

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

March 1, 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:

I write in response to your unusual letter seeking to modify your February 6 testimony that you sent to Chairman Specter yesterday. More than three weeks after the hearing you send the Committee a six-page letter seeking to alter your live testimony. Your letter, in fact, does little to clarify your testimony. Instead, it raises many questions, both factual and also some going to the credibility of your testimony.

At the outset of my questioning I asked when the Bush-Cheney Administration came to the conclusion that the congressional resolution authorizing the use of military force against al Qaeda also authorized warrantless wiretapping of Americans inside the United States. You never directly answered my question. Now, in your February 28 letter to Chairman Specter, you admit that "the Department's legal analysis has evolved over time." While not yet a direct answer to my question, you have at least indicated that you did not rely on that legal rationalization when the spying program began in 2001. I still wish to know when you concluded that the Authorization for the Use of Military Force authorized the warrantless wiretapping of Americans inside the United States and renew our request for the documents that embody that conclusion.

Of course, you realize the significance of the timing: It will demonstrate that your reliance on an "evolving interpretation" of the Authorization for the Use of Military Force shows it to be after-the-fact legal rationalization rather than the contemporaneous intent underlying the congressional resolution. You will still need to correct or better explain your statements on pages 184 and 187 of the transcript, which you recognize "may give [a] misimpression."

Second are the disturbing suggestions in your February 28 letter that there are other secret programs impinging on the liberties and rights of Americans. Much of your letter is devoted to not providing answers to the questions of a number of us regarding legal justifications for activities beyond those narrowly conceded by you to have already been confirmed by the President. We need to know what other activities affecting Americans' rights you view as justified by the Authorization for the Use of Military Force.

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Please provide answers to the following questions:

Do other programs of warrantless electronic surveillance exist? Do other programs of warrantless physical searches or mail searches exist? Which agencies run these programs and how long have they been in operation? What legal standards apply to these other programs?

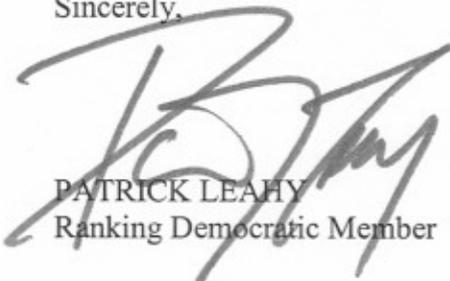
Also, please clarify your clarification of the repeated assertions you made on February 6 that the Department of Justice had not done the legal analysis as to whether it could intercept purely domestic communications of persons associated with al Qaeda. Has the Department done such an analysis since September 11, 2001? If so, what did the Department conclude?

Your continued refusal to answer these questions is a source of great concern. Likewise, the indication in your letter that your Department has conducted additional legal rationalizations and "analysis beyond the January 19th paper" make your production of the legal opinions to the Senate Judiciary Committee all the more important.

At the February 6 hearing you were confronted with your January 2001 testimony from your confirmation hearing, which appeared to many Senators to have been misleading. I expect that your letter yesterday was an attempt to provide some defense to a charge that you misled the Committee, again, in your testimony on February 6. You seek to add qualifiers and to hedge already vague answers about the shifting legal analysis for the President's domestic spying program without judicial approval and about the scope of activities undertaken secretly based on your expansive interpretation of inherent powers of the unitary executive not based on statutory authorities.

It is no secret that the Department of Justice has exhibited a disturbingly arrogant pattern of unresponsiveness to questions that I and other Democratic Senators have posed on many issues in the past. Congress has a constitutional duty to conduct oversight of this Administration in order to ensure its accountability to all Americans. Indeed, the Democratic members of the Committee are still waiting for answers to questions we posed following your February 6th hearing that were due yesterday. I look forward to your prompt reply to this inquiry, as well as your overdue answers to the Committee.

Sincerely,



PATRICK LEAHY
Ranking Democratic Member