the implied and now very explicit backing of the American people. It provided so much cheap credit to the market, securities that were bought and sold by many companies. AIG is in trouble because of these bad mortgages that basically originated with Fannie Mae and Freddie Mac.

My point is that the problems we are having are caused by the wrong kind of Government intervention. This is not a failure of free enterprise; this is a failure of Government solutions and the lack of Government oversight into enterprises such as Fannie Mae and Freddie Mac that were started.

Now, in a situation where we already have debt as a nation, we are borrowing excessively and our economy is slowing down. We are in a situation where we have to continue to spend money to bail out these companies because of bad Government decisions decades ago. A lot of money is being spent and a lot is being wasted by this Congress.

We have had a debate over the last 2 years about wasteful spending and earmarks. There has been a lot of talk about creating more transparency and stopping this wasteful spending. We had an ethics bill that passed with a lot of fanfare where we talked about making these earmarks more transparent, putting them in the bills themselves so that the American people could see what we are spending, and that if we were going to have a ''bridge to nowhere,'' at least the American people knew we were spending that money.

We have talked about this for the past 2 years, and even the President has recognized that so much of this earmarking has resulted in wasteful spending in transportation, and especially in the military, that he has issued an Executive order that has made it clear that when we produce a bill, such as the Defense authorization bill, and then, as an aside, we produce what we call report language, with oftentimes thousands of earmarks, politically directed spending all over the country—few that the military asked for, most they did not.

A lot of these are meritorious projects. The fact is, if we want to look up the bill itself, the text, and search for different types of spending, it is not available because it is not in the bill itself. For many years in the Senate and the Congress as a whole we have produced spending and authorization bills and then did the report language on the side with hidden earmarks that people didn't know were there. The President said in his Executive order that when we send a bill over with report language on the side, he is going to direct his agencies not to honor these earmarks unless they are meritorious, unless they agree with the mission of the agency and the purpose of the legislation. It doesn't mean these are all taken out and lost, which is what has been presented on the Senate floor today. What it means is they have scrutiny; that the administration, if it sees wasteful projects, does not feel obligated to spend the money, which is a good thing.

In this Defense authorization bill, some Senators, my Democratic colleagues, have decided they want to go around the Executive order. They want all of these earmarks to have the force of law, which means whether they are meritorious or not the administration has to honor them. The way they have done this, which sets us back years as far as earmark reform in the Senate, is they have put a little section in this bill that references all of these earmarks and in effect makes them law. What I have offered is an amendment. I asked to have one amendment on this bill. There is a tradition in the Senate that Senators are allowed to offer an amendment. I have been waiting a week to offer the amendment. It strikes that section that tries to secretly attach all of the earmarks to the actual law. It is a simple amendment of three words: ''Strike section 1002.'' It does not eliminate all of the earmarks, but it gives the administration the right they should have not to spend money on projects in this green book that are not needed by the military or to defend this country and that the military considers wasteful. We should not allow Members of the Senate to pretend to have reformed the earmark process, to pretend to have a more ethical process, when, in fact, what they have done is the most unethical thing we have ever done with earmarks: to try to make something secret actually have the force of law with a little section written here.

My amendment would change that and put it back to the way it has been for years. I ask my colleagues not to go backwards as far as earmark reform, not to defy what the American people have told us increasingly about wasteful spending at a time of an economic downturn, a time of war, a time of heavy debt, when we have 5 billion dollars' worth of earmarks in this little green book that Americans won't see, and we can't bring it up, as we talked about in the ethics reform bill, in a searchable format where people can find all this wasteful spending. It is hidden, and it is not right.

I encourage my colleagues to appeal to the majority leader to give me this amendment so that we can at least have a vote. I encourage all colleagues to vote for it.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONSTITUTION DAY

Mr. BYRD. Mr. President, I think that September 17 should be honored equally with the Fourth of July. Both dates mark bedrock, fundamentally important events in the life of our country. Most Americans know that July 4, 1776, marks the signing of the Declaration of Independence, but far fewer could say what is so important about September 17.

I am sure that you are not scratching your head over this date, but perhaps some who are listening are doing just that. September 17—does it mark the end of the American Revolution? Was it the date of George Washington's inauguration? Did Christopher Columbus spot land or the passengers of the Mayflower disembark on this date? The answer to all of the above is no. Those are important historical events, to be sure, but none of those dates reaches out to touch the daily lives in as many ways as September 17.

On September 17, 1787, the U.S. Constitution was signed. Our great national experiment in representative democracy began nearly 2 years later with the approval and entry into force of the Constitution on March 4, 1789, after New Hampshire became the ninth State to ratify it. September 17, 1787, however, marks the ''miracle in Philadelphia'' when the Constitutional Convention gave birth to its masterpiece.

We all know that the Declaration of Independence describes in soaring oratory the grand goals for the new Republic, chief among them the ''life, liberty and the pursuit of happiness'' that most people recognize. It is also full of more specific examples of things the Founders could no longer tolerate, such as taxation without representation, having British troops quartered in private homes, and lack of access to fair trials. In the Constitution, the Founders created the structures of government to implement both the grand visions of a free republic and to prevent the abuses of government they had suffered under British rule and outlined in the Declaration. As a result, the Constitution generally makes for less compelling reading material than the Declaration of Independence. It is not full of stirring prose, but rather, it is like an assembly and repair manual, straightforward and commonsense. Yet it supports the framework for freedom and justice. Its words, and those of its amendments, are as critically important to every American as instructions on how to operate a lifeboat are to the passengers of a storm-tossed ship.

The Constitutional Convention that met in Philadelphia managed to build an entire government in just seven articles and a preamble. One article for the legislative branch, one for the executive branch, one for the judicial branch, one for the States, one for the amendment process, one to define Federal power, and one to set forth the requirements for ratification—the Constitution is shorter than many instruction manuals for new cars, even if you

add the 27 amendments. Yet, for over 200 years, the Constitution and the Government it created have overcome the challenges of insurrection, war, depression, growth, and technologies that could never have been anticipated by the Founding Fathers.

This fall and winter, Americans will again witness their Constitution in action. We will elect a new President and many new Members of the House and Senate as well. Through the processes outlined in the Constitution and honed through years of practice, the Nation will peacefully transition to a new government. It seems routine to us, but the peaceful transition of government is a precious thing. Our system of checks and balances is a precious thing.

On September 17, I hope that all Americans who love our country and cherish our flag will take just a few minutes to read and think about our remarkable Constitution. Keep it close to your heart, as I do.

Mr. President, I ask unanimous consent to have printed in the RECORD a Washington Post article entitled ''Cheney Shielded Bush From Crisis.''

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post Sept. 15, 2008]

CHENEY SHIELDED BUSH FROM CRISIS

(By Barton Gellman)

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. 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. 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.' '' 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 makeshift 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. 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.

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. 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.

''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.

* * * * *

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.

* * * * *

Bush signed the directive before leaving for New York around lunchtime on Thursday, March 11, 2004.

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. ''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?''

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.

''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. ''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. 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.

''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.

Mr. BYRD. Mr. President, I yield the floor.

I thank all Senators.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SANDERS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SANDERS. Mr. President, I wish to say a few words in thanking Senator BYRD, not only for his years of illustrious service to the American people but for reminding us about the importance of the Constitution. It is incredible that year after year he has come up here—and perhaps more than any other Member of the Congress—to instruct the American people about that great document and to urge people—children, old people, people from all over this country—to once again study what the Constitution is about.

I would hope, as a result of Senator BYRD's efforts, classrooms all over this country—our young people—will understand the importance of the Constitution.

So I say to Senator BYRD, thank you so much for your service in that regard.

Mr. BYRD. I thank the Senator.

Mr. SANDERS. Mr. President, as we observe Constitution Day today, we do not have to look very far to be reminded why it is important for us to reflect on the 221st birthday of the Constitution, which was signed by the Framers in Philadelphia on this date in 1787. I think the reason why it is so important to take a hard look at the Constitution today is because of what has happened over the last 8 years, because in many respects we have had a President who did not do as Senator BYRD urged us to do: Study the Constitution.

We all know that international terrorism is a very serious issue. We take it terribly seriously, and all of us are pledged to do everything we can to protect the American people from international terrorism. However, many of us believe we can do it within the context of the United States Constitution and the separation of powers——

Mr. BYRD. Yes.

Mr. SANDERS. Brought forth in that Constitution.

Unfortunately, over the last 8 years under the Bush administration, we have seen a tragic effort on the part of the executive branch to impose on the people of this country a vision of government where, instead of three coequal branches of government as laid out by our Constitution—the executive, the legislative, and the judicial branches—we have moved toward one dominant branch, that of the executive ruling under the theory of the unitary executive.

Mr. BYRD. King.

Mr. SANDERS. In my view, that is not what the Constitution of our great country is about, nor is it what the Framers wanted it to be. The theory of unitary executive states that since the Constitution inherently gives the President the power to do all kinds of things—especially within the military and defense context beyond what is detailed in article II, then the President essentially can make up whatever he wants to justify for this or that action. In other words, he can say: We are threatened by international terrorism and I, as the President of the United States, can do anything I want to fight international terrorism. I don't have to worry about separation of powers. I don't have to worry about the laws of the land. I don't have to worry about the Constitution. I am the President. In my judgment, I can do what I want. I think the Senator from West Virginia would agree with me, that that is not what the Constitution of this country is about.

Mr. BYRD. That is right.

Mr. SANDERS. And that, unfortunately, we have a President who does not understand that.

In the last 8 years, sadly, we have seen a steady erosion of the fundamental rights and balance of power laid out in the Constitution and in our Bill of Rights. We have seen the President, the Vice President, and the administration carry out an unprecedented number of programs that insult our constitutional system and erode our standing around the world——

Mr. BYRD. Yes.

Mr. SANDERS. Because our Nation was founded as a nation of laws, not of individuals.

Mr. BYRD. Right.

Mr. SANDERS. Let me list a few of the programs. I will not go on for too long, but I want the American people to get a glimpse of what has, in fact, gone on in the last 8 years under a President who neither understands the Constitution nor respects the Constitution. Let me enumerate some of those provisions:

Passage of the original PATRIOT Act and the PATRIOT Act Reauthorization.

Illegal and expanded use of national security letters by the FBI.

The NSA's warrantless wiretap program.

Using Presidential signing statements to ignore the intent of Congress's laws.

Mr. BYRD. Yes.

Mr. SANDERS. We have a President who says: Well, it is an interesting law. I will pick and choose which of the provisions I want to implement. That is not what the Constitution says. If you don't like the law, veto it.

Mr. BYRD. Yes.

Mr. SANDERS. But you cannot pick and choose. That is clearly not what the Constitution had in mind.

Furthermore, we have seen profiling of citizens engaged in constitutionally protected free speech and peaceful assembly. My view is, if you are an American, you have a right to protest, you have a right to engage in the political process without worrying that somebody is spying on you.

Mr. BYRD. Yes.

Mr. SANDERS. We have seen in recent years data mining of personal records.

We have seen, of course, the Abu Ghraib prison scandal.

We have seen a broad interpretation of congressional resolutions regarding use of military force as justification for unauthorized surveillance and other actions.

Mr. BYRD. Yes.

Mr. SANDERS. We have seen extraordinary renditions of detainees to countries that allow torture.

We have seen getting rid of the right of detainees to file habeas corpus petitions.

We have seen the condoning of the use of torture.

We have seen political firings of U.S. Attorneys.

We have seen destruction of CIA tapes.

The list goes on and on and on. Those are just some of the insults to the Constitution that we have seen over the last 8 years.

Mr. BYRD. Yes.

Mr. SANDERS. Mr. President, I also wish to take a few moments to highlight one of the more egregious examples of this abuse which was recently chronicled by the Washington Post.

Mr. BYRD. Yes. Please do.

Mr. SANDERS. This article describes the unprecedented use of executive authority which trampled on the rule of law and, in the process, Americans' basic civil liberties. Specifically, the article focuses on how a small group of people in the White House—the President, the Vice President, the Vice President's Chief of Staff, and a few others—decided through their own twisted interpretation of the Constitution that with the President's say-so alone, they had the power to perform warrantless surveillance on innocent Americans known as the NSA warrantless wiretapping program. They created a program almost completely outside of the authority of our laws based on the principle that because the President of the United States is the Commander in Chief, and it is his job to protect the country, anything they think of that protects this country—anything that fights terrorism—is justified under the Constitution. That, in my view, is dead wrong.

Mr. BYRD. Shame.

Mr. SANDERS. This view of the Constitution and the balance of power in our Government should make all Americans, no matter what political persuasion—and I do want to say there are a number of conservatives all over this country—and every honest conservative should be appalled by the constitutional abuse that has taken place by President Bush. No matter what your point of view is, you should be concerned, but especially for those citizens in our country who consider themselves conservatives and wish to limit the role of government.

I ask the Senator from West Virginia: How often have we heard conservatives talk about a limited role in government and then go out and say: Oh, the government can do anything they want; forget the Constitution.

Mr. BYRD. Yes, how often?

Mr. SANDERS. I think that is absolutely hypocritical.

Mr. BYRD. Yes.

Mr. SANDERS. Even more amazingly, when a few members of the Department of Justice—the top law enforcement agency of our Government—including then-Attorney General John Ashcroft, FBI Director Robert Mueller, and Acting Attorney General James Comey, who learned of the program and refused to renew the program unless it was redrafted to fall within the confines of U.S. surveillance law, the President and his aides attempted to completely bypass these critics and decide that the President, and the President alone, could decide what is lawful or unlawful.

Mr. BYRD. Oh, my, my.

Mr. SANDERS. During a debate about who had the final word on the warrantless wiretapping program, the Washington Post quotes President Bush as saying: ''I decide what the law is for the executive branch.''

Mr. BYRD. Oh, my God.

Mr. SANDERS. I concur.

The President does not decide the law. It is the people of this country through the Congress who decide the law, and the President, as every other American citizen, obeys the law.

Mr. BYRD. Right.

Mr. SANDERS. When we lose that understanding, we lose what our Constitution is about, we lose the essence of what the United States of America is about. Thankfully, thankfully—let's give credit where credit is due—by threatening their mass resignation, the top leaders of the Justice Department forced the President to revise his and the Vice President's legal justification for this wiretap program, making it only a bit less objectionable.

While I am opposed to the wiretapping program in its current form due to the fact that it does not have an adequate check on the power to monitor the conversations of innocent Americans, I do respect—and I hope we all respect—those individuals at the Department of Justice who, during this time in 2003 and 2004, stood up for the basic aspects of our legal system.

Mr. BYRD. Yes.

Mr. SANDERS. Mr. President, I ask unanimous consent that a copy of the Washington Post articles written by Barton Gellman and published on September 14 and 15 of this year be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. SANDERS. Mr. President, I am not the only person with these concerns about the balance of power between the branches of Government. An August poll conducted by the Associated Press and the National Constitution Center found that:

> Two-thirds of Americans oppose altering the balance of power among the three branches of government to strengthen the presidency, even when they thought that doing so would improve the economy or national security.

Mr. BYRD. Amen.

Mr. SANDERS. This is not a partisan issue, no matter what administration, no matter what party. I am quite confident that whether it is a Democratic President or a Republican President, Senator BYRD will be there raising exactly the same issues.

Mr. BYRD. Yes.

Mr. SANDERS. Because he understands—and I hope all of us understand—that the Constitution is far deeper than partisan politics or who happens to sit in the White House in this or that year.

Mr. BYRD. Yes.

Mr. SANDERS. The secret creation of the warrantless wiretapping program outside the confines of law is only one example of a number of the ways the Constitution has been abused over the last 8 years.

I conclude by again congratulating Senator BYRD. Because the work he is doing here of trying to make sure that people from Maine to California study our Constitution—something that is not happening enough in our schools—

Mr. BYRD. Right.

Mr. SANDERS. People should understand the Constitution and understand that the Constitution has laid out an extraordinary framework from the first day of this country. It is an extraordinary document, perhaps the greatest document ever written in the Western World.

Mr. BYRD. Yes, it is.

Mr. SANDERS. We should be enormously proud. What we have to do regardless of our political views is we have to stand and defend and fight for the integrity of that Constitution.

So I thank Senator BYRD so much for what he has done in that regard to protect our constitutional rights.

With that, Mr. President, I yield the floor.

Mr. BYRD. And I thank Senator SANDERS.

EXHIBIT 1

[From the Washington Post, Sept. 14, 2008]

CONFLICT OVER SPYING LED WHITE HOUSE TO BRINK

(By Barton Gellman)

A burst of ferocity stunned the room into silence. No other word for it: The vice president's attorney was shouting.

''The president doesn't want this! You are not going to see the opinions. You are out . . . of . . . your . . . lane!''

Five government lawyers had gathered around a small conference table in the Justice Department command center. Four were expected. David S. Addington, counsel to Vice President Cheney, got wind of the meeting and invited himself.

If Addington smelled revolt, he was not far wrong. Unwelcome questions about warrantless domestic surveillance had begun to find their voice.

Cheney and his counsel would struggle for months to quash the legal insurgency. By the time President Bush became aware of it, his No. 2 had stoked dissent into flat-out rebellion. The president would face a dilemma, and the presidency itself a historic test. Cheney would come close to leading them off a cliff, man and office both.

On this second Monday in December 2003, Addington's targets were a pair of would-be auditors from the National Security Agency. He had displeasure to spare for their Justice Department hosts.

Perfect example, right here. A couple of NSA bureaucrats breeze in and ask for the most sensitive documents in the building. And Justice wants to tell them, Help yourselves? This was going to be a very short meeting.

Joel Brenner and Vito Potenza, the two men wilting under Addington's wrath, had driven 26 miles from Fort Meade, the NSA's eavesdropping headquarters in Maryland. They were conducting a review of their agency's two-year-old special surveillance operation. They already knew the really secret stuff: The NSA and other services had been unleashed to turn their machinery inward, collecting signals intelligence inside the United States. What the two men didn't know was why the Bush administration believed the program was legal.

It was an awkward question. Potenza, the NSA's acting general counsel, and Brenner, its inspector general, were supposed to be the ones who kept their agency on the straight and narrow. That's what Cheney and their boss, Lt. Gen. Michael V. Hayden, told doubters among the very few people who knew what was going on. Cheney, who chaired briefings for select members of Congress, said repeatedly that the NSA's top law and ethics officers—career public servants—approved and supervised the surveillance program.

That was not exactly true, not without one of those silent asterisks that secretly flip a sentence on its tail. Every 45 days, after Justice Department review, Bush renewed his military order for warrantless eavesdropping. Brenner and Potenza told Hayden that the agency was entitled to rely on those orders. The United States was at war with al-Qaeda, intelligence-gathering is inherent in war, and the Constitution appoints the president commander in chief.

But they had not been asked to give their own written assessments of the legality of domestic espionage. They based their answer in part on the attorney general's certification of the ''form and legality'' of the president's orders. Yet neither man had been allowed to see the program's codeword-classified legal analyses, which were prepared by John C. Yoo, Addington's close ally in the Justice Department's Office of Legal Counsel. Now they wanted to read Yoo's opinions for themselves.

''This is none of your business!'' Addington exploded.

He was massive in his swivel chair, taut and still, potential energy amping up the menace. Addington's pugnacity was not an act. Nothing mattered more, as the vice president and his lawyer saw the world, than these new surveillance tools. Bush had made a decision. Debate could only blow the secret, slow down vital work, or call the president's constitutional prerogatives into question.

The NSA lawyers returned to their car empty-handed.

* * * * *

The command center of ''the president's program,'' as Addington usually called it, was not in the White House. Its controlling documents, which gave strategic direction to the nation's largest spy agency, lived in a vault across an alley from the West Wing—in the Eisenhower Executive Office Building, on the east side of the second floor, where the vice president headquartered his staff.

The vault was in EEOB 268, Addington's office. Cheney's lawyer held the documents, physical and electronic, because he was the one who wrote them. New forms of domestic espionage were created and developed over time in presidential authorizations that Addington typed on a Tempest-shielded computer across from his desk.

It is unlikely that the history of U.S. intelligence includes another operation conceived and supervised by the office of the vice president. White House Chief of Staff Andrew H. Card Jr. had ''no idea,'' he said, that the presidential orders were held in a vice presidential safe. An authoritative source said the staff secretariat, which kept a comprehensive inventory of presidential papers, classified and unclassified, possessed no record of these.

In an interview, Card said the Executive Office of the President, a formal term that encompassed Bush's staff but not Cheney's, followed strict procedures for handling and securing presidential papers.

''If there were exceptions to that, I'm not aware of them,'' he said. ''If these documents weren't stored the right way or put in the right places or maintained by the right people, I'm not aware of it.''

Asked why Addington would write presidential directives, Card said, ''David Addington is a very competent lawyer.'' After a moment he added, ''I would consider him a drafter, not the drafter. I'm sure there were a lot of smart people who were involved in helping to look at the language and the law.''

Not many, it turned out. Though the president had the formal say over who was ''read in'' to the domestic surveillance program, Addington controlled the list in practice, according to three officials with personal knowledge. White House counsel Alberto R. Gonzales was aware of the program, but was not a careful student of the complex legal questions it raised. In its first 18 months, the only other lawyer who reviewed the program was John Yoo.

By the time the NSA auditors came calling, a new man, Jack L. Goldsmith, was chief of the Justice Department's Office of Legal Counsel. Soon after he arrived on Oct. 6, 2003, the vice president's lawyer invited him to EEOB 268. Addington pulled out a folder with classification markings that Goldsmith had never seen.

''David Addington was doing all the legal work. All the important documents were kept in his safe,'' Goldsmith recalled. ''He was the one who first briefed me.''

Goldsmith's new assignment gave him final word in the executive branch on what was legal and what was not. Addington had cleared him for the post—''the biggest presence in the room,'' Goldsmith said, during a job interview ostensibly run by Gonzales.

Goldsmith did not have the looks of a guy who posed a threat to the Bush administration's alpha lawyer. A mild-mannered law professor from the University of Chicago, he was rumpled and self-conscious, easy to underestimate. On first impression, he gave off a misleading aura of softness. Goldsmith had lettered in football, baseball and soccer at the Pine Crest School in Fort Lauderdale, Fla., spending his formative years with a mob-connected Teamster who married his mother. He was not a bare-knuckled brawler in Addington's mold, but Goldsmith arrived at Justice with no less confidence and strength of will.

Addington's behavior with the NSA auditors was ''a wake-up call for me,'' Goldsmith said. Cheney and Addington, he came to believe, were gaming the system, using secrecy and intimidation to prevent potential dissenters from conducting an independent review.

''They were geniuses at this,'' Goldsmith said. ''They could divide up all these problems in the bureaucracy, ask different people to decide things in their lanes, control the facts they gave them, and then put the answers together to get the result they want.''

Dec. 9, 2003, the day of the visit from Brenner and Potenza, was the beginning of the end of that strategy. The years of easy victory were winding down for Cheney and his staff.

* * * * *

Goldsmith began a top-to-bottom review of the domestic surveillance program, taking up the work begun by a lawyer named Patrick F. Philbin after John Yoo left the department. Like Yoo and Goldsmith, Philbin had walked the stations of the conservative legal establishment: Federalist Society, a clerkship with U.S. Circuit Judge Laurence H. Silberman, another with Supreme Court Justice Clarence Thomas.

The more questions they asked, the less Goldsmith and Philbin liked the answers. Parts of the program fell easily within the constitutional powers of the commander in chief. Others looked dicier.

The two lawyers worked at the intersection of three complex systems: telecommunications, spy technology, and the statutory regimes that governed surveillance. After a few weeks, Goldsmith said, he decided the program ''was the biggest legal mess I'd seen in my life.''

He asked for permission to read in Attorney General John D. Ashcroft's new deputy, James B. Comey. As always, he found Addington waiting with Gonzales in the White House counsel's corner office, one floor up from the chief of staff. They sat in parallel wing chairs, much as Bush and Cheney did in the Oval Office.

''The attorney general and I think the deputy attorney general should be read in,'' Goldsmith said.

Addington replied first.

''Forget it,'' he said.

''The president insists on strict limitations on access to the program,'' Gonzales agreed.

Weeks passed. Goldsmith kept asking. Addington kept saying no.

''He always invoked the president, not the vice president,'' Goldsmith said.

Comey was not exactly Mr. Popular at 1600 Pennsylvania Ave. He had arrived at Justice as a 6–foot–8 golden boy, smooth and polished, with top chops as a federal terrorism prosecutor in Northern Virginia and New York City. Then came Dec. 30, 2003. Comey did something unforgivable: He appointed an independent counsel to investigate the leak of Valerie Plame's identity as a clandestine CIA officer, a move that would bring no end of grief for Cheney.

In late January, Goldsmith and Addington cut a deal. Comey would get his read-in. Goldsmith would get off the fence about the program, giving his definitive answer by the March 11 deadline.

''You're the head of the Office of Legal Counsel, and if you say we cannot do this thing legally, we'll shut it off,'' Addington told him.

Feel free to tell the president that his most important intelligence operation has to stop.

Your call, Jack.

Goldsmith wanted to fix the thing, not stop it. He and Philbin traveled again and again to Fort Meade, each time delving deeper. They were in and out of Gonzales's office, looking for adjustments in the program that would bring it into compliance with the law. The issues were complex and remain classified. Addington bent on nothing, swatting back every idea. Gonzales listened placidly, sipping Diet Cokes from his little refrigerator, encouraging the antagonists to keep things civil.

There would be no easy out, no middle ground. Addington made clear that he did not believe for a moment that Justice would pull the plug.

* * * * *

Mike Hayden and Vito Potenza drove down from NSA headquarters after lunch on Feb. 19, 2004, to give Jim Comey his first briefing on the program. In the Justice Department's vault-like SCIF, a sensitive compartmented information facility, Hayden got Comey's attention fast.

''I'm so glad you're getting read in, because now I won't be alone at the table when John Kerry is elected president,'' the NSA director said.

The witness table, Hayden meant. Congressional hearing, investigation of some kind. Nothing good. Kerry had the Democratic nomination just about locked up and was leading Bush in national polls. Hardly anyone in the intelligence field believed the next administration would climb as far out on a legal limb as this one had.

''Hayden was all dog-and-pony, and this is probably what happened to those poor folks in Congress, too,'' Comey told his chief of staff after the briefing. ''You think for a second, 'Wow, that's great,' and then if you try actually to explain it back to yourself, you don't get it. You scratch your head afterward and you think, 'What the hell did that guy just tell me?' ''

The NSA chief insisted on limiting surveillance to e-mails, phone calls and faxes in which one party was overseas, deflecting arguments from Cheney and Addington that he could just as well collect communications inside the United States.

That was one reason Hayden hated when reporters referred to ''domestic surveillance.'' He made his point with a folksy analogy: He had taken ''literally hundreds of domestic flights,'' he said, and never ''landed in Waziristan.'' That sounded good. But the surveillance statutes said a warrant was required if either end of the conversation was in U.S. territory. The American side of the program—the domestic surveillance—was its distinguishing feature.

By the end of February, Goldsmith and Philbin had reached their conclusion: Parts of the surveillance operation had no support in law. Comey was so disturbed that he drove to Langley one evening to compare notes with Scott W. Muller, the general counsel at the CIA. Muller ''got it immediately,'' agreeing with the Goldsmith-Philbin analysis, Comey said.

''At the end of the day, I concluded something I didn't ever think I would conclude, and that is that Pat Philbin and Jack Goldsmith understood this activity much better than Michael Hayden did,'' he said.

On Thursday, March 4, Comey brought the findings to Ashcroft, conferring for an hour one-on-one. Three senior Justice Department officials said in interviews that Ashcroft gave his full backing. He was not going to sign the next presidential order—due in one week, March 11—unless the White House agreed to a list of required changes.

* * * * *

A few hours later, Ashcroft was reviewing notes for a news conference in Alexandria when his color changed and he sat down heavily. An aide, Mark Corallo, ducked out and returned to find the attorney general laid out on his back. By nightfall, Ashcroft was taken to George Washington University Medical Center in severe pain, suffering acute gallstone pancreatitis. Comey became acting attorney general on Friday.

The next day—Saturday, March 6, five days before the March 11 deadline—Goldsmith brought the Justice Department verdict to the White House. He told Gonzales and Addington for the first time that Justice would not certify the program.

A long silence fell. It lasted three full days.

Gonzales phoned Goldsmith at home before sunrise on Tuesday, March 9, with two days left before the program expired. Obviously there was bad chemistry with Addington. Why not come in and talk, he asked, just the two of us?

Goldsmith arrived at the White House in morning twilight. Alone in his office, Gonzales begged the OLC chief to reconsider. Gonzales tried to dispute Goldsmith's analysis, but he was in over his head. At least let us have more time, he said. Goldsmith said he couldn't do that.

The time had come for the vice president to step in. Proxies were not getting the job done. Cheney was going to have to take hold of this thing himself.

Even now, after months of debate, Cheney did not enlist the president. Bush was across the river in Arlington, commending the winners of the Malcolm Baldrige awards for quality improvement in private industry. Campaign season had come already, and the president was doing a lot of that kind of thing. That week he had a fundraiser in Dallas, a ''Bush-Cheney 2004 event'' in Santa Clara, Calif., and a meet-and-greet at a rodeo in Houston.

Soon after hearing what had happened between Goldsmith and Gonzales, the vice president asked Andy Card to set up a meeting at noon with Mike Hayden, FBI Director Robert S. Mueller III, and John McLaughlin from the CIA (substituting for his boss, George J. Tenet). Cheney spoke to them in Card's office, the door closed.

Four hours later, at 4 p.m., the same cast reconvened. This time the Justice contingent was invited. Comey, Goldsmith and Philbin found the titans of the intelligence establishment lined up, a bunch of grave-faced analysts behind them for added mass. The spy chiefs brought no lawyers. The law was not the point. This meeting, described by officials with access to two sets of contemporaneous notes, was about telling Justice to set its qualms aside.

The staging had been arranged for maximum impact. Cheney sat at the head of Card's rectangular table, pivoting left to face the acting attorney general. The two men were close enough to touch. Card sat grimly at Cheney's right, directly across from Comey. There was plenty of eye contact all around.

This program, Cheney said, was vital. Turning it off would leave us blind. Hayden, the NSA chief, pitched in: Even if the program had yet to produce blockbuster results, it was the only real hope of discovering sleeper agents before they could act.

''How can you possibly be reversing course on something of this importance after all this time?'' Cheney asked.

Comey held his ground. The program had to operate within the law. The Justice Department knew a lot more now than it had before, and Ashcroft and Comey had reached this decision together.

''I will accept for purposes of discussion that it is as valuable as you say it is,'' Comey said. ''That only makes this more painful. It doesn't change the analysis. If I can't find a lawful basis for something, your telling me you really, really need to do it doesn't help me.''

''Others see it differently,'' Cheney said.

There was only one of those, really. John Yoo had been out of the picture for nearly a year. It was all Addington.

''The analysis is flawed, in fact facially flawed,'' Comey said. ''No lawyer reading that could reasonably rely on it.''

Gonzales said nothing. Addington stood by the window, over Cheney's shoulder. He had heard a bellyful.

''Well, I'm a lawyer and I did,'' Addington said, glaring at Comey.

''No good lawyer,'' Comey said.

In for a dime, in for a dollar.

Addington started disputing the particulars. Now he was on Jack Goldsmith's turf. From across the room the head of the Office of Legal Counsel jumped in. And right there in front of the big guys, the two of them bickered in the snarly tones of a couple who knew all of each other's lines.

* * * * *

As the sun went down on Tuesday, March 9, the president of the United States had yet to learn that his Justice Department was heading off the rails. A train wreck was coming, but Cheney wanted to handle it. Neither Card nor Gonzales was in the habit of telling him no.

''I don't think it would be appropriate for the president to be engaged in the to-and-fro until it is, you know, penultimate,'' Card said in a recent interview. ''I guess the definition of 'penultimate' could vary from four steps to three steps to two steps to one step. That's why you have White House counsel and people who do the legal work.''

Participants in the afternoon meeting, including some of Cheney's recruits, left the room shaken. Mueller worked for the attorney general, and the FBI's central mission was to ''uphold and enforce the criminal laws of the United States.'' Hayden's neck, and his agency, were on the line. The NSA director believed in the program, believed he was doing the right thing. But keep on going when the Justice Department said no?

Early the next morning—Wednesday, March 10, with 24 hours to deadline—Hayden was back in the White House. One colleague saw him conferring in worried whispers with Homeland Security adviser John A. Gordon, a mentor and fellow Air Force general, much the senior of the two. They huddled in the West Wing lobby, Hayden on a love seat and Gordon in a chair.

Jim Comey was in the White House that morning, too, arriving early for the president's regular 8:30 terrorism brief. He had heard nothing since the discouraging meeting the day before.

Comey found Frances Fragos Townsend, an old friend, waiting just outside the Oval Office, standing by the appointment secretary's desk. She was Bush's deputy national security adviser for combating terrorism. Comey had known her since their days as New York mob prosecutors in the 1980s. Since then, Townsend had run the Justice Department's intelligence office. She lived and breathed surveillance law.

Comey took a chance. He pulled her back out to the hallway between the Roosevelt Room and the Cabinet Room.

''If I say a word, would you tell me whether you recognize it?'' he asked quietly.

He did. She didn't. The program's classified code name left her blank. Comey tried to talk around the subject.

''I think this is something I am not a part of,'' Townsend said. ''I can't have this conversation.'' Like John Gordon and deputy national security adviser Steven J. Hadley and Homeland Security Secretary Tom Ridge, she was out of the loop.

Oh, God, Comey remembers thinking. They've held this so tight. Even Fran Townsend. The president's counterterrorism adviser is not read in? Comey towered over his diminutive friend. He chose his words carefully.

''I need to know,'' he said, ''whether your boss recognizes that word, and whether she's read in on a particular program. Because we had a meeting here yesterday on that topic that I would have expected her to be at.''

He meant national security adviser Condoleezza Rice. Comey was hoping for an ally, or maybe rescue.

''I felt very alone, with some justification,'' Comey recalled. ''The attorney general is in intensive care. There's a train coming down the tracks that's about to run me and my career and the Department of Justice over. I was exploring every way to get off the tracks I could.''

Townsend had a pretty good guess about what was on Comey's mind. Cheney had kept her out of the loop, but it was hard to hide a warrantless domestic surveillance program completely from the president's chief terrorism adviser.

''I'm not the right person to talk to,'' she told her friend, her voice close to a whisper. Comey ought to go see Rice.

''I'm going to tell her you've got concerns,'' Townsend said.

Comey's concerns no longer interested Cheney. The vice president had tried to back him down. That didn't work.

Only one day remained before the surveillance program expired. Time for Cheney to take the fight somewhere else.

Mr. REED. Mr. President, today we celebrate the 221st anniversary of the signing of the Constitution of the United States, the longest-living written constitution in history and the very foundation of our democracy. I thank Senator BYRD for his tireless commitment to the Constitution and to ensuring its recognition every year on Constitution Day, which he established in 2004.

Our Constitution serves as a testament to the brilliance of the Founding Fathers, who sought to create a document that would ensure that political power was derived from the people and that their rights would never be infringed upon. The Framers worked diligently over the summer of 1787 to forge a document that has persisted for more than two centuries. The Framers rightly understood that it would take hard work and compromise to establish a solid foundation for a new government that aspired to protect the liberty of all its people. A remarkably brief document, containing only seven articles, the Constitution limits the power of the government, maximizes the freedom of the people, and provides for the common good.

Although my home State of Rhode Island did not send delegates to the Constitutional Convention in 1787, the effects of this small State on the formation of the Constitution are still felt today.

Roger Williams, whose statue stands just outside this Chamber, founded what would become the State of Rhode Island in 1636 after he was exiled from the Massachusetts Bay Colony. A theologian, he founded Providence Plantation on the principles of separation of church and state and religious freedom.

One hundred fifty-one years later, the Framers enshrined these same principles in the Bill of Rights. Williams and the Framers recognized that religious freedom is a natural right that had to be afforded to all people. Indeed, this freedom is one of the defining freedoms of our democracy.

I would again like to thank Senator BYRD for his dedication to honoring our Constitution and the achievements of our Founding Fathers. His devotion to this document enriches our understanding of its importance and reminds us of its essential role in our democracy. He has taken up the call to protect and defend the Constitution by ensuring that its central place in American history is not forgotten. I join him in asking all Americans to honor our great national charter today and every day.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

• Mr. KENNEDY. Mr. President, today we celebrate Constitution Day, the 221st birthday of the founding document of our country. Now, more than ever, it is time to reaffirm our commitment to defending the liberties guaranteed by the Constitution, and to recognize that strengthening civic education is an important part of this commitment. ''Democracy must be reborn in every generation, and education is its midwife,'' wrote John Dewey. In fact, civic education was the original mission of American public education.

Sadly, students today know too little about the civil liberties established in the Constitution that define our American way of life. On the most recent national civics assessment in 2006, only 20 percent of eighth grade students scored at or above the proficient level. Less than one-third could identify the purpose of the Constitution. Less than a fifth of high school seniors could explain how citizen participation strengthens democracy. Gaps in understanding like these translate later in life to reduced voter turnout, decreased civic engagement and community service, and a weaker sense of national identity.

As a result of legislation enacted in 2005, more students across the country are receiving instruction on the Constitution, civics, and American history in their schools today. To become responsible citizens, students need to know that the Constitution is not about the 39 men who signed it. It is a vital document that shapes events today and in the future. Instilling an understanding of the American ideals of liberty, justice, equality, and civic responsibility should be a central task in every school, every day.

It should encourage the type of civic-mindedness displayed by the actions of community-based organizations and private citizens who rushed to aid victims of Hurricane Katrina and the September 11 terrorist attacks. The long-term health of our democracy and America's standing in the world depend on our own understanding of our past.

In the reauthorization of the No Child Left Behind Act next year, we can strengthen our commitment to history and civics education, and encourage them to be integrated into all subject areas, extracurricular activities, and service-based learning.

Our Nation's Founders understood that education was critical to the strength of our democracy. As James Madison said to Thomas Jefferson after the Constitution was written, ''Educate and inform the whole mass of the people . . . They are the only sure reliance for the preservation of our liberty.''

As we commemorate the anniversary of the ratification of the Constitution, those words are especially timely, because they remind us that their work alone cannot sustain American democracy. Our democracy depends heavily on enlightened and engaged citizens, and high-quality civic education is the best way to ensure that its fundamental principles will continue to guide America for the next 221 years, as we and future generations do our best ''to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.'' May it always be so.•

Mr. SANDERS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEVIN. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. MCCASKILL). Without objection, it is so ordered.

CONTINUATION OF MORNING BUSINESS

Mr. LEVIN. Madam President, I ask unanimous consent that the Senate continue in a period of morning business with Members permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SESSIONS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.