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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

1613005

June 2, 2006

The Honorable Alberto Gonzales
Attorney General
United States Department of Justice
Washington, D.C. 20531

Dear Attorney General Gonzales:

On June 13, 2006, the Committee will be holding an oversight hearing on the Department of Justice. This hearing will commence at 9:30 am and is expected to last the entire day. Your presence is requested for the duration of the hearing.

During this hearing, I would like to focus on several areas of Department policy with which I have previously expressed concerns. First, I am troubled by the reported role that the Office of Legal Counsel has played in establishing the legal standards for detentions and interrogations, electronic surveillance and physical surveillance in the War on Terror. I would like to give you the opportunity to clarify what role Legal Counsel has played and why certain policy decisions were made despite emphatic legislation passed to explicitly prohibit such policies.

In particular, I would like to know what role, if any the Department played in the alleged requests to obtain customer records from the telephone companies. Second, I remain disturbed that the Department of Justice decided to deny the Office of Professional Responsibility access to classified materials during its recent investigation into the role the Department played in approving, authorizing, and auditing the NSA surveillance programs. I would hope you could help the Committee to understand why OPR's investigation was stymied. Third, I would hope you could explain the role that the Office of Intelligence Policy and Review plays in the FISA approval process, including the question as to whether all FISA warrants have to be approved and the length of time it takes for them to be approved. Finally, I plan to discuss with you the separation of powers issues raised by the FBI's search of the office of Representative William J. Jefferson on Saturday, May 20, 2006 in relation to an alleged bribery case.

In a May 10, 2006 letter I sent regarding your announcement that OPR had closed its investigation into the legal and ethical propriety of the role Department lawyers may have played in approving, authorizing, and auditing the so-called NSA terrorist

EXECUTIVE SECRETARIAT

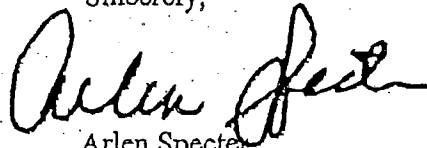
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OPR 19

surveillance program, I asked that you forward all memoranda, documents, or notes that contain any information regarding: (1) OPR's "series of requests" for clearance; (2) the decision to deny the necessary clearance; and (3) a statement of DOJ's policies and procedures for reviewing the professional responsibility compliance of attorneys who handle classified or national security matters. I would appreciate it if, in advance of the oversight hearing, you could ensure that these materials are forwarded to the Committee.

Sincerely,



Arlen Specter

ARLEN SPECTER, PENNSYLVANIA, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

1002009

May 10, 2006

The Honorable Alberto Gonzales
Attorney General
United States Department of Justice
Washington, D.C. 20531

Dear Attorney General Gonzales:

I am troubled by yesterday's announcement that the Department of Justice's (DOJ) Office of Professional Responsibility (OPR) has closed its investigation into the legal and ethical propriety of the roles DOJ lawyers may have played in approving, authorizing, and auditing the so-called NSA terrorist surveillance program. According to the announcement, the investigation is not being closed due to a lack of evidence, but "because OPR has been denied security clearances for access to information about the NSA program." I cannot understand why the Department has denied the clearances necessary for this degree of modest, internal oversight. I urge you to reconsider this decision and to allow OPR to do the important job it was created to do.

The denial of clearances to OPR appears to have been a point of contention for some time. In the May 10, 2006 letter that made the announcement, OPR counsel H. Marshall Jarrett clarified that his Office "made a series of requests for the necessary clearance" beginning in January 2006. I cannot fathom why OPR did not have sufficient clearances for this function in the first place. The Office was created in 1975 in the wake of revelations of ethical abuses, overreaching, and misconduct by DOJ officials and attorneys. The Office is supposed to provide an internal check on ethical lapses by DOJ personnel. Among the many attorneys in DOJ are those who regularly provide advice on sensitive and classified programs, such as lawyers in the Office of Legal Counsel, the Criminal Division, and the various components of the newly created National Security Division. These lawyers should receive the same level of internal scrutiny, if not more, than line prosecutors and appellate lawyers. Yesterday's disclosure suggests that no one in the Department is authorized to review the professional responsibility of DOJ lawyers who give any level of national security advice.

Received from OAG

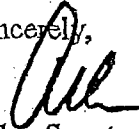
OPR 21

5/14/06

Again, I urge you to authorize the necessary clearances to allow OPR to do what it promised to do earlier this year when Mr. Jarrett announced that the Office had "initiated an investigation" into the ethical propriety of DOJ's actions and advice regarding the NSA terrorist surveillance program. Such an authorization should not be controversial within the Department. After all, pursuant to federal regulations, OPR reports directly to you, as Attorney General, and Paul J. McNulty as Deputy Attorney General. With this close reporting relationship, you should adequately be able to supervise any sensitive oversight by OPR and its attorneys. Moreover, such an internal review will help promote greater public, as well as Congressional, confidence in the Department's vital role in the war on terrorism.

Keep me advised of the status of this issue, including any changes in the Department's position. In addressing this issue, please forward all memoranda, documents, or notes that contain any information regarding: (1) OPR's "series of requests" for clearance; (2) the decision to deny the necessary clearance; and (3) a statement of DOJ's policies and procedures for reviewing the professional responsibility compliance of attorneys who handle classified materials or national security matters.

Sincerely,



Arlen Specter
Chairman

*This needs to
be corrected.*

05-16-06A10:55 RCVD

OFFICE OF PROFESSIONAL RESPONSIBILITY

Arlen Specter
Senate Judiciary Committee
Dirksen 224
Washington, D.C. 20510
Tel # (202) 224-5225
Fax # (202) 224-9102



Facsimile Cover Sheet

TO: The Honorable Alberto Gonzales
C/o William Moschella

FAX NUMBER:

514-4482

FROM: Michael O'Neill

SUBJECT: hearing

TOTAL NUMBER OF PAGES SENT (including cover sheet): 3

If you do not receive all pages, please call: 202-224-1460

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6-5-06
OPR 56

100-1017

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

May 11, 2006

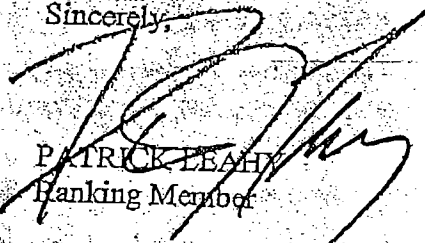
The Honorable Alberto Gonzales
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Gonzales:

A number of us were troubled to learn that the Department of Justice's (DOJ) Office of Professional Responsibility (OPR) has closed its investigation into the legal and ethical propriety of the actions of lawyers in connection with the President's program of warrantless wiretapping. For the Government to deny security clearances to Government investigators and thereby forestall the investigation is wrong. You and the President have often alluded to the Executive Branch monitoring itself. This is a clear indication of how inadequate such internal monitoring is.

I join in Chairman Specter's request for a full explanation of these actions. As an immediate matter you should reverse this effort to stonewall and proceed to provide the clearances and access to information that is needed for OPR to conduct a thorough investigation into these matters.

Sincerely,



PATRICK LEAHY
Ranking Member

cc: Chairman Arlen Specter

0102 86

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-5275

Facsimile Cover Sheet

Please Deliver to: Attorney General Gonzales

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CHARLES E. SCHUMER
NEW YORK

COMMITTEES:
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United States Senate

WASHINGTON, DC 20510

February 16, 2006

The Honorable Alberto Gonzales
United States Department of Justice
950 Pennsylvania Avenue
Washington, D.C. 20530

Dear Attorney General Gonzales:

I write in light of yesterday's revelation that the Department of Justice (DOJ), through its Office of Professional Responsibility, had, as early as February 2, 2006, launched an investigation into the Department's role in the NSA domestic surveillance program. Given that information, I am troubled that your testimony at the NSA surveillance hearing on February 6th seems at odds with the facts as should have been known to you.

At the hearing, I asked you a series of questions about whether there were DOJ investigations that had been launched as a result of the NSA program:

Senator Schumer: Have there been any abuses of the NSA surveillance program? Have there been any investigations arising from concerns about abuse of the NSA program? Has there been any disciplinary action taken against any official for abuses of the program?

...

General Gonzales: Well, I do not have answers to all of these questions.

That answer was followed by this exchange:

Senator Schumer: If I asked those two questions about the Justice Department, any investigations arising out of concerns about abuse of NSA surveillance or any disciplinary action taken against officials, in either case by the Justice Department, you would know the answer to that.

General Gonzales: I would probably know the answer to that, to my knowledge, no.

PLEASE RESPOND TO THE FOLLOWING OFFICE:

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<http://schumer.senate.gov>

OPR 181

Yesterday, of course, we learned that the Justice Department's Office of Professional Responsibility had already launched an investigation into the "Department of Justice's role in authorizing, approving and auditing certain surveillance activities of the National Security Agency." In fact, that investigation had begun at least four days before you testified before the Judiciary Committee.

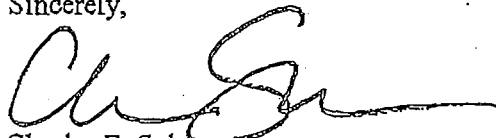
It is therefore troubling that you failed to disclose an ongoing investigation within your own Department in response to direct questions on the subject.

In light of these facts, please clarify the following as soon as possible:

- When you testified, did you know about the investigation begun by the Office of Professional Responsibility?
- If so, why did you not disclose the fact of the investigation to the Committee in response to my questions?
- If you did not know about the investigation at the time of your testimony, why not?
- When did the current OPR investigation begin? Have there been prior investigations within DOJ in connection with any version of the NSA surveillance program?
- Are there any other investigations currently underway either at the Department of Justice or at any other agency in connection with any version of the NSA surveillance program?
- If the NSA surveillance program is, as you have testified, so clearly legal and so closely monitored by Department attorneys, what was the need for an investigation by the Office of Professional Responsibility?
- Will you commit to making public the ultimate conclusions of this, and any other, DOJ investigation?

I look forward to your prompt response.

Sincerely,



Charles E. Schumer
United States Senator



Office of United States Senator
CHARLES E. SCHUMER

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FAX TRANSMISSION

To: ATTORNEY GENERAL GONZALES

Of:

Fax: 514-4482

From: SENATOR CHARLES E. SCHUMER

Pages: 3 (incl. cover)

Date: 2/16/06

Comments:



Office of the Attorney General
Washington, D. C. 20530

February 17, 2006

Dear Senator Schumer:

I am in receipt of your letter dated February 16, 2006, and I want to clarify promptly any confusion about my testimony.

You asked repeatedly at the hearing about "abuses of the NSA surveillance program." Your questions were prefaced by a discussion of abuses and potential abuses of NSA's operational capabilities, and you quoted former Senator Frank Church to make your point. The portions of the transcript that you chose not to reproduce in your letter confirm that I understood you to be questioning me about abuses or potential abuses by NSA in its operation of the terrorist surveillance program confirmed by the President in December. I correctly advised you that I did not know of any investigation by any component of the Department of Justice that is, as you asked, reviewing "abuses of the NSA surveillance program," conducting "investigations arising from concerns about abuse of the NSA program," or conducting "any investigations arising out of concerns about abuse of NSA surveillance or any disciplinary action taken against officials . . . in the Justice Department."

At the time of the hearing, I was generally aware that the Department of Justice's Office of Professional Responsibility (OPR) had opened an investigation relating to the terrorist surveillance program. At that time, it was my understanding that OPR's investigation did not relate to abuses or potential abuses under the program by NSA. Consistent with usual Department practice, I had not been briefed about the nature of the investigation, nor was I provided any other information about it. OPR conducts investigations into whether Department attorneys have adhered to standards of professional responsibility. In response to your letter, I have been advised that OPR is conducting an investigation into the role of Department attorneys in the authorization and oversight of the terrorist surveillance program and compliance with the Foreign Intelligence Surveillance Act. Since OPR's investigation plainly does not pertain to "abuses" under the program, my response to you at the hearing was and remains correct.

I hope that this clarifies any confusion regarding this matter. Please do not hesitate to call me if you would like to discuss this further.

Sincerely,

A handwritten signature in dark ink, appearing to read "A. Gonzales", is written over a horizontal line.

Alberto R. Gonzales

197a

BEING PROCESSED BY OPR

197b

-----Original Message-----

From: Scolinos, Tasia

Sent: Wednesday, February 15, 2006 4:31 PM

To: Jarrett, Marshall

Cc: Roehrkasse, Brian

Subject: FW: AP - Justice Department probes its own role in spying program

Importance: Low

(b)(5)

197c

-----Original Message-----

From: News.Update@WhiteHouse.Gov [mailto:News.Update@WhiteHouse.Gov]

Sent: Wednesday, February 15, 2006 4:15 PM

To: Scolinos, Tasia

Subject: AP - Justice Department probes its own role in spying program

Importance: Low

Justice Department probes its own role in spying program

By DEVLIN BARRETT

WASHINGTON (AP) The Department of Justice has begun an internal inquiry into its role in the administration's domestic eavesdropping program, a lawmaker revealed Wednesday.

The investigation is being conducted by the Office of Professional Responsibility, or OPR, which reviews allegations of misconduct within the law enforcement agency.

Marshall Jarrett, the OPR's counsel, acknowledged the probe in a letter to Rep. Maurice Hinchey, D-N.Y. Jarrett's letter did not specify which of the agency's actions or employees are being examined.

"You asked this office to investigate the Department of Justice's role in authorizing, approving and auditing certain surveillance activities of the National Security Agency, and whether such activities are permissible under existing law. For your information, we have initiated an investigation," Jarrett wrote in the brief letter.

Hinchey is one of a few dozen Democratic lawmakers who have been highly critical of the eavesdropping program first revealed in December.

"We're very happy that the OPR is doing it, because it seems on the surface certain illegal actions may have taken place," said Hinchey, one of President Bush's most outspoken critics in Congress.

A Justice Department spokesman did not immediately return a call seeking comment.

Sen. Joe Biden, D-Del., urged the Senate Intelligence Committee on Wednesday to open its own investigation.

"Everyone is for listening in on terrorists' phone calls. But we don't know who the NSA is listening to or the extent of the program," said Biden.

Bush's decision to authorize the United States' largest spy agency to monitor without warrants people inside the United States has sparked a flurry of questions about the program's legal justification.

The administration say the NSA's activities were narrowly targeted to intercept calls and e-mails of Americans and others inside the United States with suspected ties to al-Qaida.

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