Is that right?

MR. COMEY: Yes. And as he laid back down, he said, "But that doesn't matter, because I'm not the attorney general. There is the attorney general," and he pointed to me -- I was just to his left. The two men did not acknowledge me; they turned and walked from the room. And within just a few moments after that, Director Mueller arrived. I told him quickly what had happened. He had a brief -- a memorable, brief exchange with the attorney general, and then we went outside in the hallway.